

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2018
DELIVERED ON : 23.07.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE,
THE HON'BLE MR.JUSTICE R.SUBBIAH

AND

The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.44242 of 2016, 21834, 23600, 24040, 24856, 25220 to
25222, 31700 of 2017, 5156, 5390 and 7248 of 2018

and W.P.(MD) No.11434 of 2017

W.P.No.44242 of 2016:

P.Raji

.. Petitioner

Vs

1 The Secretary
Bar Council of Tamilnadu & Puducherry
NSC Bose Road, Chennai – 600 001.

2 The Secretary
Bar Council of India
No.21, Rouse Avenue Institute Area
Near Bal Bhawan
New Delhi – 110 002.

.. Respondents

and batch cases.

WEB COPY

For Petitioner in : Mr.M.Thangavel
W.P.No.44242 of 2016 for Mr.S.Selvaraj

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For Petitioner in : Mr.C.Elamurugan
W.P.(MD) No.11434 of
2017

For Petitioners in : Mr.K.Chandrasekaran
W.P.Nos.21834, 23600,
25220 to 25222 of 2017

For Petitioner in : Mr.L.Chandrakumar
W.P.No.24040 of 2017

For Petitioner in : Mr.S.P.Yuaraj
W.P.No.24856 of 2017

For Petitioner in : Mr.A.Mohamed Ismail
W.P.Nos.5156 and 5390
of 2018

For Petitioner in : Mr.R.Gandhi
W.P.No.31700 of 2017 Senior Counsel
for Mr.R.G.Narendran

For Petitioner in : Ms.Asha Devi
W.P.No.7248 of 2018

For Ambedkar Law : Mr.M.Nallathambi
University in all the writ
petitions

For Bar Council of Tamil : Mr.R.Singaravelan
Nadu and Puducherry in Senior Counsel
all the writ petitions for Mr.J.Pothiraj

For Bar Council of India : Mr.S.R.Raghunathan
in all the writ petitions

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COMMON ORDER

Ms.INDIRA BANERJEE, CHIEF JUSTICE

In these writ petitions, petitioners have challenged the decision of the Bar Council of Tamil Nadu and Puducherry, hereinafter referred to as "*the State Bar Council*", to keep the applications of the petitioners for enrolment pending.

2. The reasons for keeping the applications of the petitioners pending are contained in a list published by the Bar Council of Tamil Nadu. The enrolment applications of these petitioners have been kept pending on the ground that they had cleared the Secondary (X Class) or the Higher Secondary (XII Class) Board Examination privately.

3. It is not in dispute that all the petitioners have obtained the L.L.B. degree from a University established by statute and recognized by the Bar Council of India, by prosecuting a regular Three Year L.L.B. Course conducted by the University or an institution affiliated thereto. The universities from which the petitioners have obtained the L.L.B. degree are the Venkateswara University, Tirupathy, Andhra Pradesh; Dr.Ambedkar Law University, Tamil Nadu and Andhra University, Andhra Pradesh, respectively. It is also not in dispute that all the

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applicants have graduated from Universities established by statute whose degree in law is recognized by the Bar Council of India, by prosecuting regular Bachelor's Degree courses.

4. The short question involved in these writ petitions is whether the applications of the petitioners for enrolment as advocates in the roll of the State Bar Council can be declined or even kept in abeyance only on the ground that the petitioners cleared the Secondary (X Class) or the Higher Secondary (XII Class) Board Examination privately, without attending regular classes in a recognized school.

5. Legal practice in India is regulated by the Advocates Act, 1961, hereinafter referred to as "*the 1961 Act*", which came into force with effect from 19.5.1961.

6. Section 4 of the 1961 Act provides for constitution of the Bar Council of India consisting of members, as specified in the said Section. The functions of the Bar Council of India, as enumerated in Section 7 of the 1961 Act, *inter alia*, are:

"(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with

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the Universities in India imparting such education and the State Bar Councils;

(i) 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];

...

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act"

7. The functions of the Bar Council of India include promotion of legal education and laying down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils.

