

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.6752 OF 2021

Vishnu s/o Rambhaji Harishchandre,  
Age 45 years, Occu. Agri.,  
R/o Lasur, Tq. Vaijapur,  
District Aurangabad

... PETITIONER

**VERSUS**

1. Bar Council of India,  
21, Rouse Avenue Institutional Area  
Near Bal Bhawan,  
New Delhi – 110 002  
through its Secretary

2. Bar Council of Maharashtra and Goa,  
2nd Floor, High Court Extension,  
Dr. Kane Road, Fort, Mumbai – 32  
through its Secretary

3. Manikchand Pahade Law College,  
Nirala Bazar, Aurangabad,  
through Principal

4. Dr. Babasaheb Ambedkar Marathwada  
University, Begumpura, Aurangabad  
through its Registrar

... RESPONDENTS

.....  
Shri R.R. Karpe, Advocate for petitioner  
Shri Sachin S. Deshmukh, Advocate for respondent No.1.  
.....

CORAM : S.V. GANGAPURWALA,  
R.G. AVACHAT AND  
R.N. LADDHA, JJ.

Date of reserving judgment : 28th October, 2021

Date of pronouncing judgment : 4th May, 2022

**J U D G M E N T :**

With the directions of the Hon'ble the Chief Justice, this Reference is placed before this Full Bench.

2. The Division Bench of this Court, by its judgment and order dated 20/8/2021, in the present Writ Petition, has made the following reference to the Larger Bench :-

- (a) Whether, the preparatory course under clause 4.1(1) of the Yashwantrao Chavan Maharashtra Open University, Nashik could be treated as being equivalent of HSC ?
- (b) Whether, acquiring the B.com. Degree under distant learning programme of the Yashwantrao Chavan Maharashtra Open University, Nashik, on the basis of the preparatory programme of six months, could tantamount to a candidate having acquired 10+2+3 sequential educational qualification so as to be eligible for acquiring admission to the three years LL.B. degree course ?

3. The facts giving rise to this Reference are as follows :-

The petitioner completed Secondary School Certificate Course (S.S.C.) i.e. 10th Standard in the year 1992 from the State Board. He thereafter passed 11th Standard examination (First Year of Junior College – F.Y.J.C.) in 1993. Though he took admission to 12th Standard, in faculty of Arts, has, however, been unsuccessful to pass the examination. Later on in 2008, the petitioner earned Bachelor's degree in Commerce (B.Com.) from Yashwantrao Chavan Open University, Nashik (Open University for short). He could secure admission to First Year B.Com. of the Open University, since he passed pre-programme test to secure admission to the degree course. The petitioner thereafter successfully cleared State Common Entrance Test conducted for an admission for three year LL.B. Course in 2020. He was at Sr.No.1 in the Waiting List of the respondent No.3 – M.P. Law College, Aurangabad. He, was, relying on explanation to Rule 5 of Bar Council of India Rules of Legal Education, informed by the College that he was not eligible to secure admission to Three Year LL.B. course. He, therefore, filed the present Writ

Petition, seeking a writ of mandamus for directing the respondents No.3 and 4 to admit him to LL.B. Course.

4. The Division Bench, in its judgment and order dated 20/8/2021, observed :-

2. The learned advocate for the petitioner has placed the prospectus with regard to the School of Commerce and Management, Bachelor of Commerce (B.Com) of the Yashwantrao Chavan Maharashtra Open University, Nashik, before us. Reliance is placed on Clause 4 pertaining to the admission procedure for the First Year B.Com. Degree course. Relevant portion of Clause 4 reads as under:-

“4.Admission Procedure for F.Y. B.Com.

**4.1 Eligibility Criteria :-**

The admission to this programme is based on fulfilling any one of the following criteria:-

(1) Preparatory programme of YCMOU with minimum 40% marks. Certificate Programme for Self Help Group facilitators of YCMOU with minimum 40% marks.

(2) H.S.C. or equivalent examination of Maharashtra or other State HSC Board.

(3) 11 th standard passed (Before 1975).

(4) Government recognised certificate/ diploma of minimum two years after SSC.”

3. The learned advocate for the petitioner,

therefore, contends that the admission to this course is based on fulfilling any one criteria. Even if the petitioner has not passed his HSC, by undergoing the preparatory programme of the Open University for six months in which, he has scored 60% marks, he was held eligible for the B.Com. Course.

