

(13) There can be no escape from the conclusion that when a candidate, on the basis of some foreign qualification or degree, seeks admission to any course governed by the Panjab University Calendar, the equivalence of such degree or examination vis-a-vis any degree or examination conducted by the Panjab University is a matter for the Panjab University to determine. So long as the criteria adopted by the University for determining such equivalence is fair and reasonable, the Courts would be loath to interfere.

(14) After giving the matter our most careful consideration, we see no reason to interfere with the decision of the Panjab University to direct the petitioner to pass a special test in Physics as a pre-condition to the grant to her of the eligibility certificate, to enable her to obtain regular admission to the M.B.B.S. course at Dayanand Medical College, Ludhiana. We consequently hereby set aside the order of the learned Single Judge, with a direction to the Panjab University to fix a date for the special test in Physics to be taken by the petitioner, which shall not be earlier than one month from today. Further, it is clarified that this special test shall be held as per the syllabus for +2 examination in Physics of the Punjab State Education Board. In the meanwhile the petitioner is directed to be granted provisional admission, till the declaration of the result of the special test in Physics.

(15) This Letters Patent Appeal is disposed of in these terms. There will, however, be no orders as to costs.

J.S.T.

*Before Hon'ble M. R. Agnihotri & N. K. Sodhi, JJ.*

**AJAY MALIK,—Petitioner.**

*versus*

**PANJAB UNIVERSITY THROUGH ITS REGISTRAR AND OTHERS,—Respondents.**

*Civil Writ Petition 17301 of 1991.*

**January 29, 1992.**

*Constitution of India, 1950—Arts. 226/227, 254—Advocates Act (1961)—Ss. 49(1) (af)—Admission to L.L.B. course—University at liberty to prescribe a higher qualification than the minimum qualification prescribed by the Bar Council of India—Rules framed by the Bar Council not to prevail over the rules and regulations of the University—Article 254 of the Constitution cannot be invoked.*

**Ajay Malik v. Panjab University through its Registrar and 449 others (N. K. Sodhi, J.)**

---

*Held*, that it has to be appreciated that sub-clause (af) of Clause: (1) of Section 49 of the 1961 Act only empowers the Bar Council to make rules in regard to *the minimum* qualification required for admission to a degree in law in any recognised University and not that the University cannot prescribe any eligibility which is higher than the one prescribed by the Bar Council. It is, therefore, open to the University to prescribe a higher qualification and the same is permissible under the 1961 Act.

(Para 7)

*Held*, further that the University on its part while admitting students can always devise a criteria higher than the minimum prescribed by the Bar Council and merely because the two criterion are different does not make them repugnant so as to attract the provisions of Article 254 of the Constitution.

(Para

B. S. Malik, Advocate with Shiv Kumar Sharma, Advocate,  
for the Petitioner.

P. S. Goraya, Advocate, for the Respondent Nos. 1 to 3.

R. S. Chahar, Advocate, for the Respondent No. 4.

**JUDGMENT**

*N. K. Sodhi, J.*

(1) The primary question of law which arises for decision in this petition under Article 226 of the Constitution of India is whether the Panjab University, Chandigarh (hereinafter called, 'the University'), constituted under the Panjab University Act, 1947 (for short, 'the Act') could fix a condition of eligibility for admission to the first year class of the LL.B. course, which is higher than the minimum qualification prescribed by the Bar Council of India under Section 49 (1) (af) of the Advocates Act, 1961 (referred to hereinafter as 'the 1961 Act').

(2) Brief facts leading to the filing of the petition are as follows :—

(3) The petitioner who obtained a degree of Bachelor of Arts from the Delhi University in the year 1990-91 securing 40.78 per cent marks, applied for admission to the first year class of the LL.B. course of the University. It is not disputed that 15 seats in the Department of Laws were reserved for Sportsmen and the petitioner

who claims to be an outstanding sportsman, applied for one of these reserved seats. It is his case that on the basis of his past performance in sports, particularly in the game of Cricket and the trials conducted on September 17, 1991 by the Sports Committee of the University, he was recommended by the said committee for admission to the first year class of the LL.B. course, but, in spite of this, the Law Department did not call him for interview whereas candidates much lower to him in the sports category had been admitted. The only reason for refusing admission to the petitioner was that he was found ineligible inasmuch as he did not fulfil the requirement of 45 per cent of the aggregate marks in the Bachelor's degree which was the minimum prescribed by the University for seeking admission to the said course. The petitioner contended that since he possessed the minimum qualification required for admission to a course for a degree in law as prescribed by the Bar Council of India in exercise of the power conferred on it by Section 49(1) (af) of the 1961 Act, he was eligible to be admitted to the course or at least to be considered for admission for one of the seats reserved for sportsmen and the said minimum qualification of Bachelor's degree was binding on the University which could not prescribe any higher qualification for the purpose.

(4) Before dealing with the contentions raised on behalf of the petitioner, it is necessary to refer to the relevant provisions of the Regulations framed by the University in regard to the admission to the Department of Laws, Sections 7 & 49 of the 1961 Act and the Bar Council of India Rules framed thereunder :—

“Panjab University Calendar Volume II, 1988.

