

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11056 of 2020

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HARSH HITESHBHAI GANDHI
Versus
GUJARAT TECHNOLOGICAL UNIVERSITY

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Appearance:
MR NM KAPADIA(394) for the Petitioner(s) No. 1
MS VASVI N KAPADIA(6079) for the Petitioner(s) No. 1
. for the Respondent(s) No. 1
MR BHAVESH B CHOKSHI(3109) for the Respondent(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
Date : 18/09/2020
ORAL ORDER

1. This court, on 8.9.2020, issued notice making it returnable on 14.9.2020 with a further direction to the Gujarat Technological University (hereinafter referred to as the 'University') to allow the petitioner to appear in the pre-check trial test. The respondent No.1 was also directed to file its reply. Accordingly, the respondent No.1 has filed its reply and the rejoinder has been filed by the petitioner.

2. Mr. N.M. Kapadia, learned advocate for the petitioner, at the outset, submitted that when the pre-check trial test was conducted on 15.9.2020, the technical glitch was again experienced by the petitioner as well as other students. Accordingly, the University, on 15.9.2020, has tweeted that *“Students who are not able to successfully submit today's Pre-check trial test can re-appear tomorrow i.e. 16.9.2020 from 11:00 to 11:30 AM Login will start from 10:15 AM Students can appear using the same credentials used by them today and that are displayed in their student portal.* It is submitted that thereafter, the petitioner had appeared in the pre-check trial test on 16.9.2020. It is further contended that as is discernible from the contents of the affidavit-in-reply filed by

the respondent No.1 – University, it suggests that there is least likelihood of any malfunction. The University does not say that there was no malfunction in the system. While referring to pages 136 to 140, it is submitted that it is not that the petitioner was the only person who has suffered this trauma, but there are other instances also where, the students could not successfully attempt the examination. Further, there is not a whisper in the affidavit-in-reply, specifically pleading that there was no technical glitch.

3. It is next submitted that in the first instance, that is, on 17.8.2020, the petitioner was duly informed that he is not eligible to give examination; however, the University has tried to improvise its stand by filing an affidavit which, in view of the settled position of law as enunciated by the Apex Court in paragraph 4 of the judgment in the case of *State of Punjab vs. Bandeep Singh & Ors.* Reported in (2016) 1 SCC 724, is impermissible. It is submitted that the contents of the affidavit are nothing, but an afterthought theory with a view to marring the case of the petitioner. The stand of the University that remedial examination is available to the petitioner, as the petitioner has failed in one of the subjects; the same would grossly affect the career of the petitioner inasmuch as, the petitioner will carry two marksheets for the same subject, for no fault of him.

4. That right to education is a fundamental right and the same cannot be tinkered with by the University in such a fashion. Reliance in this behalf is placed on the judgment of the Apex Court in the case of *Mohini Jain vs. State of Karnataka* reported in (1992) 3 SCC 666. Specific reference has been made to paragraph 12 of the said judgment wherein, it has been observed that “Right to life” is the compendious expression for all those rights which the Court must enforce because they are basic to the dignified enjoyment of life. It is further observed that it extends to the full range of conduct which the individual is free to

pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens. Further, reliance has been placed on the judgment of the Apex Court in the case of *Popatrao Vyankatrao Patil vs. State of Maharashtra & Ors.* reported in 2020 SCC OnLine SC 291.

5. Attention of this court is invited to the affidavit-in-rejoinder filed by the petitioner and more particularly, paragraph 28, indicating the difficulties faced by the petitioner during the period of examination, beginning from 10.30 a.m. to 11.40 a.m. It is thus, urged that there was no fault on the part of the petitioner in not properly attempting the examination and thus, the action of the respondent No.1 – University is bad and illegal.

