
(2022) 02 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition (L) No. 30145 Of 2021

Vidhi Haresh Karia

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Maharashtra Public University Act, 2016 — Section 86

Citation : (2022) 02 BOM CK 0019

Hon'ble Judges : Nitin Jamdar, J; Amit Borkar, J

Bench : Division Bench

Advocate : Prashant Pandey, Ashok Dhanuka, Uma Palsuledesai, Gaurav Sharma, Ashutosh Kulkarni

Final Decision : Dismissed

Judgement

Amit Borkar, J

1. Rule. By consent, taken up forthwith for final hearing and final disposal at the stage of admission.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging notices dated 3 November 2021 and 16 December 2021

issued by the Respondent No. 2 University prescribing procedure of admission of LL.M. course for the academic year 2022-2023. The Petitioner is

also challenging the second merit list dated 17 December 2021 published by Respondent No. 2.

3. The admission programme published on 14 October 2021 contains a clause as follows:

“The details of the subsequent procedure in respect of admission to the LL.M. Programme will be notified along with the

Merit List.â??

According to the said clause, on 3 November 2021, the further admission process was notified by Respondent No. 2. Clause 5 and Note published in

the said Notice reads as under:

â??5) Candidates whose names are appeared in the First merit list of LL.M. Admission should take their admission as per prescribed

schedule. It is mandatory to submit the admission form and Fee Receipt to the office of the Department of Law. Failure to comply with the

aforementioned conditions will render candidates ineligible for the admission process, and the vacant seats will be filled up from the waiting

list which will be subsequently drawn.

NOTE: LL.M. Admission process shall be subject to verification of documents. In case of incomplete submission of documents, the candidate

shall not be entitled for admission.

Candidates whose names are appeared in the first merit list should take their admission within the prescribed date. If they fail to take their

admission within the prescribed date, their claim for LL.M. admission will be cancelled and the seat will be given to the next candidate in the

subsequent merit list according to the merit and eligibility norms of the University of Mumbai.

The Merit List is prepared based on the preferences and applications received from the candidates. If candidate has made multiple Google

form applications then only first application of such candidate has been considered for the purpose of merit list.â??

4. The Petitioner appeared for LL.M. Common Entrance Test ("CET") examination conducted online by Respondent No. 2. Respondent No. 2, on 14

October 2021, declared the entrance examination results. The Petitioner secured 92 marks out of 100. According to the admission procedure dated 14

October 2021 issued by the Respondent No. 2 the student was required to fill up the application form on or before 21 October 2021. Accordingly, on

19 October 2021, the Petitioner filled out her application form. As per the procedure published by Respondent No. 2, the students had to select all six

subjects available with Respondent No. 2 University as per their preference. The subjects chosen by the Petitioner as per her preference are: (a)

Business Law; (b) Intellectual Property Rights; (c) Criminology; (d)

Constitutional Law; (e) Environmental Law; and (f) Human Rights Law.

5. On 3 November 2021, Respondent No. 2 published the first merit list. Petitioner's name appeared in the list for the subject - 'Environmental Law'.

6. The Petitioner was called upon to opt for the subject allotted to her, i.e. 'Environmental Law'. The Petitioner refused to complete the procedure for admission and was, therefore, became ineligible to participate in the further admission process as per aforesaid conditions stated in the Notice dated 3

November 2021. The said action on Respondent No. 2 to declare Petitioner as ineligible to participate in further admission has been challenged by the

Petitioner through the present petition.

7. Respondent No. 2 filed a reply pointing out that the Petitioner was allotted subject of Environmental Law as per her eligibility. Still, she intentionally

chose not to complete relevant documents and refused to pay fees for the LL.M. course on or before 17 November 2021. Therefore, she had made

herself ineligible to participate in the admission process and fill up vacant seats from the waiting list, which was subsequently drawn. It is also pointed

out that now the second merit list has been published on 16 December 2021 and 547 seats out of 600 seats have been filled up, thereby substantially

concluding the admission process for the LL.M. programme 2021-2022. Therefore, it is stated that the admitted students will now be sitting for their

first-semester examination tentatively in April 2022. Therefore, no relief can be granted in favour of the Petitioner.

