

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17479 of 2021****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 17479 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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MADHUSUDAN GUNVANTRAY PANDYA**Versus****SAURASHTRA UNIVERSITY**

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Appearance:**MR DHAIRYAWAN D BHATT(11817) for the Petitioner(s) No. 1****MR KULDIP K ACHARYA(10616) for the Petitioner(s) No. 1****MR AR THACKER(888) for the Respondent(s) No. 1****MR MJ MEHTA(5797) for the Respondent(s) No. 5****MR NANDISH H SHAH(11330) for the Respondent(s) No. 5****MR SAURABH J MEHTA(2170) for the Respondent(s) No. 5**

RULE NOT RECD BACK for the Respondent(s) No. 3
 MR. AYAAN PATEL, for the Respondent No. 6
 RULE UNSERVED for the Respondent(s) No. 4

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 21/06/2022

CAV JUDGMENT

ORDER IN SPECIAL CIVIL APPLICATION:

1. The petitioner by way of the present petition under Article 226 of the Constitution of India has prayed for the following reliefs:

“(a) Admit this petition.

(b) Issue Notice for final disposal.

(c) To allow this petition by issuing writ of mandamus or any appropriate writ, order directed by directing respondents that the petitioner is possessing the educational qualification as required under Bar Council of India Legal Education Rules, 2008 for admission LLB Course and is petitioner is qualified to pursue the 3 year LLB Course for which he has already got admission at Navyug College, Virpar.

(c/1) To hold and declare and direct that the petitioner is possessing the educational qualification as required by Bar Council of India Legal Education Rules, 2008 and on that basis petitioner is eligible for 3 years course of Bachelors of Law and further direct respondent No. 1 to 3 to admit petitioner in 3 years L.L.B Course;

(d) Pending hearing a final disposal of the present petition, this Hon’ble Court may grant interim relief by directing respondent no. 1 and 2 to immediately reconsider the case of petitioner in view of Bar Council of India Legal Education Rules, 2008 and permit petitioner to attend classes.

(e) To grant costs of this petition to the petitioner and to grant any other appropriate and just relief/s.”

2. The brief facts as stated by the petitioner are stated thus:

2.1. The petitioner has passed B.Com examination from G.J. Sheth, Morbi college in general category. The petitioner had appeared for 3rd B.Com examination conducted in March, 2007 in which out of total 7 subjects, petitioner had failed in 2 subjects, viz., Statistics and Management Accounting. The petitioner had appeared in re-examination conducted by the University in March, 2008 for the aforesaid 2 subjects, viz. Statistics and Management Accounting and had secured result of 'pass class' and secured 45.57%.

2.2. The petitioner intending to pursue 3 years Bachelor of Law (L.L.B.) course, had submitted an application dated 03.09.2020 before the respondent University seeking admission. The petitioner had paid fees for both the semesters and had appeared for internal examination conducted by the respondent no.3 – college. The respondent no.3 – college after period of some months, rejected the application of the petitioner stating

that the petitioner had given 2 try in B.Com and after final examination of semester of semester refunded the fees paid by the petitioner. The petitioner addressed a letter to the respondent University on 25.06.2021 intimating them about the aforesaid facts. The university replied to the said communication dated 25.06.2021 of the petitioner, by letter dated 03.07.2021 stating that since the petitioner has given 2 try in 3rd year B.Com and was declared pass with 'Exemption'. Therefore, the percentage cannot be counted and as per the Rules of Bar Council of India, student of Open/General category are required to secure 45%, O.B.C. category 42% and S.T. category 40% minimum to secure admission and since the petitioner belonging to Open/ General category has so called not secured 45% is ineligible to secure admission. It was further informed that the admission process is under provision of Bar Council of India and University.

2.3. The petitioner wrote a letter to the Chairman / Secretary, Bar Council of Gujarat intimating them about the aforesaid facts by letter dated 22.07.2021 and further requested

to do the needful, if found eligible for course of 3 years L.L.B. The respondent No.4 – Bar Council of Gujarat by communication dated 04.08.2021 stated that the petitioner has secured 45.57% and considering the result of examination of March, 2007 and March, 2008, and therefore, as per Rule-7 of Bar Council of India Education Rules, 2008, and therefore, as per Rule-7, the petitioner is eligible for getting admission in course of Bachelors of Law course. The petitioner further wrote a letter to the respondent-University on 07.08.2021 intimating with regard to the letter dated 04.08.2021 addressed by the respondent no.4 - Bar Council of Gujarat.

2.4. The respondent – University by communication dated 08.10.2021 informed the petitioner and reiterated that any student who has appeared in examination and has given two attempts, then in that case, the percentage cannot be calculated on basis of both the mark-sheets and as per the Rule of Bar Council of India, a student belonging to Open / General category has to have minimum 45% to secure admission in 3 years L.L.B. course and therefore, the petitioner

is not eligible for getting admission. It was further impounded that mark-sheet issued under Ordinance-154(d) exemptions.

