

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5584 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

KRISHABH KAPOOR
Versus
SARDAR VALLABHBHAI NATIONAL INSTITUTE OF TECHNOLOGY
SURAT

Appearance:
RONITH JOY(9560) for the Petitioner(s) No. 1
MS MEGHA JANI(1028) for the Respondent(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 31/08/2021

CAV JUDGMENT

Heard learned advocate Mr. Ronith Joy for the petitioner and learned advocate Ms. Megha Jani for the respondents.

2. The petitioner is a student pursuing the course of B.Tech. under the respondent Sardar Vallabhbhai National Institute of Technology. By

filing the present petition under Article 226 of the Constitution, the petitioner has prayed to set aside decision of the Academic Performance Review Committee as reflected in communication dated 05th October, 2020 by Dean (Academic) cancelling the registration and admission of the petitioner student. Also challenged is the order dated 12th March, 2021 of respondent No.1. The next prayer is to set aside order dated 04/05th November, 2020 of the same authority rejecting the request of the petitioner. Also prayed is to quash decision dated 04/05th November, 2020 reflected in communication issued by Dean (Academic) & Chairman, Academic Performance Review Committee.

By said decision dated 04/05th November, 2020, the request of the petitioner was turned down on the ground that though all avenues were explored, in view of the Regulation 10.3(a) of the Academic Regulations, nothing could be done. In impugned order dated 12th March, 2021, the petitioner's request for reconsideration of cancellation of admission, which was made pursuant to order dated 10th February, 2021 of this Court passed in Special Civil Application No.2558 of 2021, came to be rejected.

3. It is the case of the petitioner that he passed his qualifying 12th standard examination with flying colours obtaining 85%, thereafter cleared the prestigious JEE examination by getting All India Ranking and secured admission in the respondent Institute in Bachelor of Engineering course. It is the case that during the lockdown, the mental health

of the petitioner deteriorated. He reeled under depression which started from January, 2020 and peaked in May-June, 2020. It is stated that petitioner conceived even suicidal thoughts at regular bouts. For such compelling reasons, the petitioner could not appear in the examination which was conducted online by the respondent Institute, it was pleaded. The petitioner appears not to have conveyed his feelings to his parents.

The Academic Review Committee on 18th September, 2020 resolved to remove the petitioner from the course on account that he could not earn 25 credit at the end of second semester. It appears that petitioner had previously filed Special Civil Application No.2558 of 2021 which was disposed of on 10th February, 2021 and respondent No.1 was directed to decide the representation of the petitioner. After the said order, the representation came to be decided and the respondents stuck to their earlier decision to reject the request of the petitioner as reflected in their communication dated 04/05th November, 2020.

Going back to the facts of the case as stated by the petitioner, during the period of pandemic, his mental health got deteriorated, even as the petitioner was otherwise brilliant student and had stellar academic background. The petitioner, because of his introvert nature, could not convey his feeling of depression. He did not appear in the on-line examination. The parents were not aware about the such state and frame of mind of the petitioner.

It is stated that the parents of the petitioner continue to try paying of fees of third semester but were unable to pay on-line. It was on 29th September, 2020 for the first time that the parents became aware that petitioner was removed from the Institute. Several letters came to be written by the parents to the Institute to show mercy and to request that if chances given, the petitioner would make up the deficiency.

Amongst the request communications addressed to the respondents by the parents, the last was dated 25th December, 2020, together with which doctor's certificate dated 21st December, 2020 was annexed. Said communication dated 25th December, 2020 making request to reconsider the admission of their son, reads as under.

