

(2011) 04 GUJ CK 0187

In the Gujarat High Court

Case No : Special Civil Application No. 3941 of 2011

Mihir Rajesh Kumar Parikh

APPELLANT

Vs

Gujarat Technological University and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Citation : (2011) 04 GUJ CK 0187

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : D.G. Shukla, for the Appellant; Dipen A. Desai, for Respondents 1, Government Pleader for Respondent 2, R.J Rawal, Assoc. and Shivya A. Desai, for Respondent 3, for the Respondent

Judgement

K.M. Thaker, J.—Rule. Mr. Dipen Desai, learned advocate, waives service of notice of rule on behalf of the Respondent No. 1, Mr. Janak Raval, learned AGP, waives service of notice of rule on behalf of the Respondent No. 2 and Ms. Shivya Desai, learned advocate, waives service of notice of rule on behalf of the Respondent No. 3.

1.1 With consent of the learned advocates appearing on behalf of the respective parties, the matter is taken up for hearing and final decision today.

2. Earlier, the hearing of the petition has been adjourned twice in view of the joint requests made by the learned Counsel for the contesting parties. The requests were made on the ground that the parties to the petition were trying to find out some solution, which may put an end to the dispute while protecting interest of both the sides.

2.1 It, however, appears that the things did not materialize in the manner in which the parties intended. Hence, the request for further adjournment by the counsel for the institute is declined, however, all submissions are considered.

3. The Petitioner has approached this Court alleging that he is not permitted to

appear in remedial examination for 1st semester and 3rd semester and he apprehends that he may not be allowed to appear in the 4th semester examination as well, in view of certain incident which occurred during the term (in respect of which, one of the girl students in the institute has made complaint against the Petitioner).

3.1 The Petitioner is a student in Respondent No. 3 - institute, which is affiliated to the Respondent No. 1 - university.

3.2 So far as factual matrix is concerned, it appears that the Petitioner has not cleared one subject in his 1st semester. However, he was allowed to keep the term in the 2nd semester on the condition to clear the remaining / uncleared subject of the 1st semester.

3.3 It, further, comes out from the submissions of the Petitioner that he has cleared the 2nd semester, however, so far as 3rd semester is concerned, he was not permitted to appear in the examination, which was held in December-2010 and he was not issued Hall Tickets because of the incidence in respect of which the institute has received the complaint from the girl student.

3.4 The Petitioner, therefore, has prayed that he may be permitted to appear in the remedial examination for 3rd semester (all subjects) since he has not been able to appear in the regular examination held (in December-2010) in regular course.

3.5 It appears that the Petitioner has kept the term of 3rd semester. He has alleged that he has not been able to attend the classes for 4th semester, which commenced in January-2011. According to his submission, he has not attended the entire term/semester until now so far as 4th semester is concerned. He has alleged that he was not allowed (and until now he has not been allowed) by the Respondent No. 3 - institute to attend the classes/keep the term so far as 4th semester is concerned.

3.6 It is claimed by the Petitioner that the Respondent No. 3 - institute has neither permitted him to attend the classes nor allowed him to appear in remedial examination of 3rd semester because of the complaint made against him by certain girls student alleging that he (i.e. the Petitioner) had misbehaved with her, tarnished her name publicly and written derogatory matters about her on the "Wall" of Face Book.

3.7 It is clarified that at this stage the Court has refrained from recording any observation about the conduct of Petitioner or nature and gravity of complaint against him. It appears that the complaint came to be lodged by the girl student. One another student, who is named by the girl student in the complaint, who, during the investigation, revealed the name of the Petitioner before the police authorities.

3.8 It has also come out during the hearing that the Petitioner was arrested and thereafter, he has been granted regular bail in connection with the incident for

which the girl student filed the complaint.

3.9 In response to the notice issued vide order dated 29.3.2011, the Respondents have, as aforesaid, appeared on couple of occasions earlier and the hearing of the petition was adjourned at the joint request of the parties as the parties to the petition were trying to find out solution to put an end to the dispute. However, the attempts have failed.

4. Learned Counsel for the Respondent No. 3 - institute has submitted that a complaint of a very serious nature came to be made by the concerned girl student with the authorities of the institute. It has been, inter alia, submitted that the Petitioner is alleged to have opened a false "Face Book Account" in the name of the concerned girl student and pasted, on the "Wall" of the Face Book Account comments concerning/against the said girl student which are said to be in filthy language and in very bad taste in language. Other details regarding the conduct of the Petitioner and his other behaviour have been orally submitted by the learned Counsel for the Respondent No. 3 - institute which need not be recorded in detail in present order. Suffice to note that the Respondent institute found it uncongenial to the discipline and for the atmosphere to allow the Petitioner to attend the classes.

4.1 The learned Counsel for the Respondent No. 3 - institute has submitted that in view of the complaints received from the said girl student, the Respondent No. 3 - institute has suspended the Petitioner.

4.2 He has also submitted that according to the practice and procedure followed in the Respondent No. 3 - institute, the suspension order was placed on the Notice Board and the said fact is within the knowledge of the Petitioner.

4.3 It is claimed by the learned Counsel for the Respondent No. 3 - institute, that actually after the suspension order was placed on notice board, the Petitioner had approached the authorities of the Respondent No. 3- institute with his parents to resolve the issue.

4.4 It is claimed by the Respondent No. 3 - institute that the Petitioner is, since then, under suspension and that is the reason that the Petitioner is not allowed to attend the classes.

4.5 From the submissions of the institute, it appears that in view of the conduct of the Petitioner and the nature of the complaint, the Respondent No. 3- institute seriously feels that the presence of the Petitioner student will not be congenial to the atmosphere and discipline of the Respondent No. 3 - institute.