3. Heard Mr. Kuldip K. Acharya, learned counsel appearing for the petitioner.

3.1. Mr. Acharya, learned counsel submitted that the respondent nos. 1 and 2 are statutory authority and they are bound to follow the Rule of law. The exclusion of petitioner on the basis of two attempts and to be treated as 'pass class' though the Bar Council of India is considering the total marks obtained, irrespective of how many attempts made in passing of such exams for the purpose of admission in L.L.B. course, having given 'pass class' result is arbitrary and irrational.

3.2. Mr. Acharya, learned counsel submitted that reliance placed by the respondent University on Ordinance-154(d) does not come exclusive of marks in counting percentage, even otherwise, there is no rational in excluding the students having passed in 2nd attempt and counting marks secured in the examination as of individual subjects.

3.3. Mr. Acharya, learned counsel submitted that the Bar Council of India is a statutory authority and the respondent no.2 is bound to frame its Rules and Act for L.L.B. course in consonance with the Rules and Regulations and norms of the Bar Council of India.

3.4. Mr. Acharya, learned counsel orally submitted that the admission once granted cannot be retracted in absence of any suppression.

3.5. Mr. Acharya, learned counsel placed reliance on the following authorities:

(I) AIR 1990 SC 1075 (pa-10, 14)

(II) AIR 1976 SC 376 (pa-7)

(III) 1993 0 GLHEL-HC 204364 (pa-3)

4. Heard Mr. Shivang Thacker, learned counsel appearing for the respondent no.2 – university.

4.1. Mr. Shivang Thacker, learned counsel has relied on the affidavit-in-reply filed by the respondent-University reads thus:

“4. I say and submit that the petitioner by filing the present petition has sought direction from this Hon’ble Court to hold that petitioner is possessing the educational qualification as required under Bar Council of India Legal Education Rules and he is qualified to pursue the 3 year LLB Course and has sought the interim reliefs to reconsider the case of the petitioner.

5. I say that the present petitioner has completed B.Com. Course in Saurashtra University in the year March, 2008 in pass class. I say that the present petitioner appeared in 3rd year B.Com examination held in March, 2007 and was declared failed in two subjects. I say that petitioner appeared again only in two subjects in which he was declared fail and claimed exemption in other subjects for which he was declared passed. I say that petitioner filed up the examination form only for two subject in which petitioner declared failed and petitioner claimed exemption in remaining subjects. I say that again the petitioner appeared in two papers (Subjects) in 3rd year B.Com examination held in March 2008. I say that the petitioner had not cleared 3rd B.Com. Examination in first trial and subsequently petitioner appeared in examination held in March, 2008, which was his second trial and in which petitioner claimed exemption marks and cleared passed in two remaining all the subjects in March, 2008 in which petitioner declared fail in March-2007 exam.

6. I say that any student who appeared in the examination first time and not succeed/pass with all the subjects but appeared again the examination with obtain exemption marks in any of the subject and decided not to appear again in the same subject where he/she has got exemption then his/her final result of the examination after clearing all the subjects he result will be in pass class and he/she is not entitled for any percentage as per the Ordinance of the university. I say that as per the provisions contained in Ordinance No.154 of The Saurashtra University Act, a (student) who has passed the examination after getting the benefit of exemption marks in any subject, then after clearing all the

subjects he/she will be considered as passed in passing class and percentage cannot be counted because he/she has not cleared the examination in one attempt and he/she had got the benefit of the exemption marks and cleared the examination. I say that in the mark-sheet of the petitioner in result Column at page 11 of the petition clearly indicate that pass class.

7. *I say that petitioner has not passed in first trial in 3rd year B.Com., examination and claimed benefit of the exemption marks and therefore, as per the Ordinance No. 154 of Saurashtra University Act, then the percentage of the petitioner cannot be counted and only is given pass class. I reproduce relevant part of the Ordinance No.154 of The Saurashtra University Act:-*

“Except as herein otherwise provided, in a subject or subjects in which identical papers (and practical tests) are prescribed for another examination, shall at his option, be entitled to exemption at the other examination from such subject, provided always that the standard attained at the original examination, is not lower than that required at the other examination. Candidates so exempted shall not be eligible for classed or for University awards. A candidate who has passed the examination after obtaining the benefit of condonation shall be deemed to have passed in individual subjects of the examination with minimum percentage of the marks required for passing such subjects”.

I say that passing standard of the 3rd Year B.Com is 36% percentage. As per the above quoted Ordinance 154, petitioner has passed the 3rd year Examination with pass class that is 36 % percentage and not 45.57 % percentage as claimed by the petitioner. In view of the aforesaid ordinance, it cannot be said that the petitioner has obtained the qualifying marks for getting admission in LL.B. as prescribed by the Bar Council of Gujarat which is 45%. Therefore, petitioner is not eligible for get admission in the LL.B. Course because he is not having 45% marks in T.Y.B.Com. Petitioner passed 3rd year examination in pass class as stated above and pass class percentage cannot be

considered as 45.57% as claimed by the petitioner. He is only having passing standard of 36% percentage.