4. While considering the above submissions, the question that crops up is as to whether, the preparatory programme of the Open University for a period of six months, could be said to be equivalent to HSC of the State Board.

5. We have come across the judgment delivered by this Court (Coram : R.M. Borde and Mangesh S. Patil, JJ) dated 10.10.2018 in Writ Petition No.9118/2018 filed by Dattatraya Tanaji Mhetre vs. The State of Maharashtra and others. This case is practically identical to the case of the petitioner in hand. It was concluded that such qualification of graduation on the basis of the preparatory program of six months, without passing HSC, would mean that the candidate has non-sequential educational qualification. Respondent Nos.1 and 2 had relied upon Rule 2.4 as well as Explanation 1 to contend that non sequential educational qualification from the Open University, which would lead to acquiring of degree/ graduation certificate, would not be termed to be a graduation degree in the absence of passing HSC examination.

6. . . . .

7. The judgment in Dattatraya Tanaji Mhetre (supra) was followed by the learned Division Bench of this Court (Coram : S.V. Gangapurwala and A.M. Dhavale, JJ.) in Writ Petition No.12192/2018 filed by Pratiksha Dnyanoba Mane vs. the State of Maharashtra and others.

Vide the final order dated 22.01.2019, this Court dismissed the petition filed by Pratiksha Mane concluding that the passing of 10+2+degree in sequential manner is essential for three years LLB course and there was nothing on record to establish that the preparatory examination of six months could be said to be equivalent to the HSC examination for the purpose of academics and admission to the professional course.

8. We thus, find that the view taken in Dattatraya Tanaji Mhetre (supra) was not cited before the learned Division Bench (Coram : S.C. Dharmadhikari & M.S. Karnik, JJ) at the Principal Seat when Writ Petition No.1441/2014 filed by Shobha @ Neha Bhimrao Buddhivant vs. The Bar Council of India and others, was allowed vide judgment dated 27.06.2019. It appears that the view taken by this Court earlier in Dattatraya Tanaji Mhetre (supra) was not brought to the notice of the learned Division Bench, which decided Shobha @ Neha (supra) on 27.06.2019.

9. Nevertheless, having considered the view taken in Dattatraya Tanaji Mhetre (supra) and in Shobha @ Neha (supra), we are of the view that non-sequential educational qualification cannot be the basis for granting admission to three years LL.B. course for reasons more than one. Firstly, that 10+2+3 sequence for securing admission to the three years LLB degree course is not achieved by the present petitioner. Secondly, that six months preparatory course of the Open University, which is in fact a course for preparing the candidate to appear for the admission process of the graduation degree course of distant learning with the Open University, would not be equivalent to the passing of HSC examination.

10. Since we are in agreement with the view taken in Dattatraya Tanaji Mhetre (supra) and we

do not agree with the view taken in Shobha @ Neha (supra), which was delivered without noticing the judgment in Dattatraya Tanaji Mhetre (supra), we find it appropriate to refer this matter to the Honourable The Chief Justice of this Court under Rule 8 of Chapter 1 of the Bombay High Court (Appellate Sides) Rules, 1960 for formation of a Larger Bench.

5. We have heard learned counsel for the petitioner and learned counsel for the Bar Council of India and Bar Council of Maharashtra and Goa, respondents No.1 and 2 herein.

6. Learned counsel for the petitioner would submit that, the issues involved in the present Writ petition have already been set at rest, by Full Bench judgment of the Madras High Court in case of G.S. Jagadeesh Vs. The Chairman, 3 Year LL.B. Admission, 2016-2017, the Tamil Nadu Dr. Ambedkar Law University, Chennai (Writ Petition No.32984 of 2016), dated 13/3/2018. He would further submit that, the petitioner completed his graduation in the year 2008 from the Open University, a recognised University. It is, therefore, not open for any other authority to question his degree certificate unless and until the same is cancelled by the appropriate authority or by Court of law. Learned counsel would further submit that, the Bar Council of India is the apex body in our

country to consider the matter regarding legal education and regulate the same. The Bar Council of India admittedly accepted the decision in case of G.N. Jagadeesh (supra) and thus, it could not be heard to rely on the explanation to Rule 5.

