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**(2011) 04 GUJ CK 0185**  
**In the Gujarat High Court**

**Case No :** Letters Patent Appeal No. 567 of 2011 in Special Civil Application No. 15165 of 2010 and Civil Application No. 4090 of 2011 in Letters Patent Appeal No. 567 of 2011

Majabutsinh C. Gohil

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision :** 20-04-2011

**Acts Referred:**

**Citation :** (2011) 04 GUJ CK 0185

**Hon'ble Judges :** V.M. Sahai, J;G.B. Shah, J

**Bench :** Division Bench

**Advocate :** Dhaval Dave and P.A. Jadeja, for the Appellant; N.J. Shah, Asstt Government Pleader for Respondent Nos. 1 and 3 and D.G. Shukla, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. Dhaval Dave assisted by Mr. P.A. Jadeja for the Appellant, learned Assistant Government Pleader Mr. N.J. Shah for Respondent Nos. 1 and 3 and learned Counsel Mr. D.G. Shukla for Respondent No. 2.

2. This intra court Letters Patent Appeal has been filed challenging judgment and order of the learned Single Judge dated 4.3.2011 passed in Special Civil Application No. 15165 of 2010.

3. Learned Counsel for the Appellant has submitted that the Appellant appeared in examination of GATE 2010 conducted by IIT (Guwahati). The IIT (Guwahati) has granted grades instead of percentile. The Gujarat Public Service Commission ("the Commission" for short) has issued advertisement inviting applications for appointment of Lecturers in Government Engineering Colleges and Government Polytechnics. The essential qualification mentioned in the advertisement was that person having First Class Graduate Degree in Engineering with GATE percentile of

75% or a candidate having First Class M.E. Degree would be eligible for written examination. The Appellant is First Class Engineering graduate and has appeared in GATE examination in 2010 conducted by IIT (Guwahati). Instead of awarding GATE percentile, the IIT (Guwahati) has awarded only grades. The Commission therefore, wrote to IIT (Guwahati) to provide percentile of the candidates who had appeared in GATE examination 2010 or disclose the formula for calculation of percentile so that they may calculate percentile of each candidates who had applied pursuant to the advertisement issued by the Commission.

4. The IIT (Guwahati) informed the Commission that they will not give the formula, on the basis of which percentile marks could be calculated. They further informed that in GATE 2010 examination, only grades have been allotted and it is not open to anyone to calculate percentile marks on the basis of the grades.

5. The matter went to the State Government. The State Government was of the opinion that the Commission should apply formula for calculating percentile score of a candidate which was applied in GATE Examination 2009.

6. The Commission applied formula of GATE 2009 and calculated percentile score of each candidates. Since the Appellant, according to the calculation of the Commission, received 73.45% percentile, which was below 75% percentile, he was not called for the written examination.

7. The Appellant challenged the calculation of percentile made by the Commission before the learned Single Judge. The learned Single Judge has dismissed the writ petition on the ground that the percentile calculated by the Commission was uniform on the basis of GATE 2009 examination which was applied to all candidates who had made applications in pursuance to the advertisement. Since the Appellant-Petitioner could not secure requisite percentile of 75%, he was not called for the written examination.

8. The learned Counsel for the Appellant has urged that the Commission has not applied the same formula as of GATE 2009 but has applied different formula. To arrive at a conclusion as to how many candidates have got the same rank or to come to an exact calculation as to how many candidates have received less marks than the Appellant, the entire result was required to be calculated. This was not possible for the Commission as IIT (Guwahati) refused to co-operate with the Commission and refused to permit the Commission to calculate percentile or to provide formula to the Commission. Even if there is some variation in the formula adopted by the Commission that has not prejudiced the Appellant as the same formula have been applied to all the candidates.

9. The learned Counsel for the Respondent Commission has placed reliance on a decision of the Hon"ble Apex Court in the case of A.P. Public Service Commission Vs. Baloji Badhavath and Others, , wherein it has been held that, Commission is free to evolve its own procedure for conduct of examination and while conducting examination, a fair and transparent procedure has to be followed. How the Commission will judge merit of the candidates is its function. Unless the

procedure adopted by the Commission is held to be arbitrary or against the known principles of fair play, court would not ordinarily interfere with the process conducted by the Commission.

10. We are of the opinion that the calculation of percentile is a matter which has to be looked into by the expert body and Court should be slow in interfering with such matters. Since the formula of GATE 2009 examination for calculating percentile has been applied uniformly to all candidates, we do not find any illegality in the calculations made by the Commission.

11. For the aforesaid reasons, we do not find any merits in the appeal. The appeal fails and is accordingly dismissed. Notice is discharged.

12. Since the main appeal is dismissed, no orders are required to be passed on the Civil Application and the same stands disposed of.