8. *I say that the similar issue came up before this Hon'ble High Court in the case of Dhamani Ramesh Holaram in SCA No. 8554 of 2013 whereby the petitioner who had cleared the 3rd year B.Com with pass class after multiple attempts and was denied the admission in the First Year LL.B considering the provisions of Ordinance 154 of the Saurashtra University Act. I say that the Hon'ble Court after considering the provisions of the Saurashtra University Act has dismissed the petition filed by the petitioner and has held in view of the provisions of the Ordinance 154 of the University Act. Annexed hereto and marked as **"Annexure-R1"** is the copy of the Judgment passed in SCA NO. 8554 of 2013.*

9. *I say that, the in similar set of facts the issue regarding the admission in LL.M Course where a student had cleared LL.B examination after attempts and secured pass class came up for consideration before the Hon'ble High Court and the Hon'ble High Court in SCA No. 17933 of 2014 has held such student is not entitle for admission. I say that the said Judgement is confirmed by the Hon'ble Division Bench in LPA No. 51 of 2015. Annexed hereto and marked as **"Annexure-R2"** is the copies of the said Judgments."*

4.2. Relying on the aforesaid submissions, Mr. Thacker, learned submitted that the petitioner has prayed for a direction from this Court to hold that the petitioner is possessing the educational qualification as required under the Bar Council of India Legal Education Rules, 2008 for admission LLB course and is qualified to pursue the 3 year LLB course and further

sought relief to reconsider the case of the petitioner may not be granted in view of the fact that the case of the petitioner falls under the provisions of Ordinance No. 154 of the Saurashtra University Act and as the said Ordinance, once a candidate seeks exemption, the candidate shall not be eligible for class or for university awards. In the facts of the present case, the petitioner having availed exemption under the provision of Ordinance- 154, the petitioner would be held to be ineligible to pursue the LLB course, having cleared 3rd year B.Com with 'pass class'. The petitioner only having pass class i.e. 36% and not 45.57%, and therefore, no error could be said to have been committed by the respondent-University.

4.3. Mr. Thacker, learned counsel has placed reliance on the following authorities:

- (I) Special Civil Application No. 8554 of 2013 order dated 04.03.2015.
- (II) Special Civil Application No. 17933 of 2014 order dated 09.01.2015.
- (III) Letters Patent Appeal No. 51 of 2015 dated 22.01.2015.

5. Heard Mr. Kuldip Acharya, learned counsel appearing for the petitioner, Mr. Shivang A. Thacker, learned counsel for Mr. A.R. Thacker, learned counsel for the respondent nos.1 and 2 – Saurashtra University, Though served respondent No.3 has chosen not to appear, respondent no.4 has unserved, Mr. Saurabh J. Mehta, learned counsel appearing for the respondent no.5 and Mr. Ayaan Patel, learned Assistant Government Pleader appearing for the respondent No.6 – State.

6. It appears that the petitioner completed B.Com from Saurashtra University in the year March, 2008 as disclosed from the mark-sheet in ‘pass class’. The petitioner appeared in 3rd year B.Com held in March, 2007 and was declared ‘fail’ in 2 subjects, viz. Statistics and Management Accounting. The petitioner again appeared only in 2 subjects, in which he was declare failed and claimed exemption in other subjects, for which he was declared ‘pass’. The petitioner filled-up the form only for 2 subjects, in which petitioner was declared failed and claimed ‘exemption’ in the remaining subjects. The petitioner appeared in 2 papers /subjects in 3rd year B.Com. Examination

held in March, 2008. The petitioner had not cleared 3rd year B.Com. Examination in 1st try and subsequently, appeared in the examination held in March, 2008 which was his 2nd trial/attempt, in which petitioner had claimed 'exemption' in other subjects and cleared remaining 2 subjects in March, 2008, in which petitioner was failed in March, 2007. It appears that the respondent no.3 – College accepted the form duly filed by the petitioner on 03.09.2020 and also accepted the fees paid by the petitioner to appear in the internal examination conducted by the respondent no.3-college. The respondent no.3 – college however refunded the fees duly paid by the petitioner and rejected the admission of the petitioner by the said communication dated 24.06.2021 (Annexure-C page-12-13). The said communication reads thus:

WEB COPY

"Date : 24/06/2021

To,
Rutwik Hights, B-303,
Sanidhya Park Society,
Boni Park, Ravaper Road,
Morbi.