"Respected Sir,

With due respect, we want to draw your kind attention towards some unknown facts about our son, which recently comes in our notice when we felt his abnormal behavior past some day. Being typical Indian parents, it did not come in our notice earlier. We can't even think about it that such a situation may happen with our son, who was extra ordinary brilliant in studies throughout his academic carrier. We were in a belief that our son's shy and reserve nature is normal and that's why he generally doesn't share feelings with anyone. But, seeing his abnormal behavior since some days, we felt that there is something very suspicious which his taking him away from everyone & everything but that he didn't want to disclose or share with anyone, as he became more and more silent day by day. We were afraid about his behavior that he may also take some wrong step, then someone suggested us to consult with Psychologist. Initially, we were not agreeing for it but feeling the severe situation, we heavily hearted consulted Psychologist where we come to know the real fact about our son. The fact, which

not only shocked us but now, we are really feeling that everything has been snatched from us. As per the Psychologist, our son was in huge mental stress since January 2020 which aggravated to its peak in May/June 2020 and even suicidal thoughts were continuously coming in his mind. Now, we really feel that the condition of the mental stress of our son affected his studies and that's why he was not able to score the minimum required marks as defined by the Institute, for passing 1st year B.Tech. Knowing the fact, we at once started the medicines and other remedies suggested by the doctor for our son. As per the doctor, our son will come over it very soon. But, now knowing the facts, we want to promise you that we will take utmost care of our son and try our best that he may do his best in his future academic career."

The Doctor's certificate read as under.

"To whomsoever it may concern

This is to certify that Mr. Krishabh Kapoor 18 y/ 0 Male R/o Vadodara S/o Mr. R.K. Kapoor is diagnosed with severe depressive episodes with suicidal ideation currently in partial remission. His problem started in Jan. 2020, reached its peak in May-June (2020) and now decreased in severity and for that he is put on appropriate treatment. He needs regular supervised care & follow up visits for his problem."

This Court by order dated 23rd April, 2021 permitted the petitioner to appear in the supplementary examination which was to take place in the first week of May, 2021, observing that absence of grant of such relief would invite for the petitioner an irreversible situation. The result of the supplementary examinations of both first and second semester were ordered to be placed on record. As per the result, it is an admitted position that petitioner has cleared the semesters and has secured the minimum required credit marks.

4. Learned advocate for the petitioner

submitted that it was indeed due to the mental condition of the petitioner that he could not adhere to the requirement in Regulation 7.3 and was not able to make the application on medical ground before or during the end-semester examinations.

In the affidavit-in-reply filed by the respondent Institute, it is *inter alia* submitted that the students are bound by the Regulations for the B.Tech. Programme and that they are to be applied with uniformity to all the students. It was contended that the Regulations did not permit to make any special exception. The impugned action was justified stating that it was based on Regulation 10.3(a), under which it is mandatory for each student to complete 25 earned credits at the end of second semester. It was contended that initially the petitioner obtained only 11 earned credits. It was further submitted that having failed to pass the semester examination, petitioner did not choose to appear in the corresponding supplementary examinations held in February, 2020 and August, 2020.

According to the respondents, the case of petitioner based on the medical ground could be governed by Regulation 7.3 which necessitate the making of application prior to the last day of examination. Such application was not made, it was submitted. It was further submitted that medical illness was not reported by the petitioner when he stayed in the hostel for the months of January, 2020 to March, 2020. As regards the aspect of intervening

pandemic period, according to the respondents, the petitioner could have stayed in Vadodara with his family. It was contended that there was long gap between the illness and the medical certificate issued by the doctor. The medical certificate was also doubted.

Learned advocate for the respondents while heavily relying on the averments and contentions in the affidavit-in-reply, pressed into service the principle laid down by the Apex Court in **Thaper Institute of Engineering & Technology v. Gagandeep Sharma [(2001) 9 SCC 157]** in which it was held that the Court would not normally interfere with the prescribed standards *especially* when such standards are intended to improve the academic standards. Learned advocate submitted that the scope of judicial review in the educational matters is limited for this Court.

5. If the Regulations of the respondent Institute for B.Tech. Programme are surveyed, they deal with the admission, registration, attendance requirement and also about the absence during semester. While the attendance of particular percentage of total days would determine, the grade to be awarded to the student as per Regulations 6.1 to 6.5, Regulation 7 provides about the absence during the semester. As per Regulation 7.2 a student who is absent from a mid-semester examination due to illness, has to approach the course teacher or coordinator immediately on the return to the class

and the request could be supported by medical certificate.