8. The State Bar Council has been constituted under Section 5 of the 1961 Act. The functions of the State Bar Councils are enumerated in various sub-sections of Section 6 of the 1961 Act. The functions are as follows:

"6. Functions of State Bar Councils. — (1) The functions of a State Bar Council shall be—

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

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- (c) to entertain and determine cases of misconduct against advocates on its roll;*
- (d) to safeguard the rights, privileges and interests of advocates on its roll;*
- (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section clause (a) of sub-section (2) of section 7;*
- (e) to promote and support law reform;*
- (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and paper of legal interest;*
- (eee) to organise legal aid to the poor in the prescribed manner;*
- (f) to manage and invest the funds of the Bar Council;*
- (g) to provide for the election of its members;*
- (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;*
- (h) to perform all other functions conferred on it by or under this Act;*
- (i) to do all other things necessary for discharging the aforesaid functions."*

9. Chapter III of the 1961 Act deals with admission and enrolment of advocates. Some of the relevant provisions of Chapter III of the 1961 Act are set out herein below:

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"Section 17. State Bar Councils to maintain roll of advocates.—

(1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of—

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), immediately before the appointed day including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council;

(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority, 1[and, subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined] as follows:—

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(a) the seniority of an advocate referred to in clause (a) subsection (1) shall be determined in accordance with his date of enrolment under the Indian Bar Councils Act, 1926 (38 of 1926);

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify;

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be;

(e) notwithstanding anything contained in clause (a), the seniority of an attorney enrolled whether before or after the commencement of the Advocate (Amendment) Act, 1980 as an advocate shall be determined in accordance with the date of his enrolment as an attorney.

(4) No person shall be enrolled as an advocate on the roll of more than one State Bar Council.

Section 19. State Bar Councils to send copies of rolls of advocates to the Bar Council of India.—

Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates

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prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the additions to, any such roll, as soon as the same have been made.

Section 21. Disputes regarding seniority.—

(1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

(2) Subject as aforesaid, if any dispute arise with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.

Section 22. Certificate of enrolment.—

(1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.

(2) Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.

Section 24. Persons who may be admitted as advocates on a State roll.—

(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the

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following conditions, namely:—

(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law—

(i) before the 12th day of March, 1967, from any University in the territory of India; or

(ii) before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India or;

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he is barrister and is called to the Bar on or before the 31st day of December, 1976 or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council:

Provided that where such person is a member of the Schedule Castes or the Schedule Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be 1[one hundred rupees and to the Bar Council of India, twenty-five rupees.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on that date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that

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examination.

Section 24A. Disqualification for enrolment.—

(1) No person shall be admitted as an advocate on a State roll—

(a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

*Explanation.—*In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

Section 25. Authority to whom applications for enrolment may be made.—

An application for admission as an advocate shall be

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made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.

Section 26A. Power to remove names from roll.—

A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect.

Section 27. Application once refused not to be entertained by another Bar Council except in certain circumstances.—

Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll, except with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

Section 28. Power to make rules.—

(1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section

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(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India."

10. Under Section 24 of the 1961 Act, a person is qualified to be admitted as an advocate on a State roll:

(i) if he is a citizen of India or a national of a country in which citizens of India, duly qualified, are permitted to practise; and

(ii) has completed the age of 21 years; and

(iii) obtained a Degree in Law after undergoing a Three Year course of study in Law from any University in India which is recognized for the purposes of enrolment by the Bar Council of India, or after undergoing a course of study in

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Law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in Law, which is recognised by the Bar Council of India for the purpose of enrolment or obtained a Degree in Law from any foreign University whose degree is recognised by the Bar Council of India for the purpose of enrolment; and

(iv) fulfils such other conditions as might be specified in the rules made by the State Bar Council under Chapter III; and

(v) he/she has paid the requisite fees and the stamp duty chargeable under the Indian Stamp Act.

11. If a candidate fulfils the conditions prescribed in Section 24 of the 1961 Act, he/she cannot be refused enrolment unless he/she is disqualified for enrolment on any of the grounds stipulated in Section 24A of the 1961 Act, namely:

- (i) if he/she is convicted of an offence involving moral turpitude;
- (ii) if he/she is convicted of an offence under the

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provisions of the Untouchability (Offences) Act, 1955;

(iii) if he/she is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

12. Those found guilty of offences stipulated in Section 24A(1), but dealt with under the provisions of the Probation of Offenders Act, 1958, are exempted from disqualification.