Subject : In reference to your letter dtd. 03/06/2021

Sir,

You have applied on 03/09/2021 for the admission in

Navyug L.L.B. College, in reference to which your name was kept for enrollment and registration in Saurashtra University. In which, the admission was given to you in L.L.B. according to the mark-sheet of B.Com. in which you have secured 45 %. But according to the admission rules of B.C.I. and University, the necessary qualification according to the first mark-sheet is 45%, where as yours is 45.57 % which is the sum of two mark-sheets. Hence, according to the aforementioned rules of admission, you does not come in the criteria to fulfill the first primary rule of admission. Hence, your enrollment was kept in the Defect list in the Registration process. But, as you deos not posses the eligibility for admission, hence, the University has kept our name in the Defect list, about which we have informed you through telephone.

Your admission was kept along with the admission process in Saurashtra Univesity, but that process have been delayed for six months as the admission process have been postponed due to some reasons by B.C.I. and Saurashtra Univesity and your admission has been declared as defective. We have immediately given telephonic information to you regarding the same. Hence, it is informed to cancel your admission and take back your fees which was paid by you.

Thanking you .

<u>Enclosure :</u> Defect list published by the University	Sd/- illegible Navyug College Virpar (Morbi)
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SAURASHTRA UNIVERSITY
ENROLLMENT QUERY REPORT
ACADEMIC YEAR: 2020-2021
NAVYUG COLLEGE OF PHYSICAL EDUCATION, VIRPAR
BACHELOR OF LAW (W.E.F. 2019)

Sr. No.	Form No.	Name	Query Name	Cancel Remarks
2	38	Pandya Madhusudan Gunvantray	Not Eligible	Not Eligible – 2 trie in Bcom Fail (42% Open Category) & Age limit Affidavit not attached.

*Principal
Navyug College,*

Virpur (Morbi).

7. It appears that the petitioner addressed a letter to the respondent University by communication dated 25.06.2021. In response to the same, the University vide communication dated 03.07.2021 replied to the petitioner. The same reads thus:

*Saurashtra University
Examination cell- Department
University campus, University road, rajkot-360005
Phone no.(0281)2576511 Ext no.707-710/ Fax no. (0281) 2586411
email:exam06@sauuni.ac.in*

No.Exam Cell/866/2021

Date:03/07/2021

*To,
Mr. Madhusudan Gunvantrai Pandya
Block no.303, Rutvik Heights,
Sanidhya Park society,
Bony Park, Ravapar road,
Morbi-363641*

Subject:Regarding cancellation of admission

Reference:Your application dated 25/06/2021

Respected Sir,

Apropos the aforementioned subject, it is to state that as per your referred application, you had received the degree of B.Com in yearly system and you had 2 trials in third year of B.Com. You were declared pass with Exemption, hence percentage can not be considered in it. As per the rules of the Bar Council of India, 45% for the Open category, 42% for O.B.C. category and 40% for S.C./S.T. categories have been fixed. Since you belong to open category, you must have at least 45%, hence you are not eligible to get admission in Semester-1 of LL.B.

Moreover, you were given admission by the college in the

year 2020. Thereafter, for enlistment by the University, the portal of the concerned college is to be opened, the entry of the form is done by the college and the file is to be submitted at the University. Moreover, after the decision from University authority and Bar Council of India, it is to be decided whether to do enlistment of the college in which you got admission. Hence, after analysis of the form submitted by the college, your enlistment is not generated because you were not found eligible for Semester-1 of LL.B. and you are informed late in that regard.

*Yours faithfully,
Sd/- (illegible)
Section Officer*

*Copy forwarded to:-
Navyug College,
Behind the farm of "Baa"
Virpar, Taluka- Tankara,
District- Morbi*

8. The petitioner had also addressed a communication to the Bar Council of Gujarat on 22.07.2021. The relevant para of the said communication dated 22.07.2021 reads thus:

"...I would like to state in detail before you that I have graduated from Saurashtra University, Rajkot. I failed in one subject in T.Y. B.Com due to some reasons. I appeared in the examination for the said subject again and passed it. Therefore, if we calculate the marks of two marksheets for T.Y. B.Com, it is 45.57%. The copies of both the said marksheets are attached herewith the application.

Thereafter, when I applied for the L.L.B. course, no affidavit was demanded from me. Thereafter, when the college received a query from the university, the college informed me that you will have to submit an affidavit regarding age. I submitted it immediately. The copy of the same is attached herewith.

Thereafter also, the college informed me that your admission has not been confirmed yet. Therefore, when I asked the reason for the same, I was told that you have not secured 45% marks, and

therefore your admission has been cancelled. Thereafter, I submitted an application to the college that as per my marksheet, I have 45.57% marks and therefore do the needful. At that time, I was told that, it has been informed by the university that the marks of two marksheets cannot be considered as per the norms of the Bar Council and therefore, you should know in this regard from the university.

Thereafter, when I tried to know from the university by writing a letter, they also replied that since you have passed with Exemption, we cannot consider the total of both the marksheets as per the rules of the Bar Council. The copies of the said letter and the reply received from them are attached herewith. I request you to solve this matter as early as possible.”