‘Faculty of Law’

BACHELOR OF LAWS

1. x x x x x x x x x

2. x x x x x x x x x

3. The minimum qualification for admission to the first year class of the LL.B. course shall be one of the following :

(a) A Bachelor's degree in any faculty of the Panjab University with at least 45 per cent of the aggregate marks ;

(b) a degree in any faculty of any other University recognised as equivalent to the corresponding degree of the

Ajay Malik v. Panjab University through its Registrar and 451 others (N. K. Sodhi, J.)

---

Panjab University, with at least 45 per cent of the aggregate marks.

Provided x x x x x x x x

Provided that the Panjab University may recognise the degree of any other University of India if it is recognised by the Bar Council of India.

Section 7(1) of the Advocates Act, 1961 :

Functions of Bar Council of India : The functions of the Bar Council of India shall be—

- (a) x x x x
- (b) x x x x
- (c) x x x x
- (d) x x x x
- (e) x x x x
- (f) x x x x
- (g) x x x x
- (h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils ;
- (i) to recognise Universities whose degree in law shall be qualification for enrolment as an advocate and for that purpose to visit and inspect Universities ;

\*\* \*\* \*\* \*\*  
\*\* \*\* \*\* \*\*

Section 49 of the Advocates Act, 1961 :

General power of the Bar Council of India to make rules :—

(1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe—

- (a) \* \* \* \* \*
- (ab) \* \* \* \* \*
- (ac) \* \* \* \* \*
- (ad) \* \* \* \* \*
- (ae) \* \* \* \* \*

(af) the minimum qualifications required for admission to a course of degree in law in any recognised University ;

**	**	**	**	**
**	**	**	**	**

### THE BAR COUNCIL OF INDIA RULES

#### PART IV

##### *Section-B.*

(1) Save as provided in Section 24(1) (c) (iiia) of the Act, a degree in law obtained from any University in the territory of India after the 12th day of March, 1967 shall not be recognised for purposes of Section 24(1) (c) (iii) of the Act unless the following conditions are fulfilled :—

(a) That at the time of joining the course of instruction in law for a degree in law, he is a graduate of a University or possesses such academic qualifications which are considered equivalent to a graduate's degree of a University by the Bar Council of India ;

(b) **	**	**	**
(c) **	**	**	**
**	**	**	**
**	**	**	**"

(5) The 1961 Act enacted by the Parliament falls under Entry-26 of List-III of the seventh schedule to the Constitution of India, which reads as under :—

“Legal, medical and other professions.”

A reading of Sections 7 and 49(1) of the 1961 Act makes it abundantly clear that Bar Council of India is invested with the responsibility of ensuring standards of legal education and it is also empowered to prescribe *the minimum conditions of eligibility* for admission to the law course for the purpose of recognising law degrees awarded by the Universities.

(6) The Act, on the other hand, is relatable to Entry-25 of List-III of the seventh schedule to the Constitution, which reads as under :—

‘Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65, 66 of List I, vocational and technical training of labour.’

The University having been constituted under the Act, its Senate and Syndicate have been given powers to frame Regulations and Rules regarding the conditions to be complied with by candidates, not being students of any college affiliated to the University for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University. The University has also the power to frame Regulations for the courses of study to be followed and the conditions to be complied with by candidates for any university examination and for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University. In exercise of these powers, the University has for its ‘Faculty of Law’ framed amongst others Regulation-3, the relevant extract of which has been reproduced earlier. This Regulation provides for the minimum qualification for admission to the first year class of the LL.B. course namely, that a candidate for admission possesses a Bachelor’s degree with at least 45 per cent of the aggregate marks. As has been noticed above, the Bar Council of India in its Rules has provided that a degree in law obtained from any University in the territory of India after the 12th day of March, 1967, shall not be recognised for purposes of Section 24(1) (c) (iii) of the 1961 Act unless at the time of joining the course of instruction in law for a degree in law, the candidate is a graduate of a University or possesses such academic qualifications which are considered equivalent to a graduate’s degree of a University by the Bar Council of India. It would be seen that the power of the Bar Council is to prescribe only a minimum condition of eligibility for admission for purposes of recognising a University degree so that a certain level of legal education could be maintained but it does not imply that a University to maintain its own academic standards is prohibited from raising the minimum qualification as prescribed by the Bar Council. In other words, if the University prescribes any condition of eligibility for admission to the law degree course which is lower than the condition of eligibility prescribed by the

Bar Council, the latter can refuse to recognise the law degree conferred by the University for the purpose of enrolment as an Advocate. For instance, the University could prescribe that no candidate who has secured less than 50 per cent marks in the Bachelor's degree would be eligible for admission to the law course. Such a clause in the University Regulations would not contravene the rules framed by the Bar Council. In the present case, the University has prescribed the condition of 45 per cent of the aggregate marks in the Bachelor's degree, which is the qualifying examination for admission. This could certainly be done.