13. In these writ petitions, the Court is not concerned with Section 24A of the 1961 Act, as none of the petitioners have been refused enrolment on any of the grounds specified in Section 24A of the 1961 Act.

14. A person is not eligible for enrolment as an Advocate under Section 24 of the 1961 Act unless he/she has obtained a degree in law after undergoing a three year course of study in law from any University in India which is recognized by the Bar Council of India or after undergoing a course of study in law, the duration of which is not less than two academic years.

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15. Under Section 25 of the 1961 Act, an application for enrolment to the State Bar Council, within whose jurisdiction the applicant proposes to practice, is to be made in the prescribed form.

16. On receipt of such application for enrolment as an advocate, the State Bar Council is to refer the same to its Enrolment Committee, which is to dispose of the application in the prescribed manner.

17. Enrolment in the roll of the Bar Council confers on an advocate the right to practice law. Wrongful denial of enrolment or even delay in disposal of an application for enrolment causes immense prejudice to the applicant, apart from depriving an applicant of the right to equality as also the right under Article 19(1)(g) of the Constitution of India to practice a profession of his/her choice. Delay in disposal of an application also affects seniority as an advocate, which is counted from the date of enrolment as per Section 17(3)(a) of the 1961 Act and has long term prejudicial consequences for the applicant.

18. Needless to mention that the Enrolment Committee has to take a decision on the application for enrolment with utmost expedition. Where the Enrolment Committee of a Bar Council proposes

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to refuse any such application, it is to refer the application for opinion of the Bar Council of India along with a statement of grounds in support of the refusal of the application.

19. Section 26(3) of the 1961 Act makes it obligatory on the Enrolment Committee of a State Bar Council to dispose of any application referred to the Bar Council of India under sub-section (2) of Section 26 of the 1961 Act in conformity with the opinion of the Bar Council of India. Refusal by a State Bar Council to enroll an advocate on its roll has penal consequences under Section 26(4) read with Section 27 of the 1961 Act, since, on such refusal, the State Bar Council is to send intimation to all other State Bar Councils in the country about such refusal. Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, the other State Bar Councils are debarred from entertaining an application for admission of such person, except with previous consent in writing of the State Bar Council which refused the application, and of the Bar Council of India. Therefore, a duty to give an applicant an opportunity of representation and/or hearing before rejection of an application for enrolment is implicit in the 1961 Act and/or any rules framed thereunder.

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20. The State Bar Council does not appear to have framed any rules under its rule making power under Section 28(1)(d) of the 1961 Act prescribing any additional conditions subject to which a person may be admitted as an advocate on its roll.

21. The function of promoting legal education and laying down standards of such education is that of the Bar Council of India and not the State Bar Councils. The said function is performed by the Bar Council of India in consultation with the Universities in India imparting education in law and the State Bar Councils.

22. In exercise of its rule making power conferred under the 1961 Act, the Bar Council of India has framed Rules of Legal Education, 2008, hereinafter referred to as "*the Legal Education Rules*", in consultation with Universities and State Bar Councils. Rules 3, 5, 6 and 7 of the Bar Council of India Rules of Legal Education, hereinafter referred to as "*Legal Education Rules*", provide as follows:

"3. Recognized Universities.- *The State Bar council shall enroll as Advocate only such candidates, who have passed from University, approved affiliated Centre of Legal Education/Departments of the recognised University as approved by the Bar Council of India. The Bar council of India shall notify a list of*

such Universities and the Centres of Legal Education prior to the commencement of each academic year in the prescribed manner and also put in website of Bar Council of India a list of Universities and Centres of Legal Education as amended from time to time. Each State Bar Council shall ensure that applicants passing out from such recognised Universities and of its approved affiliated law Centre of Legal Education are enrolled.

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 recognised as a Deemed to be University or foreign University recognised as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree programme 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 recognised by the Bar Council of India for the purpose of enrolment.*

(b) 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 Leaving certificate course) from a recognised

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University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognised by the Union or by a State Government or from any equivalent institution from a foreign country recognised 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 recognised 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.