4.6 The Respondent No. 3 - institute has also submitted that the institute is contemplating appropriate proceedings against the Petitioner in accordance with its regulations and law, including a formal inquiry, so as to take appropriate disciplinary action and to pass appropriate orders, after such inquiry.

5. So far as the Petitioner is concerned, though it is not disputed by the learned

Counsel for the Petitioner that the Petitioner is aware about the suspension order, it is claimed that any copy of the suspension order has not been duly and formally served on the Petitioner until now and the Petitioner does not know the contents. It is also claimed that the Petitioner is not aware and has not been informed about any inquiry or other proceedings against the Petitioner and, in any case, any proceedings to the knowledge of the Petitioner has yet not started.

5.1 It is in the aforesaid factual background that according to the learned Counsel appearing for the contesting parties, attempts were made to resolve the issue by exploring the possibility that the student may leave the institute and take admission in any other institute.

5.2 However, the Respondent No. 1 - university has expressed inability to accommodate the Petitioner in the middle of the term in any other institute.

5.3 It has been submitted by the learned Counsel for the Respondent No. 1 - university that the Petitioner can be accommodated in any other institute only at the beginning of the next term and not in the middle of present term, more particularly when the Petitioner is under suspension, as claimed by the institute, and has not attended the classes for 4th semester.

6. The net result of the discussion during the hearing of the present petition is that, the Petitioner is uncertain about his present position since any formal proceedings have not commenced against him, as claimed by the Petitioner.

6.1 On the other hand, the Respondent No. 3 - institute has claimed that the Petitioner has been suspended and the Respondent No. 3 - institute is contemplating to initiate appropriate proceedings in accordance with its regulations.

6.2 It is submitted that until now, the institute did not proceed with actual proceedings since the parties were discussing ways for resolving the issue and alternative that the Petitioner may leave the institute, was being considered. However, since any possibility that the said alternative may fructify, does not appear feasible, appropriate actions are required to be passed since whatever may be the misconduct of the Petitioner, institute can not keep him and it cannot be permitted to keep a student, in permanent state of uncertainty and without any proceeding and consequential order in accordance with law a student cannot be continued under prolonged suspension.

7. In view of the aforesaid submissions, present petition can be disposed of, at this stage, with following directions/observations:

7.1 The Respondent No. 3 - institute will, on or before 28.4.2011, forward a copy of the suspension order said to have been issued against the Petitioner, under R.P.A.D. to the Petitioner student, at his residential address (declared by him on the record of the institute).

7.2 If any inquiry is under contemplation, final decision in that regard shall be

taken preferably by 6.5.2011.

7.3 The Respondent No. 3 - institute will separately by appropriate communication inform the Petitioner student, if any disciplinary action, including any inquiry, is contemplated by the Respondent No. 3 - institute and if yes, the date and time when the inquiry would commence.

7.4 If the Respondent No. 3 - institute intends to take any disciplinary action against the Petitioner, the same will be taken in accordance with law and the regulations of the institute, if any. The Petitioner will be afforded reasonable opportunity of offering explanation i.e. of hearing in respect of the complaint said to have been received by the Respondent No. 3 - institute.

7.5 However, the Respondent No. 3 - institute has received any complaint in writing from the girl student, then, either copy thereof will be supplied to the Petitioner or a notice containing the essence of the complaint and intimation calling for Petitioner's explanation, shall be served on the Petitioner, and if the complaint has been received orally, the Respondent No. 3 institute will inform the gist of the complaint in writing to the Petitioner.

7.6 On receipt of such information, if the Petitioner intends to file his written explanation, the same shall be done by the Petitioner within period of one week from the date of receipt of such intimation from the Respondent No. 3 - institute.

7.7 The Respondent No. 3 - institute shall forward the copy or gist of the complaint to the Petitioner on or before 2.5.2011.

7.8 If any, inquiry is intended to be conducted, the Respondent No. 3 - institute will initiate and conduct the same in accordance with law and its regulations, within one week, after the reply from the Petitioner or after waiting for one week for Petitioner's reply. If any reply is not given by the Petitioner within one week, then, it would be open to the Respondent No. 3 - institute to proceed with the formal inquiry and afford reasonable opportunity of explanation/hearing to the Petitioner.

7.9 Thereafter, appropriate order, as may be considered necessary in the facts and circumstances of the case, will be passed by the competent authority and the same shall be forwarded to the Petitioner under R.P.A.D. The order will be passed within 10 days from the closing/conclusion of the disciplinary inquiry by the competent authority.

7.10 The proceedings of the inquiry, if any, will not be unnecessarily prolonged and/or adjourned unless for any unavoidable reasons and circumstances.

7.11 The Petitioner shall not ask for any unnecessary adjournments.

7.12 After the order is passed by the competent authority of the Respondent No. 3 - institute and is communicated to the Petitioner, it would be open to the Petitioner, if the order is against the Petitioner, to take appropriate action in accordance with law against such order.

8. It is clarified that so far as the remedial examination for 1st and 3rd semesters are concerned, it is the case of the Petitioner that he has kept the term of both the semesters in accordance with the regulations of the Respondent No. 3 - institute, however, in view of the subsequent events, the Petitioner has not been permitted to appear in the remedial examination. He has also submitted that the remedial examinations are now to be held in May/June-2011.

9. Under the circumstances, it would be open to the Petitioner to fill-up the prescribed application form seeking permission to appear in the remedial examination and in turn, the Respondent No. 3 - institute would take appropriate decision in accordance with its regulations and the regulations prescribed by the Respondent No. 1 - university. Whatever decision is taken, shall be communicated to the Petitioner.

With the aforesaid clarifications and directions, the petition stands disposed of.