(7) The matter can be looked at from yet another angle. Even if one were to assume, as was contended by learned counsel for the petitioner, that the condition of eligibility for admission to the LL.B. course as prescribed by the Bar Council of India was binding on the University, it has to be appreciated that sub-clause (af) of Clause (1) of Section 49 of the 1961 Act only empowers the Bar Council to make rules in regard to *the minimum qualification* required for admission to a degree in law in any recognised University and not that the University cannot prescribe any eligibility which is higher than the one prescribed by the Bar Council. It is, therefore, open to the University to prescribe a higher qualification and the same is permissible under the 1961 Act. A somewhat similar matter though not relating to legal education came up for consideration before a Division Bench of this Court in *Panjab University v. Ashwinder Kaur* (1). After noticing the earlier case law on the subject including the judgments of the Supreme Court in *R. Chitralakha v. State of Mysore* (2), *D. N. Chanchala v. State of Mysore* (3), *State of Andhra Pradesh v. Davu Narendranath* (4), and a Division Bench judgment of this Court in *Sant Lal v. State of Haryana* (5), it was observed as under :—

“It will be seen from Regulation No. 3.1 prescribing the qualification for admission to M.Lib., that these are the minimum qualifications. In other words, the admission cannot be made by prescribing lower qualifications than mentioned in Regulation No. 3.1. However, this did not

- 
- (1) A.I.R. 1991 P&H 166.
  - (2) A.I.R. 1964 S.C. 1823.
  - (3) A.I.R. 1971 S.C. 1762.
  - (4) A.I.R. 1971 S.C. 1762.
  - (5) 1978 (1) S.L.R. 133.

debar the Authorities to lay down higher qualifications for the purpose of admission."

Again in para 13 of the judgment, the conclusion arrived at was "In view of the authoritative pronouncements, we are of the view that there is nothing wrong to lay down the higher qualifications for the purpose of admission to a particular course than the minimum prescribed." Similar is the view taken by a learned Single Judge of the Karnataka High Court in *Sobhana Kumar S. and others v. The Mangalore University and others* (6).

(8) Thus, while answering the contention raised on behalf of the writ petitioner against him, it is held that the University is not bound by the condition of eligibility laid down by the Bar Council of India and in case 'the former' prescribed any condition lower than the one prescribed by the Bar Council, it would be open to 'the latter' not to recognise the degree awarded by the University. Even otherwise, what is prescribed by the Bar Council is only the *minimum qualification* for admission and, therefore, it is open to the University to prescribe higher qualifications while admitting students to the LL.B. course.

(9) Having failed in his primary contention, learned counsel for the petitioner then urged that the condition of eligibility as prescribed by the University requiring 45 per cent of the aggregate marks in the Bachelor's degree was repugnant to the rules framed by the Bar Council whereunder the requirement was only of being a graduate of any University and, therefore, the latter would prevail. The argument, thus, is that the Rules framed under the 1961 Act which cover the exclusive field of legal education under Entries 77 and 78 of List-I of the seventh schedule to the Constitution must prevail over the Regulation framed by the University in exercise of its power under a law which is relatable to Entry-25 of List-III of seventh schedule. There is no merit in this submission either as we find no repugnancy between the two provisions. As already observed earlier, the 1961 Act authorises the Bar Council to frame rules providing for the minimum qualification for admission to a law course in any University. The University on its part while admitting students can always devise a criteria higher than the minimum prescribed by the Bar Council and merely because the two criteria are



different does not make them repugnant so as to attract the provisions of Article 254 of the Constitution. In this view of the matter, we need not refer to the case law cited on behalf of the writ petitioner as we find that the same is not relevant to the facts of the present case.

(10) Lastly, it was urged that Regulation-3 framed by the University requiring at least 45 per cent of the aggregate marks in the Bachelor's degree is arbitrary and violative of the Article 14 of the Constitution inasmuch as it classifies the candidates in two categories—those possessing 45 per cent marks or more in the aggregate and others with less than 45 per cent marks. The classification, according to the counsel for the petitioner, is impermissible as it has no nexus with the object sought to be achieved. This argument has only to be noticed to be rejected. In our opinion, the Regulation is not arbitrary and it is open to the University for the purpose of maintaining its academic standards to prescribe any qualification for admission to its course which may be higher than the minimum prescribed. No meaningful argument, indeed, could be urged in this regard.

(11) For the reasons recorded above, we find no merit in the writ petition and the same stands dismissed with no order as to costs.

J.S.T.

Before Hon'ble R. P. Sethi & H. S. Bedi, JJ.

MASTER HARI SINGH,—*Petitioner.*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents.*

*Civil Writ Petition No. 6223 of 1992.*

December 23, 1993.

*Constitution of India, 1950—Art. 226/227—Terrorist and Disruptive Activities (Prevention) Act, 1987—S. 19—F.I.R. under TADA Act registered—Writ petition filed for quashing the F.I.R.—F.I.R. at investigation stage—Maintainability of the writ petition.*

**Held that TADA Act cannot be taken to mean that constitutional powers of the Court under Articles 226 and 227 have been excluded. The Act itself "being product of the Constitution does**