6. Prohibition to register for two regular courses of study.-

No student shall be allowed to simultaneously register for a law degree program with any other graduate or postgraduate or certificate course run by the same or any other University or an Institute for academic or professional learning excepting in the integrated degree program of the same institution. Provided that any short period part time certificate course on language, computer science or computer application of an Institute or any course run by a Centre for Distance Learning of a University however, shall be excepted.

7. Minimum marks in qualifying examination for admission.-

Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 Examination in case of Integrated Five Years' course or Degree course in any discipline for Three years' LL.B. course, for the purpose of applying for and getting admitted into a Law Degree Program of any recognized University in either of the streams.

Provided that such a minimum qualifying marks shall not automatically entitle a person to get admission into an institution but only shall entitle the person

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concerned to fulfill other institutional criteria notified by the institution concerned or by the government concerned from time to time to apply for admission."

23. For admission to the Three Year Law Degree Course, an applicant -

(i) would have to be a graduate in any discipline from a university established by an Act of Parliament or by a State Legislature or an equivalent National Institution recognized as a deemed university, or a foreign university recognized as equivalent to an Indian University established by statute.

(ii) an LL.B Degree / Law Degree from such university and/or deemed university and/or equivalent institution should be recognized by the Bar Council of India for the purpose of enrolment.

(iii) the candidate should have graduated from such deemed university or equivalent institution on successful completion of a regular course conducted by such university and/or deemed university and/or equivalent.

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(iv) the candidate should not have obtained 10 +2 or graduation or post graduation through Open University System directly without having the basic qualification for prosecuting such studies.

24. In our considered view, successful completion of a regular programme and/or course conducted by a University would include a regular course and/or programme conducted by an institution affiliated to and/or recognized by the University and authorised by the University to conduct such programme and/or course.

25. The first proviso makes it absolutely clear that applicants, who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies through distance or correspondence method are also considered to be eligible for admission in the Integrated Five Years Course or Three Years LL.B. Course, as the case might be. The first proviso, which is clarificatory, only removes any doubt that prosecution of studies in distance or by correspondence method is to be deemed to be on par with regular course conducted by a recognized Institution for the purpose of Higher Secondary Pass Certificate or First Degree Certificate.

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26. In other words, a candidate who has obtained a Higher Secondary Pass Certificate from a recognized Board by successfully completing a regular programme and/or course through the distance or correspondence method would be eligible for the Integrated Degree programme and an applicant who has graduated in any discipline from a University whose Degree in Law is recognized by the Bar Council of India for the purpose of enrolment, on successful completion of a regular Under-Graduate Degree course conducted by such University or an institution affiliated to and recognized by such University and authorised to conduct a regular course and/or programme through distance or correspondence method, would be eligible for admission to the Three Year LLB Course.

27. However, the Explanation after the proviso makes an exception in case of persons who have obtained 10 +2 or graduation/post graduation through Open University System directly **without having any basic qualification** for prosecuting such studies. Such persons are not eligible for admission either to the Three Year Law Degree course or to the Five Year Integrated Degree Programme.

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28. Rule 5 of the Legal Education Rules does not exclude candidates who obtained the Secondary or Higher Secondary Course Certificate without attending a regular course in a recognized educational institution from admission to the Three Year LL.B Course.

29. For admission to the Integrated Degree Program, which is the Five Year Law Course, an applicant should have successfully completed Senior Secondary School Course or equivalent from a recognized University of India or abroad 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 issuing qualifying certificate **on successful completion of the course.** Thus, a candidate applying for the Integrated Degree Programme (Five Year Course) should have obtained Higher Secondary Certificate or equivalent certificate from a recognized University and/or Board and/or equivalent after successful completion of a regular course.

30. On a perusal of Rule 5(a) and (b), it is patently clear that it was the intention of the Bar Council of India, that for admission to the Three Year Law Course, a candidate should not only be a graduate, but

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a graduate upon completion of a regular course conducted by a university or an institution recognized by and/or affiliated to a university, or a deemed university or equivalent institution and in case of admission to the Integrated Degree Program, an applicant should have obtained a Senior Secondary School Certificate (+2) or equivalent certificate such as 11 +1 or 'A' level Senior School Leaving Certificate from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government, on successful completion of the course and/or in other words, by taking admission in and going through a regular course. It appears to be the intention of the Rules that the immediately preceding qualifying certificate and/or degree should have been obtained on completion of a regular course. As observed above, completion of a course through the distance or correspondence method is to be deemed to be at par with a regular course of study which requires physical attendance of classes.