7. Learned counsel for the respondents No.1 and 2 (Bar Councils) would, on the other hand, submit that the Bar Council of India in its legal education meeting dated 30/4/2017, considered the matter regarding Rule 5 of the Legal Education Rules and concluded thus :

“The Committee considered the matter in respect of basic qualification referred in the explanation to Rule-5 of Legal Education Rules-2008. There are two aspects for consideration, one is proviso of this rule dealing with distance and correspondence course of +2 and first degree certificate through distance and correspondence. The Committee finds, there is no difficulty which correctly recorded as per the policy of the Bar Council of India. So far explanation to this section also correctly describes that applicant must obtain basic qualification for admission to 5 degree course which shall be 10th and or for admission in 3 year law course basic qualification should be 12th (+2) because unless he passed these basic qualifications he could not have got admission in (intermediate) +2 or graduation, hence Committee finds no reason to delete the explanation.”

8. Relying on Constitution Bench judgment of the

Apex Court in case of **Dwarka Prasad Vs. Dwarka Das Saraf [ (1976) 1 SCC 128 ]**, he would submit that, the proviso must be limited to the subject matter of the enacting clause. It is settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. Words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context (1912 AC 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand would have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

9. Learned counsel, however, was candid enough to concede that, for admission to a three year LL.B. Course, the

basic qualification is passing of a degree course in any of the streams recognised by a recognised University.

10. Section 4 of the Advocates Act, 1961 (for short the Act) provides for constitution of the Bar Council of India, the functions whereof have been enumerated in Section 7 of the said Act. One of the functions of the Bar Council of India is to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. Its another function is to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf.

11. The Bar Council of India, in exercise of powers under Section 7(h) & (i) of the Act, has framed legal education rules. It would be apposite to have a reference to certain definitions and relevant provisions of the Rules :-

(vi) “Bachelor degree in law” means and includes a degree in law conferred by the University recognized by the Bar Council of India for the purpose of the Act and includes a bachelor degree in law after any bachelor degree in science, arts, commerce, engineering, medicine, or any

other discipline of a University for a period of study not less than three years or an integrated bachelor degree combining the course of a first bachelor degree in any subject and also the law running together in concert and compression for not less than a period of five years after 10+2 or 11+1 courses as the case may be.

(viii) “First Degree” means Bachelor Degree in any branch of knowledge such as Arts, Fine Arts, Science, Commerce, Management, Medicine, Engineering, Pharmacy, Technology etc. conferred by Universities or any other qualifications awarded by an institution/authority recognized by the Bar Council of India, from time to time.

(xiii) “Integrated Degree course in law” means double degree course comprising the bachelor degree in any branch of knowledge prosecuted simultaneously with the Degree course in law in such an integrated manner as may be designed by the University concerned for a continuous period of not less than five years.

(xxii) “Recognized University” means a University whose degree in law is recognized by the Bar Council of India under these Rules.

(xxvi) “Second degree” means a course of study leading to degree, which can be prosecuted only after obtaining a bachelor degree.

12. Rule 5, which is very much relevant herein, reads thus :-

**5. Eligibility for admission:**

(a) Three Year Law Degree Course: An applicant who has graduated in any discipline of knowledge

from a University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(b) Integrated Degree Program: An applicant who has successfully completed Senior Secondary School course ('+2') or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained + 2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. course, as the case may be.

Explanation: The applicants who have obtained 10

+ 2 or graduation/ post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

While clause 4.1 of the prospectus of the Open University, which speaks of admission procedure for F.Y.B.Com reads as under :-

**4.1 Eligibility Criteria.**

The admission to this programme is based on fulfilling any one of the following criteria -

- (1) preparatory programme of YCMOU with minimum 40% marks. Certificate Programme for Self Help Group facilitators of YCMOU with minimum 40% marks.
- (2) H.S.C. or equivalent examination of Maharashtra or other State HSC Board.
- (3) 11th Standard passed (Before 1975).
- (4) government recognised certificate/ diploma of minimum two years after SSC.”

