

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 7148 of 2012****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NIRAV D BHATT - Petitioner(s)****Versus****VICE CHANCELLOR & 2 - Respondent(s)**

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**Appearance :**

MR HASIT H JOSHI for Petitioner(s) : 1,

None for Respondent(s) : 1, 3,

MR DIPEN DESAI for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH****Date : 15/05/2012****ORAL JUDGMENT**

1. By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order/communication of the Registrar, Gujarat Technological University dated 08/05/2012 by which the petitioner is communicated that the representation of the petitioner to grant term of the petitioner for 4<sup>th</sup> Semester in EC

Branch has been rejected and consequently the petitioner will not be permitted to appear in the 4<sup>th</sup> Semester examination going to be held from 18/05/2012. It is also further prayed for an appropriate writ, order or direction directing the respondents to permit the petitioner to appear in the examination of 4<sup>th</sup> Semester in EC Branch going to be held on 18/05/2012 considering the petitioner to be present for studies on medical ground.

2. It is the case on behalf of the petitioner that the term of the 4<sup>th</sup> Semester in EC Branch commences from 26/12/2011 to 24/01/2012 (90 working days) and unfortunately the petitioner met with an accident on 27/01/2012 and was admitted in the Civil Hospital at Sola on 28/01/2012 due to which he could not attend the college till 18/27/03/2012. It is also the case on behalf of the petitioner that the petitioner was advised by his Doctor to take rest up to 27/03/2012. It is the case on behalf of the petitioner that due to the above he could not attend the college and could not pursue his studies and, therefore, the term has not been granted on the ground that the petitioner has not attended and/or studied for the requisite days and his presence is less than 75%. It is the case on behalf of the petitioner that the petitioner made the representation dated 17/04/2012 to the respondent-University and despite the same, the same was not decided and, therefore, the petitioner preferred Special Civil Application No. 6614/2012 and the learned Single Judge vide order dated 04/05/2012 directed the respondent-University to take appropriate decision on the representation submitted by the petitioner and to convey the same to the petitioner and, therefore, by the impugned communication the petitioner has been

informed/communicated by the Gujarat Technological University that it is not possible to allow the petitioner to appear in the BE 4<sup>th</sup> Semester. Hence, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs.

3. Shri Hasit Joshi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the respondent-University has not properly considered the representation made by the petitioner and has not considered the cause for not attending the college by the petitioner. It is submitted that due to the accident and unavoidable circumstances, the petitioner could not attend the college and pursue the studies and, therefore, it is requested to consider the case of the petitioner sympathetically.

4. In response to the notice issued by this Court, Shri Sunit Shah, learned advocate has appeared on behalf of the respondent-University. An affidavit-in-reply is filed on behalf of the respondent-University submitting that as per the rules framed by the University Grants Commission, minimum number of lectures, tutorials, seminars and practicals are required to be attended for eligibility to appear at the examination, which shall not be less than 75% of the total number of lectures, tutorials, seminars, practicals and any other prescribed requirements. It is submitted that as such the University Grants Commission has already condoned 25% of the absentia with a due consideration of unavoidable natural causes. It is further submitted that as per the relevant paragraph/Rules framed by the University a student may not be allowed to appear in one or all subjects if the presence

criteria of 75% is not fulfilled in one or more subjects. It is further submitted that as such vide circular dated 02/04/2011 provision is made to condone 10% of the total absentia of students due to illness in all examinations for considering total attendance of 75% of the total absentia. It is submitted that in the present case in fact from 26/12/2011 to 21/04/2012 the petitioner has attended only 25% class and was on medical leave up to 19/03/2012. It is further submitted that from 19/03/2012 to the end of the term i.e. 21/04/2012 total attendance of the petitioner was reported to be 36.56% out of the total required attendance in the Institute. It is further submitted that even the University considered the request of the petitioner sympathetically and informed the Institute to extend the learning facility to the petitioner so that he may complete the requisite attendance i.e. 75%. It is submitted that though actually the term has expired on 21/04/2012 even if it is extended till the date of the examination, in that case also, the presence would be 47.50% only i.e. still less than 75% and, therefore, it is submitted that after considering the case of the petitioner sympathetically, it is not possible to allow the petitioner to appear in the examination at this stage.

5. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the term of the college as declared by the University was between 26/12/2011 to 21/04/2012 (90 working days). It is also not in dispute that as per the norms framed by the University Grants Commission a student has to attend atleast 75% of the total number of lectures, tutorials, seminars and practicals and any other prescribed requirements. As per the norms framed by the University student may not be allowed to

appear in the examination if the presence criteria of 75% is not fulfilled. In the present case, it appears that the petitioner could not attend the college/classes after 27/01/2012 due to the accident and hospitalization till 18/27/03/2012. As per the affidavit-in-reply and as per the data submitted by the Institute it appears that from 26/12/2011 to 21/04/2012 (the period prior to the accident) the petitioner has attended only 20% class. It appears that even the case of the petitioner has been considered sympathetically though the actual term has expired on 21/04/2012 which was further extended till the date of the examination then also it would be 47.56% only and, therefore, even considering the case of the petitioner sympathetically the petitioner does not fall within the eligible criteria to appear in the examination and it is not possible for the GTU to allow the petitioner to appear in the University examination.

6. Considering the aforesaid facts and circumstances of the case and after considering the case of the petitioner sympathetically and even extending the term beyond the term prescribed by University i.e. till the date of the examination the petitioner would not be entitled to appear in the University examination. Under the circumstances, the petitioner is not entitled to any reliefs as prayed for and, therefore, the present petition deserves to be dismissed and is accordingly dismissed. Notice is discharged.

**(M.R. SHAH, J.)**

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