9. The Bar Council of Gujarat replied to the said letter of the petitioner by communication dated 04.08.2021. The same reads thus:

*“THE BAR COUNCIL OF GUJARAT
3rd Floor, Satyamev Complex, Opp. Gujarat High Court, Sola, Ahmedabad
– 380060.
Phone: (079) 27434073, 29701096
E-mail: mail@barcouncilofgujarat.org
Website: www.barcouncilofgujarat.org*

Ref No. BCG/6202/ 2021

Date: 04/08/2021

To,
Shri Madhusaudan G. Pandya
Block No. 303, Rutvik Heights,
Boni Park, Ravapar Road,
Morbi – 363641.

Subject: About getting admission in LL.B Course
Reference:

Sir,

With reference to the above noted subject, it is to state that I have studied B.Com from Saurashtra University through Navyug Law College,

Virpar, Morbi, wherein if the marks are calculated as per the subjects in March-2007 and March-2008, I have obtained 45.47% of marks.

Further as per Rule-7 of Chapter-II of the Bar Council of India Legal Education Rules, 2008;

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

Please be informed that, accordingly, you can get admission in LL.B. Course.

Yours sincerely,

sd/- (illegible)

(P.M. Parmar)

*In-charge Secretary
Bar Council of Gujarat*

10. In view of the aforesaid communication of the Bar Council of Gujarat, the petitioner addressed a letter to the respondent- University to consider the case of the petitioner in accordance with the communication dated 04.08.2021 of the Bar Council of Gujarat. The respondent- University once again

by communication dated 08.10.2021 reiterated the same, which reads thus:

*“SAURASHTRA UNIVERSITY
Examination cell- Department
University campus, University road, Rajkot-360005
Phone no.(0281)2576511 Ext no.707-710/ Fax no. (0281) 2586411
email:exam06@sauuni.ac.in*

=====

No. Exam Cell/1496/2021

Date : 08/10/2021

*To,
Shri Madhusudan Gunvantrai Pandya
Block No.303, Rutvik Heights,
Sanidhya Park Society,
Boni Park, Ravapar Road,
Morbi- 363641*

*Sub: To provide grounds for canceling admission to LL.B.
Ref.: (1) Your application dated 25/06/2021.
(2) Letter No : Exan Cell/866/2021 of this office dated
03/07/2021.
(3) Your application dated 07/08/2021
(4) Your application dated 14/09/2021*

Sir,

In connection with the aforesaid subject, in regrading with your application at reference No.1 submitted due to not getting admission in the three years LL.B course, a reply was given to you vide letter at reference No.2 that, you have done your B.Com. degree in yearly system, wherein your have two trials in third year. As you are passed with Exemption, the same can not be considered in the percentages calculation. As per the rule of the Bar Council of India, stipulated percentages for the open category are 45%, for O.B.C. 42% and for S.C./S.T. category it is 40%. As you are in open category, it is necessary to have minimum 45%. Therefore, you are not eligible for the admission in the LL.B. Semester-1. Therefore, you are not entitled to admission.

You enclosed the letter of Bar Council of Gujarat, dated 04/08/2021 with your letter at reference-3, it was stated in the same that, you have 45.57 % and you can get admission in the LL.B. Course. In regard with the same, you were informed in person that, if any

student at this University have passed any degree in yearly system and he/she have two trials, then in such circumstances, percentages for the same are not considered. Therefore, as per the rule of the Bar Council of India for the eligibility for the Three Years LL.B., minimum 45% are required for the open category. As you do not have the same, you are not entitled to admission.

With regard to the mark sheet issued to you by the University for the Three Years B.Com., kindly consider the Ordinance-154(d) Exemptions, attached herewith.

***Sd/-Illegible
Exam Director***

Enclosure : Copy of Ordinance-154(d) Exemptions

Ordinance 154 (d) Exemptions:

““Except as herein otherwise provided, in a subject or subjects in which identical papers (and practical tests) are prescribed for another examination, shall at his option, be entitled to exemption at the other examination from such subject, provided always that the standard attained at the original examination, is not lower than that required at the other examination. Candidates so exempted shall not be eligible for classed or for University awards. A candidate who has passed the examination after obtaining the benefit of condonation shall be deemed to have passed in individual subjects of the examination with minimum percentage of the marks required for passing such subjects”.

11. In Special Civil Application No. 8554 of 2013, the aforesaid issue was considered by this Court vide oral judgment dated 04.03.2015. The relevant para of the same reads thus:

“8. Therefore, this Resolution clearly provides for the situation where a student who has obtained the graduation degree in more than one trial, then, in that case, the percentage of marks may be calculated by totaling the marks obtained in each paper at the time of clearing the subject. However, Rule 7 of the Bar Council may not have

specifically provided. In any view of the matter, for the purpose of admission O. 154 of the University would be relevant which has also been quoted in the affidavit-in-reply filed on behalf of respondent No.1 University. It has been clearly contended that if the person has passed the examination in more than one trial he would have the benefit of exemptions in few papers but he would be considered as having passed the examination with minimum percentage of marks. Ordinance 154 refers to the exemptions and it clearly mentions that the person would be entitled to exemption at the other exams from the other subjects. However, the standard attained at the original examination is not lower than that required at the other examination. It clearly provides,

“A candidate who has passed the examination after obtaining the benefit of condonation shall be deemed to have passed in individual subjects of the examination with the minimum percentage of marks required for passing such subjects.”

