

**(1990) 08 GUJ CK 0017**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 166 of 1980

Mangalbhai A. Patel

APPELLANT

Vs

Gujarat University, Ahmedabad

RESPONDENT

**Date of Decision :** 10-08-1990

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Gujarat University Act, 1949 — Section 32

**Citation :** AIR 1991 Guj 59 : (1991) 1 GLR 221

**Hon'ble Judges :** C.V. Jani, J

**Bench :** Single Bench

**Advocate :** M.I. Patel, for the Appellant; S.N. Shelat, for the Respondent

## **Judgement**

1. In this petition under Art. 226 of the Constitution of India, the petitioner prays for a writ directing the respondent University to declare that the petitioner had passed the M.E. Examination in Civil Engineering in First Class.

2. According to the petitioner, after having passed Bachelor of Engineering Examination some years back, he joined and registered his name as a postgraduate student with the respondent University on 15th July, 1975. He appeared at the M.E. (Civil) first Semester Examination in November, 1975 and cleared five subjects, but failed in the subject of Physical and Chemical Testing. He passed in this subject in the examination held in the month of May 1976. The petitioner has stated that out of the 100 marks of the six subjects of the first Semester Examination he had obtained 69 marks, i.e. about 63.6% marks.

3. The petitioner thereafter appeared at the M.E. (Civil) Semester 11 Examination in the month of May 1976 and passed the same in four subjects, but not in two subjects of Sewage Treatment and Disposal and Air Pollution and Radiological Health. He cleared these subjects at the Examination held in the month of November, 1976. According to the petitioner, he had obtained 628 marks out of 1100 marks in the Second Semester Examination which came to 57% of the total marks.

4. The petitioner thereafter appeared in the Third and Fourth Semester Examinations held in the month of May 1978 and obtained 300 out of 500 marks. Thus, according to the petitioner, he had passed all the Examinations within four years from the date of his registration as a Student in M.E. Degree with 60.26% of marks. It is the petitioner's case that as per the prevalent Regulation No. 7 Annexure-A to the petition, he was entitled to the award of M. E. (Civil) Degree in First Class, but he was declared "Pass" by the respondent University.

5. The petitioner, therefore, requested the University by his letter dated 11th August, 1978, to award him M.E. (Civil) degree in First Class.

6. After the Semester-11 Examination was held in May 1976, the prevailing Ordinance and Regulation Annexure-A were replaced by the respondent-University by other ordinance and regulations which are produced at Annexure-F to the petition. According to the said Ordinance Annexure-F, a candidate would be declared to have passed the Examination in First Class if he has passed all the subjects of the First Semester at one and the same sitting and all the subjects of the Second Semester also at one and the same sitting of the examination and had obtained 60% or more marks but less than 66% of the total marks. After this Ordinance came into force, the petitioner had appeared in the Second Semester Examination in the month of November 1976 and had cleared the two subjects of Sewage Treatment and Disposal and Air Pollution and Radiological Health in November, 1976.

7. The respondent-University has refused to award M.E. Degree in First Class to the petitioner on the ground that the Ordinance and Regulation Annexure-A did not apply to his case, and he had not passed the examination in all the subjects of the First Semester at one and the same sitting and the examination in all the subjects of the Second Semester also at one and the same sitting.

8. It is the submission of Mr. M. 1. Patel for the petitioner that the petitioner is entitled to get M.E. Degree in First Class in view of the prevailing Ordinance and Regulation.

9. In order to appreciate the contention of Mr. Patel, it is necessary to reproduce the relevant portion of the Regulation Annexure-A :

"0.02:

A candidate will be required to pass three examinations:

(i) First Semester examination

(ii) Second Semester examination

(iii) Examination of dissertation work, at the end of the fourth semester.

R. 07:

A candidate will be declared to have passed the examination leading to the award of M.E. degree in the first class, if he obtained 60% or more but less than

66% of the combined aggregate marks of the first and second semester examinations and the dissertation examination, provided he has passed all the examinations within four years from the date of registration."

The petitioner took admission to the course leading to the Degree of M.E. as per regulation 0.01 of the said Annexure-A and he has satisfied all the requirements of R.07 as he had passed all the examinations within four years from the date of registration and he had obtained more than 60% marks of the combined aggregate marks of the first and second semester examinations and the dissertation examination.

10. The regulations which came into force from June, 1976 are produced at Annexure-F. The relevant portion of these regulations reads as follows:

"0.02:

A candidate will be required to pass three examinations as under:

- (1) First Semester examination
- (2) Second Semester examination
- (3) Examination of dissertation work, at the end of the Fourth Semester.