31. On a perusal of Rule 5 of the Legal Education Rules, it is patently clear that students who prosecute studies privately are to be considered as eligible for admission to the Three Year LLB course, **provided they possess the requisite Secondary School Leaving Course Certificate or equivalent certificate, and a Higher Secondary Course Certificate or an equivalent certificate from a**

Board of Education recognized by the Union or by the State Government or from any equivalent institution of foreign country or any university established by statute or deemed university, and have graduated from a university and/or institution whose degree in law is recognized by the Bar Council, by successfully completing a regular course, which would include a correspondence course or a course through the distance mode.

32. However, applicants to the Law Course who obtained 10 +2 or graduation or post graduation through Open University System directly, without having the basic qualification for prosecuting such studies are not eligible for admission in the Law Courses. In other words, a graduate from an Open University who does not have the Secondary or alternatively Higher Secondary Course Certificate would not be eligible. Similarly, a post graduate from an Open University without a graduate degree would not be eligible for admission.

33. The Explanation does not apply to candidates, such as the petitioners, who have cleared the Secondary School Leaving Certificate Examination and Higher Secondary Course Certificate Examination from a Board recognized by the State of Tamil Nadu and have

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graduated from an Indian University established by statute, by attending a regular course. The mere fact that the student may have studied in private and appeared for the examinations in private to clear any previous examination would not make any difference. A candidate cannot be debarred from admission to the Three Year LLB course on the sole ground that he appeared for the Secondary Certificate Examination or the Higher Secondary Certificate Examination as a private candidate without attending regular school or a regular course through correspondence or distance mode.

34. It may be pertinent to note, at the inception, that Rule 5 read with Rule 7 of the Legal Education Rules only fixes eligibility criteria. It is obviously open to Universities to devise admission norms and/or criteria, subject to fulfillment by candidates of the eligibility criteria fixed by Rules 5 and 7 of the Legal Education Rules.

35. It is for the Law institution concerned to make admissions either on the basis of the marks obtained in previous examinations or on the basis of the marks obtained in a separate admission test or on the basis of the average of the marks obtained in the previous examinations and marks obtained in an admission test, if such admission test is held, provided the candidates fulfill the eligibility

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criteria as laid down in Rules 5 and 7 of the Legal Education Rules.

36. In these cases, it is not in dispute that the petitioners have cleared the Secondary School Leaving Certificate examination and the Higher Secondary Course Certificate examination conducted by Boards recognized by the State of Tamil Nadu, have graduated from Indian Universities established by statute and recognized by the University Grants Commission after attending regular courses and thereafter obtained the Three Year LLB Degrees from universities established by statute and recognised by the Bar Council of India for the purpose of enrolment after attending regular classes conducted by the Universities.

37. The enrolment of the petitioners has been kept in abeyance only on the ground that they had passed the Secondary or Higher Secondary Boar Examination privately, without attending regular classes in a recognised school.

38. There can be no doubt, as argued by Mr.R.Singaravelan, learned Senior Counsel appearing on behalf of the State Bar Council, that it is an implicit condition of enrolment, that candidates should not only have the requisite law degree from Universities or approved

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affiliated Centres of Legal Education as approved by the Bar Council of India, but should also have had the requisite eligibility for pursuing the law courses conducted by such universities and/or the affiliated Centres of Legal Education.

39. Much emphasis has been placed on the Explanation after the proviso to Rule 5 of the Legal Education Rules, which reads that *"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"*. The Explanation means that for admission to the Three Year LL.B. Course, it is necessary for a student to first clear the Secondary School Leaving Certificate Examination or equivalent examination conducted by some recognized Board; thereafter, the Higher Secondary Course Certificate Examination or equivalent examination conducted by some recognized Board, and thereafter on successful completion of an Undergraduate course and/or programme in any discipline conducted by a recognized university or its affiliated institution either by holding classes which require attendance or through the distance or correspondence mode. It is reiterated that the graduate degree would have to be obtained by successfully completing a regular course conducted by the university.