9. Therefore, in light of these clear provisions of the Ordinance which hardly requires any further elaboration, the case of the petitioner cannot be considered. It is required to be mentioned that the Hon’ble Apex Court in a judgment reported in (2013) 11 SCC 802 in the case of Prayadarshini College of Computer Science & anr. v. Manish Kumar & ors., has observed,

“15. It has to be kept in mind that every candidate applying for a particular course in any college is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong.”

10. The Hon’ble Apex Court in a judgment reported in (2003) 7 SCC 719 in the case of Regional Officer, CBSE v. Ku. Sheena Peethambaran & ors. has observed and quoted from the earlier judgment,

“We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.”

11. Thus, while considering the aspect of eligibility with minute details it is better to be left to the authority like the University as an expert body and the court would decline to interfere, in exercise of its discretionary jurisdiction under Art. 226. Again, LL.B. is a professional course and in order to have certain minimum standards if the body like the University or the Bar Council have fixed certain minimum standards, the same cannot be relaxed by such interpretation so that a person who is not otherwise qualified is permitted to join the course. Thus, when the Ordinance of the University prescribes the eligibility, it cannot be overlooked and the present petition cannot be entertained.”

14. The following judgments are relied upon by the petitioner:

(I) In the case of Sanatan Gauda University v/s. Berhampur University reported in AIR 1990 SC 1075, the Hon'ble Supreme Court in para-10 and 14 held thus:

"10. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the Final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. The University is, therefore, clearly estopped from refusing to declare the results of the

appellant's examination or from preventing him from pursuing his final year course.”

“14. Mr. P.N. Misra, the learned counsel for the respondent, contended that the University had informed the Colleges about the necessary condition for admission to the Law course which, it appears, was not respected by the College. When the applications by the candidates for sitting at the examination were forwarded by the College, the University asked the Principal to send the marks of the candidates for the purpose of verification. but the Principal did not comply. The letters Annexures 'F' and 'G' to the counter affidavit have been relied upon for the purpose. The learned counsel pointed out that instead, the Principal sent a letter Annexure '1' stating that the marks-list would be sent in a few days for "your kind reference and verification" which was never sent. The Principal wrongly assured the University authorities that he had verified the position and that all the candidates were eligible. In these circumstances, the argument is that the appellant cannot take advantage of the fact that the University allowed him to appear at the examination. I am afraid, the stand of the respondent cannot be accepted as correct. From the letters of the University it is clear that it was not depending upon the opinion of the Principal and had decided to verify the situation for itself. In that situation it cannot punish the student for the negligence of the Principal or the University authorities. It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his marks-sheet before the College authority with his application for admission, and cannot be accused of any fraud or misrepresentation. The interpretation of the rule on the basis of which the University asserts that the appellant was not eligible for admission is challenged by the appellant and is not accepted by the College and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results.”

The aforesaid ratio is not applicable in the facts of the present case, in view of the fact that as referred above, the admission which was granted by the respondent no.3 college stood cancelled by communication dated 24.06.2021 and fees were also refunded to the petitioner and the University had declined enrollment of the petitioner. In the case referred to by the petitioner, the student/ candidate had undergone the study for 2 years and was permitted by the University also to appear in the University examination.

(II). In the case of Shri Krishna v/s. The Kurukshetra University reported in AIR 1976 SC 376, the Hon'ble Supreme Court in para-7 held thus:

“It appears from the averments made in the counter affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding 728 the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the

Department nor the University authorities took care to scrutinize the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others(ii) where a Division Bench of the High Court of Madhya Pradesh observed as follows:

“From the provisions of ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result.”

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate

himself would have contracted out of the statute which was for his benefit and the statute (1) A.T.R. 1967 M. P. 194,197. 729 therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant.”

The ratio as laid down does not applicable in the facts of the present case, in view of the fact that, in the aforesaid decision, the University authority failed in scrutiny of the form and it was held that the fraud could not be attributed to the student. However, in the present case, the respondent University declined to enroll the petitioner, and there is no allegation of fraud against the petitioner.