Regulation 7.3 says that case of absence on medical grounds before or during the end-semester examinations, the student can apply for II grade, for which application should be made earliest and not later than the last day of examination. The Head of the Department would grant or reject such request depending upon the merit. This Regulation is as under.

"7.3 In case of absence of medical grounds, before or during the end semester examinations, the student can apply for 'II' grade. An application requesting 'II' grade should be made at the earliest, but not later than the last day of the examination. This application should be made to the Head of Department of the student's Programme who, depending on the merit of the case, will grant approval and inform all the concerned course coordinators and D.R. (Academic). The student should subsequently complete all course requirements within fifteen days from the date of the last end semester examination except in theory courses. The 'II' grade will then be converted to a proper grade (AA to FF). The student who remains absent in the end semester examination or supplementary examinations (not on medical grounds) will be awarded 'NA' grade instead of 'II' grade."

The termination from the course is the subject dealt with in Regulation 10. As per Regulation 10.1, a student remaining continuously absent for more than six weeks in a semester without sanction of the leave, may face the action of striking off his/her name from the rolls of the Institute, subject to the right to appeal to the Director. Student may also be asked to leave the Institute on disciplinary grounds, as per Regulation

The requirement to satisfy the minimum academic

criteria is stated in Regulation 10.3, extracted hereinbelow.

"10.3 A student shall have to leave the Institute if he/she fails to satisfy the minimum academic criteria prescribed for continuation as a student of the end of each academic year as stated below:

(a) A student must complete 25 earned credits (EC) at the end of 2nd semester failing which his/her registration shall be terminated.

(b) A student must complete a minimum of 55 earned credits at the end of the 4th semester of his admission to the Institute, failing which, his/her registration shall be terminated.

(c) A student must complete a minimum of 90, 125 and 165 earned credits at the end of the 3rd, 4th and 5th year of his admission respectively; at the end of 6th year he/she must complete all the earned credit requirements for the programme."

Sub-clause (d) deals with the situation where a student has withdrawn from one or more semesters, which is not applicable in the facts of the present case. As per clause (e), the appeal will not be entertained during the first two years when a student fails to meet the minimum academic requirement. Clause (f) says that opportunity of preferring appeal shall be available from third year onward.

Regulation 15 relates to examination which includes the examinations which may be conducted for those students who are unable to appear in the end-semester examination due to some compelling reason. As per Regulation 15.1, mid and end-semester examination may be conducted as per the decided time schedule whereas, as per Regulation 15.2, satisfactory attendance would entitle the student to

appear in the end-semester examination and the student may also be debarred as a result of disciplinary action. What comes into play in the facts of the present case are Regulations 15.3 and 15.4, which are as under.

"15.3 Students who are unable to appear in the semester-end examination due to some compelling reason such as serious illness or other special circumstances will be given II grade (on medical grounds) and NA grade (on non medical grounds) and will be permitted to appear in a supplementary examination to be conducted as scheduled by the institute.

15.4 Students who have failed in one or more courses in the end semester examination of a semester, will be permitted to appear only in supplementary examinations as scheduled by the institute and to be conducted preferably before the commencement of the next semester. The original grade will be modified to a new grade (AA to FF) based on the performance in the supplementary examination."

5.5 Thus, Regulation 15.3 read with Regulation 15.4 speak about a student who is unable to appear in the examination on account of compelling reason and serious illness is mentioned as compelling reason. On the medical ground, such student is allowed to appear in the supplementary examination. Only to be recollected, the petitioner student has appeared in supplementary examination in view of the interim order and has cleared both the semesters earning the minimum credit marks. The reason why the petitioner could not appear in the regular semester examination, has been amply spelt out in the request communications sent by the parents, including the communication dated 25th December, 2020 quoted in paragraph No.3.3 above. The petitioner suffered strokes of depression during the pandemic and due to

his introvert nature, withdrew himself from education and academic activities, not informing even his parents. This led to empty passage of time to the disadvantage of the petitioner. The psychiatrist was consulted out of compulsion whose certificate show that the depressive episodes gripped the petitioner during the period from January, 2020 to reach at a peak in May-June, 2020.