13. Clause (1) of the eligibility criteria of the Open University for admission procedure for F.Y.B.Com speaks of candidates who successfully clear of preparatory programme of YCMOU with minimum 40% marks or pass certificate

programme for facilitators of the very Open university with minimum 40% marks, are eligible for admission to F.Y.B.Com. Although clearing any of these two tests may not stricto sensu be equivalent to passing of H.S.C. Course of a recognised State or national School Board shall for all practical purposes to be held to be an acceptable criteria for securing admission to F.Y.B.Com. Since the basic qualification for securing an admission to 3 year LL.B. course is a degree certificate of any of the streams of a recognised University, candidate who earns Bachelor's degree in any of the streams of the Open University would be eligible to secure an admission to 3 year Law degree course. Needless to mention, such a candidate is required to pass State Common Entrance Test.

14. So far as regards admission to First Year integrated degree course (5 year Law Course) is concerned, a candidate must have cleared Secondary School Certificate Course (+2) or equivalent (such as 11+1) 'A' level in the Senior School Certificate) from recognised University of India or outside, shall also be considered as eligible for admission in the 5 year Law Course.

15. Rule 4 of the Rules, 2008 provides two courses of law leading to Bachelor's degree in law.

- (1) a three year degree course in law undertaken after obtaining a Bachelor's degree in any discipline of studies from a University or any other qualification considered equivalent by the Bar Council of India; and
- (2) A double degree integrated course combining Bachelor's degree as designed by the University concerned in any discipline of studies with the Bachelor degree course in law which shall be of not less than 5 years duration.

16. Rule 5 prescribes the eligibility for admission. Under Rule 5(a), eligibility for admission to three year law degree course is prescribed. An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State legislature or an equivalent National institution recognised as a deemed to be University or foreign University recognised as equivalent to the status of Indian University by an authority competent to declare equivalence, may apply for three year degree programme in law leading to conferment of LL.B. degree.

17. As per Rule 5(b), for an integrated degree

programme, an applicant who has successfully completed senior secondary school course ( + 2 ) or equivalent, such as 11 + 1 A level in senior school certificate course from a recognized University in India or outside or from Senior Secondary Board or equivalent recognised by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the Government of that country, for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted with the programme of the centres of legal education to obtain the integrated degree in law.

18. The aforesaid provision would make it abundantly clear that, for a three year law degree course a candidate has to be a graduate in any discipline of knowledge and for an integrated degree programme, a candidate has to successfully complete the secondary school course, such as 10 + 2 or equivalent.

The proviso to Rule 5 further clarifies that the applicants who have obtained + 2 higher secondary pass certificate or first degree certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the integrated five year

course or three year LL.B. course, as the case may be, meaning thereby that a candidate having obtained + 2 higher secondary pass certificate or a first degree certificate even by prosecuting studies in distance or correspondence method is also eligible for admission to the LL.B. course.

19. The explanation to Rule 5 reads that, the applicants who have obtained 10 + 2 or graduation/ post graduation through Open University system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law course. The explanation is a subject matter of interpretation in the present case.

20. Before we deal with the interpretation of the explanation, the other provision also will have to be considered. Rule 7 of the Rules of 2008 prescribes the minimum marks in qualifying examination for admission to the LL.B. course. For an integrated five year course, the Bar Council of India may stipulate the minimum percentage of marks not below 45% in case of general category applicants and 40% in case of SC/ ST applicants to be obtained for the qualifying examination, such as + 2 examination and for a three year LL.B. course, the similar minimum marks are to be obtained in a degree course in any discipline, meaning

thereby that the minimum marks required for qualifying examination to secure admission to the integrated course is the marks obtained in + 12 examination and for three year law course, the minimum marks to be considered are the marks obtained in a degree course. The marks obtained in + 2 or any other equivalent examination is irrelevant for the purpose of admission to the three year law course.

21. An explanation is normally to be read in a manner so as to harmonize with the main section and cannot be construed as to widen or limit the scope and purview of the section. The explanation will have to be construed in a manner that it is read in harmony with the main section. Proviso to Section 5 provides that, a person obtaining + 2 higher secondary pass certificate or first degree certificate after prosecuting studies in distance or correspondence method is also considered as eligible for admission to the law course. Explanation cannot be read as limiting the operation of the provision itself. The criteria for admission to the three year law degree course is that, a candidate should possess a graduate degree i.e. the first degree (Bachelor degree in any branch of knowledge, such as Arts, Fine Arts, Science, Commerce, Management and so on). The only limitation

would be that the first degree certificate and/or the first degree shall be from institution recognised by the Bar Council of India from time to time.