R. 05:

A candidate will be declared to have passed the examination leading to award of M.E. Degree in (a) First Class with distinction or (b) First Class or (c) Second class, if he

(i) Has submitted the duly certified dissertation by the end of the fourth academic year counted from the academic year of registration;

(ii) Has passed all the subjects of First Semester at one and the same sitting of the examination and all the subjects of the Second Semester also at one and the same sitting of the examination, and

(iii) Has obtained the following percentage marks (for the respective classes) of the combined aggregate marks of the first and second semester examinations and the dissertation examination:

- a) 66% or more for first class with distinction.
- b) 60% or more but less than 66% for first class,, and
- c) 50% or more but less than 60% for second class."

11. Mr. M. 1. Patel, learned counsel for the petitioner, has submitted that when the petitioner joined the M.E. Course the regulations Annexure-A were applicable and, therefore, he was entitled to the conferment of M.E. Degree in First Class as per Regulation 7. thereof. It is also his submission that even after the regulation Annexure-F came into force he had passed the examination in all the remaining

subjects of the second semester at one and the same sitting and also the examination of the third and fourth semester at one and the same sitting.

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12. On the other hand, Mr. S. N. Shelat, learned counsel for the respondent University submits that the M.E. Degree in First Class cannot be conferred on the petitioner in view of regulation No. R.05 which prevailed when the question of conferring the degree arose. Mr. Shelat has relied on a judgment of the Supreme Court in Punjab University Vs. Subash Chander and Another, , wherein their Lordships held that the amended regulation issued by the Punjab University regarding the grace marks would not be said to be retrospective in operation simply because it would apply to Subashchandra who appeared for the final examination of M.B.B.S. after the amended provision came into force, even though he had joined the course earlier in 1965. Their Lordships observed that "no promise would be deemed to have been made to Subashchandra at the time of his admission in 1965, that there will be no alteration in the regulation in regard to the percentage of marks required for passing in the examination and that too, the rules which were in force at the time of his admission would continue to be applied to him until he finished his whole course".

13. In the present case, when the question of awarding M.E. Degree to the petitioner arose, the new regulations contained in Annexure-F to the petition had already come into force. The respondent-University was therefore, expected to examine whether the petitioner had satisfied the criteria indicated in the regulation R.05 of Annexure-F. As per the said regulation, a candidate would be declared to have passed the examination leading to award of M.E. Degree in First Class, if he has passed all the subjects of first Semester at one and the same sitting of the Examination and all the subjects of the second semester also at one and the same sitting of the examination and has also obtained 60% or more of the combined aggregate marks of the first and the second semester examination and the dissertation examination. As the petitioner did not satisfy this criteria, the M.E. Degree in First Class would not be awarded to him as per the prevailing regulation.

14. Mr. M. 1. Patel relies on another judgment of the Supreme Court in K. Jagadeesan Vs. Union of India and others, . This judgment does not appear to be of any help to the petitioner as it was laid down that where the rules regarding recruitment to the post of Mechanical Engineers in Meteorological Survey of India were amended, and a degree in Engineering was made the requisite qualification for promotion to the post of Director (M.E.), it cannot be said that it would amount to amendment with retrospective effect. As far as the employee not possessing a degree in Engineering, but who was eligible for promotion under the original rules was concerned, Their Lordships observed that the only effect of such an amendment was that employee's chance of promotion or his right to be considered for promotion was adversely affected, but this could not be regarded

as retrospective in effect and the challenge to the amended notification on that ground must fail.

15. In the present case, the petitioner is not in service; he was merely a candidate who had joined Post-graduate course in Civil Engineering when the old regulations were in force. However, when he became qualified for award of M.E. Degree, the new regulation Annexure-F had already come into force. It is nobody's case that the new regulations had been framed by the respondent-University with some extraneous motive, either in order to mar the prospects of a particular individual or his benefit. A stricter standard of eligibility has been prescribed by the new regulation in the better interests of higher education. It also cannot be said that the new regulations were retrospective in operation. They apply to all the cases in which the Post-graduate Degree in Civil Engineering was to be awarded. As the petitioner did not satisfy the criteria laid down by the amended regulation, he was not entitled to award of M.E. Degree in First Class. In spite of all the sympathy for the petitioner, the respondent-University cannot be directed to award M.E. Degree in First Class to the petitioner.

16. The petition, therefore, fails. Rule is discharged with no order as to costs.

17. Petition dismissed.