(III). In the case of Gujarat University v/s. Mukat Navnitlal Kapadia reported in 1993 0 GLHEL-HC-204364, the Court in para-3 held thus:

“(3). MR. S.N. Shelat learned counsel for respondents nos. 1 and 2/ appellant herein would submit that when Varanaseya Sanskrit Vishwavidyalaya is not a recognised institution the M. Com. degree which the petitioner obtained from that Vishwavidyalaya could not be of any avail to him for seeking admission; when the obtaining of a M. Com. degree from a recognised institution is the prerequisite for such admission. Here we find a case where there has been no play of fraud and no suppression of fact on the part of the petitioner. It is

not as if the Gujarat University and its officials could not verify the position despite the exercise of due diligence. There was absolute lack of due diligence on their part and they did not care to verify the position and allowed things to rest. There was ample time and opportunity for them to verify the position. Yet they did not. In such a case as pointed out by the Supreme Court in Shri Krishnan vs. The Kurukshetra University Kurukshetra AIR 1976 SC 376 it would not be a case of either suggestion false or suppression veri on the part of the petitioner. He by himself did not misrepresent any thing. The application of the petitioner as already noted did go through a scrutiny by the Admission Cell of the Gujarat University specifically constituted therefore. Only after such scrutiny and the grant of eligibility certificate the petitioner went through the course in respondent no. 4-College. It is claimed that long after the petitioner going through the course and taking the examination and coming out successfully passing in first class with distinction a complaint was received and further there has been a Notification by the University Grants Commission in June 1991 saying that Varanaseya Sanskrit Vishwavidyalaya is not a recognized institution. If there had been due diligence at the appropriate level and time this position which is inequitable indeed to the petitioner would not have emerged. It is only in this context we are obliged to take note of the principle of equitable estoppel and render justice as the facts of the case demand. The doctrine of equitable is grounded on the principle that where a person having the means to know the material facts remains inactive or negligent or abstains from taking the requisite steps at his command to ascertain the material facts so as to repudiate the transaction in time and thereby the other person is induced to suppose and act that there is nothing reprehensible in the transaction it would amount to acquiescence on the part of the former and the transaction though could be impeached originally becomes unimpeachable. It is true that ordinarily one cannot be estopped to assert direct violation of any statutory provision but equitable estoppel being eminently a rule of justice is supposed to prevail over all other rules. As already noted the petitioner could not be stated to have committed any

fraud and he could not be slated to have suppressed any thing and whatever infirmity the seeking of admission by the petitioner to the course suffered must be deemed to have been acquiesced in by the University and its authorities. Accordingly finding no warrant for interference in Letters Patent Appeal we dismiss this Letters Patent Appeal. Letters Patent Appeal Dismissed.”

It appears that no fraud was attributed to the student and it was held that the University must be deemed to have acquiesced to give admission. In the present case, as stated above the University declined to enroll the petitioner.

The aforesaid judgment relied upon by the petitioner is not applicable in the facts and circumstances of the present case.

POSITION OF LAW:

15. In Special Civil Application No. 17933 of 2014, the aforesaid issue was considered vide an order dated 09.01.2015, relevant para reads thus:

“6. In view of these rival submissions, it is required to be noted that whether present petition can be entertained and allowed or not.

7. From perusal of the papers, it is evident that the petitioner is claiming admission in LL.M., course. The basic requirement is pointed out by learned Senior Counsel Shri Shelat referring to the ordinance of the University is that candidate must have passed at the first attempt with degree of Bachelor of Law (Third Year LL.B., of Gujarat University). Thus, it is evident that one must have passed Third Year LL.B., in the first attempt with second class and marksheet did not reflect that the petitioner has passed as required. Admittedly, there was ATKT and therefore, it cannot be said that the petitioner is eligible, having passed with second class in the first attempt. The submissions which have been made with much emphasis by learned Advocate for the petitioner referring to the subsequent marksheet showing him as passed with 50%, are misconceived, as it cannot be said to be a first attempt. Therefore, it is an issue with regard to eligibility and criteria and for that purpose, it is required to be considered by the Respondent like Respondent No.2 University.

8. The Hon'ble Apex Court has observed that consideration of the aspect of the eligibility with minute details, other examination and the material should be better left to the authority like University as an expert body. The Court is not equipped and may not have necessary and relevant material, therefore normally the Court would not interfere with such decision of an expert body.

Further, in a judgment referred to and relied upon by learned counsel Shri Shelat reported in (2003) 7 SCC 719 in the case of Regional Officer, CBSE Vs. Ku. Sheena Peethambaran & Ors., it has also been observed and quoted from the earlier judgment that,

“We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.”

Thus, in the facts of the case also when the ordinance of the University prescribes eligibility, it cannot be overlooked and the present petition cannot be entertained,

even if by inadvertence, the fees are accepted by the college.”

16. The order passed in Special Civil Application No. 17933 of 2014 came to be confirmed in Letters Patent Appeal No. 51 of 2015.

17. In the case of Principal, Patna College, Patna v/s. Kalyan Srinivias Raman reported in AIR 1966 SC 707, the Supreme Court observed thus:

“...where the question involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the Hi Court less reasonable than the alternative construction which it is pleased to accept. The limits of the High Court's jurisdiction to issue a writ of certiorari are well-recognised and it is, on the whole, desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind.”