8. On 17 January 2022 the learned Advocate appearing for the University was asked to ascertain whether the Petitioner can be accommodated to any

of the courses of her choice. Learned Advocate appearing for the University stated that the Petitioner could be accommodated for Human Rights

Law. However, the Petitioner refused to accept the said offer of Respondent No. 2 University insisting upon business law; therefore, this Court is

constrained to decide the present petition on merits.

9. We have heard learned Advocates for the Petitioner and the Respondents. The learned Advocate for the Petitioner submitted that there is no

whisper in the first merit list that the student will be rendered ineligible if she refuses to take admission as per the first merit list. According to the

Petitioner, Notice dated 3 November 2021 incorporating a condition which requires a student to take admission as per the subject allotted in the first

merit list amounts to material variation in the condition of eligibility which Respondent No. 2 is not entitled to incorporate. According to the Petitioner, the said condition violates the right of the Petitioner under Article 14 of the Constitution of India. He submitted that the Notice dated 14 October 2021 and 3 November 2021 is contrary to Section 86 of the Maharashtra Public University Act, 2016.

10. Per contra, learned Advocate for Respondent No. 2 invited our attention to the specific clause in the Notice dated 14 October 2021, which states that the details of subsequent procedure in respect of admission to LL.M. programme will be notified along with the merit list. He, therefore, submitted that according to the said clause condition of eligibility of mandatorily taking admission in the first round of process has been incorporated. He submitted that there is no ground raised in the petition regarding violation of Section 86 of the Act of 2016. He submitted that there is no vested right with the Petitioner to seek admission in the LL.M. course once she has been declared ineligible as per the conditions prescribed. He, therefore, submitted that the petition be dismissed.

11. We have carefully considered the submissions of the parties. It needs to be noted that the Petitioner has not incorporated specific pleadings to challenge a specific condition disqualifying her from the process of admission. Petitioner has not incorporated in her petition any ground challenging impugned Notices on the ground of breach of Section 86 of the Act of 2016. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, Petitioner raising the point must plead such facts which must appear from the writ petition. In the absence of specific pleadings, the Petitioner is not entitled to challenge the conditions in the impugned Notices as the Respondents will not get the opportunity to meet such challenge resulting in a breach of principles of natural justice.

12. The only challenge thus is that the Respondent No. 2 has incorporated the condition in the midst of the process of admission. This is entirely incorrect. There is a specific clause contained in the Notice dated 14 October 2021, which reads as under:

“The details of the subsequent procedure in respect of admission to the LL.M. Programme will be notified along with the Merit List.”

13. Reading of the aforesaid clause clarifies that Respondent No. 2 has reserved the right to notify subsequent procedure in respect of admission to

the LL.M. programme along with the merit list. According to the said clause, the procedure has been prescribed in the Notice dated 3 November

2021. Therefore, it cannot be said that Respondent No. 2 has changed material conditions during the ongoing admission process. Once the challenge to

this notification fails, no grievance can be made against the condition stipulated therein.

14. Petitioners name appeared in the first merit list .The Petitioner was required to take their admission within the prescribed date. Petitioner failed to

take their admission within the prescribed date and thus Petitioners claim for LL.M. admission was canceled and Petitioner went out of the Process.

Having existed from the admission process, the events there after or admissions govern to other students thereafter ,are academic as far as Petitioner

is concerned, we are not considering an public interest litigation.

15. With a view to balance equities, this Court called upon the Petitioner on 17 January 2022, calling upon the learned Advocate for Respondent No. 2

University to take instructions in what manner the Petitioner can be accommodated in any other subject. Accordingly, Respondent No. 2 offered

subject " Human Rights to the Petitioner, but the Petitioner was bent upon for the subject " Business Law and refused the same .

16. As pointed out by Respondent No. 2 that the first-semester examination for the LL.M. course is likely to be held in April 2022, and we are in the

midst of February 2022. Therefore, at this stage, in the absence of proper challenge giving details by incorporating specific pleadings in the petition, the

validity of the conditions in the Notices dated 14 October 2021 and 3 November 2021 cannot be sustained. Once the conditions holding Petitioner as

ineligible is upheld, the Petitioner at this stage of the admission process, when the process of admission is substantially over and the examinations are

tentative to be held in April 2022, is not entitled to any relief.