40. A candidate, who may have passed the Higher Secondary Course Certificate Examination (+2) without clearing the Secondary School Leaving Certificate Examination (+10) or alternatively a candidate, who may have straightaway graduated under the Open University System without clearing the Secondary School Leaving Certificate Examination and the Higher Secondary Course Certificate Examination, or either, as the case might be, would not be eligible for admission.

41. Rule 7 of the Legal Education Rules enables the Bar Council of India to stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 examination in case of integrated Five Year course or Degree Course in any discipline for 3-year LL.B Course. The proviso to Rule 7 makes it clear that obtaining the minimum qualifying marks shall not automatically entitle a person to get admission into an institution but shall only entitle the person concerned to fulfil other institutional criteria notified by the institution concerned or by the Government concerned, from time to time, to apply for admission. The proviso is not attracted in this case, as it is

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not the case of the State Bar Council that the applicants have not violated and/or breached any such additional criteria and/or condition.

42. Our attention has been drawn to the judgment of a Division Bench of this Court in *K.Sakthi Rani v. The Secretary of of the Bar Council of Tamil Nadu, Chennai-600 104 and others*, reported in 2010-2-L.W. 746.

43. The question in issue in the case of *Shakthi Rani*, supra, was whether persons, who had studied law without basic degree but upon obtaining a Post Graduate degree through an Open University were entitled to be enrolled as Advocates. The question was answered in the negative.

44. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. Paragraphs and sentences in a judgment cannot be read in isolation from the context in which the judgment was rendered. *K.Sakthi Rani*, supra, is not an authority for the proposition that every previous certificate and/or degree should have been obtained by attending a regular course in a recognized institution.

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45. There are apparently two conflicting Division Bench judgments, one rendered in *S.R.Deepak v. The Tamil Nadu Dr.Ambedkar Law University and another, reported in 2016-2-L.W. 64 (Mad) (DB)* and the other rendered in *Theerthagiri v. The Director of School Education and others, reported in (2016) 5 L.W. 573 (Mad) (DB)*.

46. In *S.Theerthagiri*, supra, the Division Bench, in effect, held that candidates who had appeared privately and passed the SSLC Board Examination, i.e., the X Standard Board Examination, but later obtained the +2 Higher Secondary Pass Certificate and thereafter graduated from a regular University did not suffer from any disqualification to prosecute the Three Years Law Course or the Five Years Integrated Law Course, as the case might be.

47. However, in *S.R.Deepak*, supra, a Division Bench of this Court held:

"21. Indisputably, Rule 5 or the relevant criteria prescribed in the Information Bulletin does not deal with a situation, wherein, a candidate has obtained X standard examination certificate privately nor after prosecuting studies in distance or correspondence method. Distance education has been defined under

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the provisions of the Indira Gandhi National Open University Act, 1985, as an education taken from an outside place on the basis of education imparted through broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more of such means. In distance education, a candidate is not required to attend classes regularly. However, the education is imparted, as aforesaid, for two years in two year course. In the case of open university system, albeit there may not be regular classrooms, but, the candidates are supplied with study materials which make them abreast of up-to-date knowledge. In the case of a private candidate, no study material is supplied. It is for the candidate to study on his own and write the examination. The test is passing the examination without there being any support.

22. In the case on hand, the appellant had passed the 2 years examination, i.e., for IX and X standard in one year privately without any educational aid. As such, it cannot be held that he had obtained a basic qualification of X standard in 10 years. As a sequel, we have no hesitation in holding that the appellant does not fall within the eligibility criteria as enshrined in Clause (a) of Rule 5 of the Rules of Legal Education."

48. There being conflicting judgments of two Benches of co-

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ordinate strength, these writ petitions have been referred to this Special Bench.

49. It is reiterated that for admission to the Three Year Law Degree Course, an applicant should be a graduate in any discipline of knowledge from a University established by an Act of Parliament; Act of State Legislature; equivalent National Institution recognized as Deemed to be University; or Foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, whose degree in law is recognized by the Bar Council of India for the purpose of enrolment. Such applicant should have graduated upon completion of a regular programme conducted by such University, Deemed University or institution. A regular programme may be conducted by such University, Deemed University or institution affiliated to and/or recognized by such University and/or Deemed University by holding physical classes or through the correspondence or distance method. A candidate who graduates privately cannot take admission in the Three Year Law Degree Course.