18. In the case of Devender Bhaskar & Ors. v/s. State of Haryana & Ors. reported in JT 2021 (11) SC 444, the Hon'ble Supreme Court in para-20 to 26 observed as under:

“20. We have already noticed that one of the eligibility criteria for appointment to the post of Arts and Crafts teacher as per the advertisement dated 20.07.2006 is a “two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognized by the Haryana Education Department.” It was made clear by the Industrial Training and Vocational Educational Department, Haryana, that diploma in Art and Craft Course by the Kurukshetra University is conducted through distance education and that this course cannot be equated with two-year diploma in Art and Craft Course awarded by the Haryana Industrial Training Department. Recognition of the said Course by the State of Haryana, as held by the High Court, is entirely different from its equivalence. When the experts in the Education Department have held the diploma in Art and Craft by the Kurukshetra University is not equivalent to the two-year diploma in Art and Craft awarded by the Haryana Industrial Training Department, we are of the view that the High Court was not justified in equalizing them.

21. In [Mohammad Shujat Ali & Ors. v. Union of India & Ors](#) 1, it was held that the question regarding equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications. It was further held that where the decision of the Government is based on the recommendation of an expert body, then the Court, uninformed of relevant data and unaided by technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government unless it 1 (1975) 3 SCC 76 is based on extraneous or irrelevant considerations or actuated mala fides or is irrational and perverse or manifestly wrong.

22. In [J. Ranga Swamy v. Government of Andhra Pradesh and Others](#), 2 this Court held that it is not for the court to consider the relevance of qualification prescribed for various posts.

23. In [State of Rajasthan & Ors. v. Lata Arun](#), 3 this Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It was held thus:

“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

24. In [Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.](#), 4 this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the 2 (1990) 1 SCC 288 3 (2002) 6 SCC 252 4 (2009) 1 SCC 610 Court held that no material had been produced before it to show that the distance education course had been recognized as such.

25. In [Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors.](#) 5, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.

26. Having regard to the above, in our view, the High Court has erred in holding that the diploma/degree in Art and Craft given by the Kurukshetra University is equivalent to two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or diploma in Art and Craft conducted by Director, Industrial Training and Vocational Education, Haryana.

19. The aforesaid judgments as relied upon by the petitioner are not relevant for deciding the eligibility of the

petitioner for admission in the law course. The petitioner passed with 2nd attempts / trials and appeared only in the two subjects i.e. Statistics and Management Accounting, in which he declared failed. The Ordinance – 154 framed by the Saurashtra University for ‘exemption’ comes into play. Admittedly, the petitioner appeared in 3rd year B.Com examination held in March, 2007 and was declared ‘fail’ in 2 subjects. The petitioner again appeared for 2 subjects only in March, 2008, for which he was declared pass and claimed exemption for other subjects. The petitioner could not clear 3rd year B.Com. Examination in the year March, 2008 only in 2nd attempt and he could not clear the examination in 1st attempt. Having claimed exemption, Ordinance 154 of the Saurashtra University Act comes into play. This Court in aforesaid decisions has considered the provisions of Ordinance 154 of the Saurashtra University Act and considered the Rule-7 of the Bar Council of India Education Rules, 2008 and held that if the candidate passed the examination in more than 1 trial/attempt, he would have the benefit of exemption in few papers but he would be considered as having passed the examination with

minimum percentage of marks. In the present case, the mark-sheet duly produced at Annexure-A (pg-10-11) clearly states that the petitioner has secured 'pass class'. Further the eligibility as prescribed by the University cannot be overlooked and the petitioner cannot be said to have eligible and to have secured minimum 45% as prescribed by the Bar Council of Gujarat for securing admission in L.L.B. course. The issue with regard to the eligibility criteria is required to be considered by the respondent – University. This Court otherwise cannot sit in an Appeal to a decision taken by an expert body, and therefore, this Court is not inclined to interfere under Article-226 of the Constitution of India.

20. In view of above, the Rules of Bar Council of India do not provide for conducting of examination and result thereof. The Rule only suggests that a candidate must possess 45% marks for securing the admission in law course/ L.L.B. course. The University Ordinance No. 154 as referred above prevails over the Rules of the Bar Council of India and when the petitioner had passed B.Com. Examination with 'exemption'

i.e. in 'pass class' and on 2nd attempts, he is not eligible for admission in the L.L.B. course.

21. In view of above, this Court is not inclined to exercise its extraordinary jurisdiction under Article-226 of the Constitution of India, by directing the respondents to consider the educational qualification of the petitioner as required under Bar Council of India Legal Education Rules, 2008 for admission to LLB course when petitioner has passed B.Com. examination with 'pass class'.

In view of above, the petition fails and is accordingly dismissed.

ORDER IN CIVIL APPLICATION:

In view of the order passed in the main petition, the Civil Application do not survive and the same also stands dismissed, accordingly.

(VAIBHAVI D. NANAVATI,J)

Pradyuman