22. The person obtaining the first degree certificate from the Yashwantrao Chavan Maharashtra Open University, Nashik is recognised by the Bar Council of India. We specifically asked the learned counsel for the Bar Council of India as to whether the first degree certificate obtained from Yashwantrao Chavan Maharashtra Open University, Nashik is recognised by the Bar Council of India. Mr. Deshmukh, learned counsel for the Bar Council of India candidly accepted that the first degree certificate from Yashwantrao Chavan Maharashtra Open University, Nashik is recognised by the Bar Council of India for admission to the law course. The explanation prescribes that the applicants obtaining 10 + 2 or graduation/ postgraduation through Open University system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law course.

23. The words "basic qualification" appearing in the explanation to Rule 5 is the subject matter of consideration. "Basic qualification" is not defined under the Rules or the Act. In an Open University, for an admission to the Commerce

graduation course, the criterion are provided. A person having qualification of H.S.C. or equivalent examination or is 11th Standard Passed, or a Government recognised certificate/ diploma of two years after S.C.C., are eligible for admission, and a person who had undergone a preparatory programme of Yashwantrao Chavan Maharashtra Open University, Nashik with minimum 40 marks is also eligible for admission to the first year degree certificate course. Equivalence is provided to the said courses.

24. Under Government Resolution dated 20/5/2011, the Government of Maharashtra has granted equivalence of 10th and 12th to those who have passed preparatory programme and first year of graduation. The preparatory programme would be the basic course for securing admission to the first degree course in an open University. The basic course for first degree certificate would be different for different institutions. The Bar Council has not restricted the admission to the law degree course to the students passing from a regular University only. Even a student graduating in any discipline of knowledge from a equivalent national institution recognised as a deemed to be University or even a foreign University recognised as equivalent to the status of an

Indian University by an authority competent to declare equivalence can apply for three year degree programme in law. It is not necessary that a foreign University recognised as equivalent to the status of an Indian University may require 10 + 2 as a basic qualification for the first degree course. A person who has completed 10 + 2 or equivalent is also considered eligible for admission to the five year integrated law degree course as per Rule 5(b).

25. The aspect of basic qualification appearing in explanation would differ from University to University and course to course. The basic qualification for first degree course in an Open University would be the preparatory course and/or 12th Standard passed. The basic qualification as is appearing in explanation will have to be given a wider interpretation and cannot be given a restricted interpretation. If restricted interpretation is given to the words "basic qualification" appearing in explanation, then the same would not be in tune and consonance with the main rule. A person who has completed the preparatory programme course from Yashwantrao Chavan Maharashtra Open University, Nashik and who has also completed 10 + 2 from any Board, is eligible for admission to the first degree course in branch of Arts,

Commerce, Science. If the restrictive meaning is given to the basic qualification, then a student who has passed graduation from the open University and had earlier completed 10 + 2 from S.S.C. Board would be eligible for admission to the three year law course, but a person who has been admitted to the first degree course in the open University after passing the preparatory programme for the said course, would not be eligible. The same cannot be the intention of the legislature.

26. If such a restricted meaning is given to the words "basic qualification", the very purpose of proviso would stand frustrated. Proviso has clarified that an applicant who has passed the first degree certificate after prosecuting studies in distance or correspondence method, shall also be considered as eligible for admission. The explanation cannot be interpreted in a manner it would negate the proviso and the main section. The explanation cannot take away the statutory right with which a person is bestowed with under the rule. For explanation to harmoniously survive with the proviso and the main rule will have to be interpreted in a manner that the basic qualification would mean the basic qualification as provided by that University for obtaining admission to the graduation/ postgraduation or 10 + 2 course. Any other

interpretation would lead to an anomalous situation and would render the Rule 5 and the proviso otiose and superfluous.

27. For the reasons given hereinabove, we answer both the points in the affirmative. The Reference thus stands disposed of. The matter may, therefore, be placed before the appropriate Bench for deciding the Writ Petition No.6752 of 2021.

( S.V. GANGAPURWALA, J. )

( R. G. AVACHAT, J. )

( R. N. LADDHA, J. )

fmp/-