50. For admission to the Integrated Degree Program in Law, which is a Five Year Law Course, an applicant should have completed

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Senior Secondary School course (+2) or equivalent (such as 11 +1, 'A' level in Senior School Leaving Certificate course) from a recognized University in 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 a regular course or programme.

51. The first proviso carves out an exception and reads that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence mode shall also be considered as eligible for admission in the Integrated Five Years course or Three Year LLB Course, as the case may be. In other words, for admission to the Three Year LLB course or Integrated Degree Program in Law, as the case may be, prosecution of studies in distance or correspondence mode is to be treated at par with prosecution of studies by attending a regular course conducted by a recognized affiliated institution.

52. However, the Explanation debars those who have obtained 10 + 2 or graduation / post graduation through Open University

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System directly, without having the basic qualifications for prosecuting such studies from admission in the law courses.

53. It is reiterated that Rule 5(a) of the Legal Education Rules read with the first proviso and the Explanation makes a graduate degree from a university whose LLB degree is recognized by the Bar Council of India for enrolment upon completion of a regular course, including a course through correspondence or distance mode, a mandatory eligibility criteria for admission to the Three Year LLB course. However, those who obtain graduate degree through an Open University system without having the basic qualification i.e., without obtaining 10 +2 certificates and/or in other words Secondary and/or Senior Secondary certificate or equivalent from a Board authorised to confer such certificates are not eligible for admission to the Three Year Law course. Similarly, a candidate who may have cleared +2 (Senior Secondary course) would not be eligible for admission in the Integrated Degree Program if he has obtained the certificate through an Open University system without having the basic qualification for prosecuting +2 course, which is a Secondary certificate.

54. With the greatest of respect to the Division Bench deciding *S.R.Deepak*, supra, we are unable to agree that a candidate who

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obtains the Secondary Certificate or Higher Secondary Certificate without prosecuting a regular course would be ineligible for admission to the Three Year LLB Course, even though the candidate might have obtained a Secondary Certificate and a Higher Secondary Certificate from a recognized Board authorized to issue such certificates and have graduated from a recognized university whose degree in Law is recognized by the Bar Council of India for enrolment by successfully completing a regular course.

55. There is a difference between open universities and other universities and/or boards, in that some of these open universities enable candidates, who do not have the basic qualifications, to obtain higher qualifications straightaway. By prosecuting studies through open universities, it may be possible for a candidate to obtain a Post Graduate Degree or a Three Year LLB Degree without being a graduate or to obtain a graduate degree without having the Senior Secondary School Certificate. In our view, the Bar Council of India, in its wisdom, framed the Legal Education Rules making a graduate degree upon prosecution of a regular course from a university, whose degree in Law is recognized by the Bar Council of India, a mandatory eligibility criteria.

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56. Had it been the intention of the Bar Council that for admission to Three Year LLB Course a candidate would be required to obtain all the previous requisite degrees and certificates, such as the Secondary School Certificate and Senior Secondary School Certificate, by prosecuting a regular course, the Legal Education Rules would have specifically provided so.

57. The language and tenor of Rules 5(a) and 5(b) read with the first proviso and the Explanation make it amply clear that prosecution of a regular course is mandatory only for the immediately previous qualifying certificate and/or degree, for example, graduate degree for the Three Year LLB Course and Senior Secondary Certificate for the Integrated Degree Program. Had the Rules intended otherwise, the Rules would have specifically provided that candidates would not be eligible for admission to the Three Year LLB unless they had obtained the Secondary and Senior Secondary Certificates upon prosecution of studies through a regular course or through distance or correspondence mode. The Bar Council of India has, in its wisdom, chosen to frame rules whereunder a Senior Secondary Examination upon prosecution of a regular course is mandatory only for admission to the Integrated Degree Course and a graduate degree in any discipline upon successful completion of a regular course, mandatory

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for admission to the Three Year LLB course.

58. We are also of the view that once a recognized university or a recognized board issues a certificate, there is a presumption of eligibility of the candidate to be conferred the certificate. It is not for any other authority to question the certificate on the ground of ineligibility to obtain the certificate, until and unless the certificate is cancelled by an appropriate authority and/or by a Court of law. To hold otherwise would be to open the pandora's box, for years later certificates might be questioned on grounds such as inadequate attendance, failure to clear internal test examinations and the like and it would be impossible for candidates possessing the degree and/or certificate to adduce cogent materials and/or evidence to satisfy those questioning the certificates.