6. On the other hand, Mr. Bhavesh Chokshi, learned advocate for the respondent No.1 – University submitted that the petitioner had enough time to attempt the Multiple Choice Questions. The test was of 70 minutes with only 70 questions to attend. If seen the log-sheet, the petitioner has spent 42 minutes, however the petitioner has answered only 18 questions. Out of which, only 10 questions are correct. It is submitted that in such type of Multiple Choice Question format examination, normally, a question is answered in less than a minute and the examination format and the timeline are also fixed keeping such data in consideration.

7. While referring to page 8 of the writ petition, it is submitted that it is the case of the petitioner that after almost 28 minutes, that is, around 10.58 a.m., the system got hanged and the petitioner was compelled to log out and log in again and that the petitioner was allowed to re-log in

at around 11 a.m., after which he could attend few more questions. The said averment in the petition is fallacious inasmuch as, the log-sheet (page 84) clearly suggest that at around 10:59:03.303, the petitioner was very much available on the device and has attempted questions 20 and 21. It is, while referring to page 95, submitted that as per the system, the pictures of the students are taken randomly and the last entry at page 95 substantiates that at around 10_59_04.jpeg, the petitioner was very much on the device. Thus, the stand of the petitioner about the petitioner having faced problem at about 10.58 a.m., is misplaced and misconceived.

8. In all, 31000 students have appeared in two phases and both the examinations were conducted by the University successfully without any technical glitch. It is only the case of the petitioner that the petitioner has experienced the difficulties in appearing in the examination.

9. Heard Mr. N.M. Kapadia, learned advocate with Mr. Rushabh Kapadia, learned advocate for the petitioner and Mr. Bhavesh Chokshi, learned advocate for the respondent No.1 – University through video conference.

10. Both the parties, have placed on record their defence, one voicing the technical difficulties faced by him and the other justifying the system being flawless. Pertinently, amidst Covid-19, instructions and directions are issued by the respective authorities to conduct online and offline examinations for the students enrolled with such University. The stand of the respondent No.1 – University is enumerated in the affidavit to the effect that, for the purpose of conducting online examination, a foolproof and robust mechanism has been devised in order to ensure that online examinations are conducted successfully and without any technical glitch.

11. On the other hand, the petitioner who, though logged in, in time, had faced certain technical glitch and accordingly, the petitioner could not attempt his paper of Foundation Engineering fully. *Prima facie*, several difficulties were voiced by the petitioner and are highlighted. Some of which are illustrated herein below:-

- (i) Questions appearing and loading again and again;
- (ii) Questions automatically got switched over from one to another and before it being read over, disappeared from the screen with new question being surfaced;
- (iii) 25 questions were on the tray/question palette, however, questions No. 32 and 7 were reflected on system, that is, around 11:16:36:487 and 11:16:36:593, which is incomprehensible;
- (iv) Questions not visited or attempted, the log-sheet indicates that the questions have been loaded/visited;
- (v) Question number being displayed on the screen at the time also appears in question palette on the right side, displaying it as the active question number. It appears that question number 70 is though displayed on the screen, is not reflected on the question palette on the rightside at the same time.

12. In the normal circumstances, the University would have conducted physical examination; however, these are unprecedented circumstances which, necessitated examinations being held online. As the technology is and we all know, it has the tendency of uncertainties, be it network issues, device issues etc. When working with the technology, technical glitches cannot be ruled out and must be taken into consideration. The problem, which the petitioner encountered during the examination on 6.8.2020, the petitioner must be allowed to appear in the examination, considering the fact that the situation complained of was beyond his control. The petitioner may not have faced the issue in a normal setting.

13. Hence, the respondent No.1 – University, in view of the

aforementioned discussion, is directed to allow the petitioner to appear in the examination for the subject – Foundation Engineering, which is scheduled on 23.9.2020 of phase – 3, commencing from 21.9.2020.

14. Needless to say that this order will not confer any equity in favour of the petitioner and is subject to the outcome of the captioned writ petition.

15. List the matter on 5.10.2020.

16. Direct service, is permitted. Registry to communicate this order to the respondents through fax/e-mail.

Binoy/Radhika

(SANGEETA K. VISHEN,J)