The depressive cycle which the petitioner suffered was during the period of COVID-19 pandemic itself. It was a period of wide-spread despondence. It is reasonable to believe that the situation brought about by the pandemic created an adverse effect on the tender-mind of the petitioner, who disengaged himself from the studies. The ground advanced by the petitioner could be viewed as genuine as there is nothing to disbelieve the same. The stand of the respondent Institute to doubt is insensitive and departs from the facts stated in the letter of the parents fortified by the certificate of doctor. The reason given by the petitioner has to be appreciated in the special circumstance of pandemic period.

It is Regulations 15.3 and 15.4 that govern the rights of the student who has failed to appear in the end-semester examination for the reasons beyond his control. The facts of the petitioner's case fits in the provision to extend the benefit thereof to the petitioner. An attempt was made on behalf of the respondents to read Regulation 10.3 with Regulation

7.3 to try and suggest that the petitioner had not applied upto the last date of examination on his medical ground. When the medical ground is genuine and which is a good ground provided in Regulation 15.3 entitling the student to appear in the supplementary examination when serious illness or such compelling reasons exist, the non-observance of the requirement in Regulation 7.3 about not applying for grade II before the semester examination date, stands rendered a directory in nature.

5.8 It is the very reason of depressive tendencies developed in the mind of the petitioner during the pandemic, which prevented him from applying on the medical ground under the said Regulation. In the facts and circumstances of the case and more particularly in the context of the currency of the pandemic period, the depressive state of mind and the depression created in the petitioner student, can be classified as serious illness. It is this very factor acceptable in Regulation 10.3 entitled the petitioner to seek the supplementary examination, which now he has passed to acquire the eligibility to march ahead for further studies.

6. In the totality of the facts and circumstances obtained as above, and in light of the operation of the Regulations as discussed above, the Court is of the view that there is no good reason not to give the benefit of Regulations 15.3 and 15.4 of the Regulations to the petitioner student. Though by interim measure which may not create any right as

such, the petitioner was permitted to appear in the supplementary examination. The petitioner has cleared for both the semesters and having cleared the same, the petitioner now possesses the requisite minimum 25 credit marks to acquire the eligibility to study further to complete the course.

Approach of sympathy is not the rule of law, yet the law has to be benevolent to sub-serve the interests of justice, wherever the facts and circumstances so justify and demand. This is one such case. The aspect of petitioner having cleared the examinations and acquiring the minimum credit marks, cannot be overlooked to put the petitioner at a disadvantageous situation. When the medical illness of the petitioner was attributable to the pandemic period and was during the pandemic period, when the Regulations of the respondent Institute permitted the supplementary examinations in such eventuality and when the petitioner has cleared the supplementary examinations successfully, it will be inequitable, arbitrary and contrary to the tenets of justness, fairness and equality, to disregard the factor.

7. In the above view, the respondents have to reconsider their decision to cancel the registration and undertake the exercise of arriving at a fresh decision in light of the facts which are presently obtained. The decision of the Academic Performance Review Committee communicated on 05th October, 2020 by Dean (Academic) cancelling the registration and admission of the petitioner student is hereby set

aside. The communications dated 04th November, 2020 (Annexure-K) and dated 12th March, 2021 (Annexure-A) and the decisions reflected therein are also hereby set aside, in order to enable the respondent Institute to take a fresh view of the matter and arrive at a decision anew.

The competent authority of the respondent Institute shall pass fresh order in relation to the case of the petitioner and about permitting the petitioner to continue his studies in the course of B.Tech., which shall be guided by the discussion, observations and findings in this order, within fifteen days from the date of receipt of the present order.

8. The time of prosecution of the petition till this order is passed, shall not be hindering factor for the petitioner, nor shall be an aspect for the respondent Institute in taking the decision as above.

9. The petition is disposed of with above directions.

FURTHER ORDER

At this stage, learned advocate Mr.Aadit Sanjanwala for learned advocate Ms.Megha Jani prayed for stay of the aforesaid order.

In the facts of the case and in view of the directions given in the order, the request could not be acceded to, hence rejected.

(N.V.ANJARIA, J)

ANUP