59. In view of the observations above, we hold that candidates who have obtained the Three Year LLB Degree from a University established by statute, recognized by the University Grants Commission, approved affiliated Centre of Legal Education/ Departments of the recognized University as approved by the Bar Council of India for the purpose of enrolment, after graduating from Universities established by statute by prosecuting regular Bachelor's

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Degree courses, shall not be refused enrolment. Once a degree is found to be authentic, it is not for the Bar Council to go behind the degree and enquire into the eligibility of the candidates to take admission in the University.

60. All applications for enrolment are required to be dealt with expeditiously within a reasonable time, which, in our considered view, should, not except in exceptional circumstances exceed three months. In exceptional circumstances, where the genuineness of a degree in itself is in doubt and the degree is from a University located in a different State or Union Territory far away from Chennai, the verification may take a month or two more.

61. The writ petitions are allowed with the observations made above. No costs. Consequently, W.M.P.Nos.38087 of 2016, 34847 of 2017, 6327, 6631 and 9006 of 2018 and W.M.P (MD) Nos.8789 and 8790 of 2017 are closed.

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(I.B., CJ.) (R.P.S., J.) (A.Q., J.)

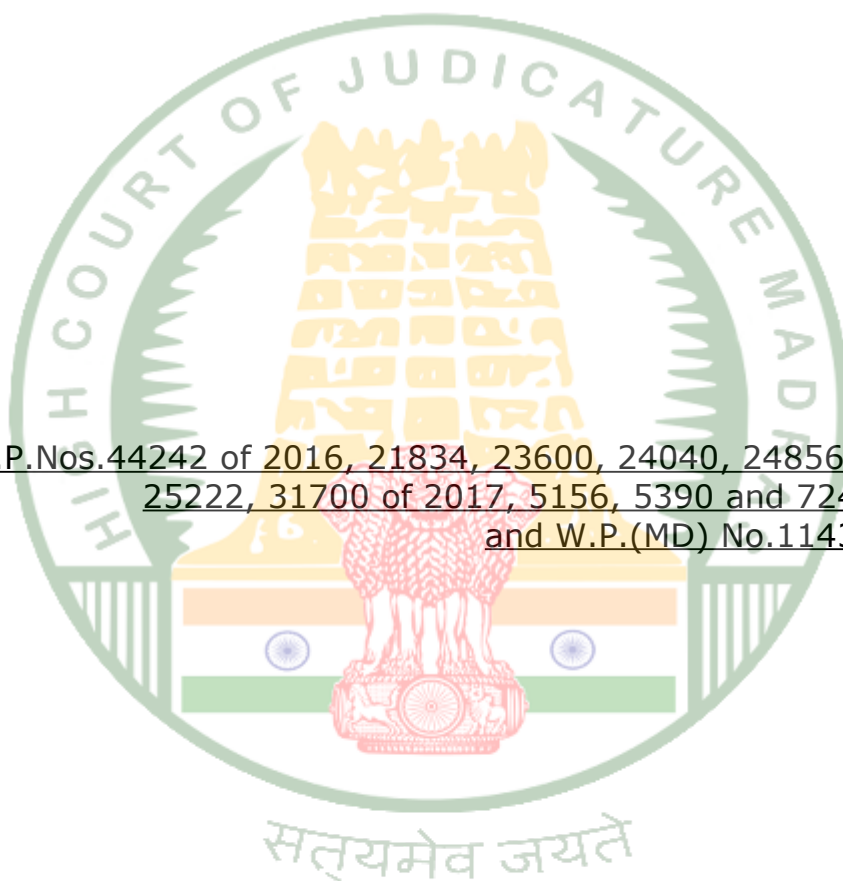
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THE HON'BLE CHIEF JUSTICE
R.SUBBIAH,J.
AND
ABDUL QUDDHOSE,J.

(sasi)

W.P.Nos.44242 of 2016, 21834, 23600, 24040, 24856, 25220 to
25222, 31700 of 2017, 5156, 5390 and 7248 of 2018
and W.P.(MD) No.11434 of 2017



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