

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CONTEMPT PETITION NO.510 OF 2019**  
**IN**  
**WRIT PETITION NO.4898 OF 2019**

Rekha Dayanand Tare ... Petitioner

versus

Union of India and Anr. ... Respondents

Mr. Rajeev N. Kumar with Ms. Tanvi Pulekar, Ms. Chetana Gaikwad, for Petitioner.

Mr. Parag Vyas i/by A.R.Gole, for Respondent No.1.

Mr. Anil Singh, Additional Solicitor General with Mr. A. Misra i/by M/s. M.V.Kini and Co., for Respondent No.2.

**CORAM: S.J. KATHAWALLA &  
B.P.COLABAWALLA, JJ.**

**DATE: 10<sup>th</sup> DECEMBER, 2019**

**P.C.:**

1. By the above Contempt Petition, the Petitioner has alleged that the Respondent No.1 – Union of India, through the Secretary, Ministry of Human Resources Development and Respondent No.2 – Shri Kundan Nath, Under Secretary, Ministry of Human Resources Development, are guilty of contempt of Court since they have, vide Order dated 31<sup>st</sup> July, 2019, willfully disobeyed the directions given by the Division Bench of this Court by its order dated 20<sup>th</sup> June, 2019 passed in Writ Petition No.4898 of 2019.

*This order is corrected and modified as per Suo Moto Speaking to the minutes of order dated 10<sup>th</sup> December, 2019.*

2. The facts in the matter are in brief set out hereunder :

2.1 Aditya Dayanand Tare (Aditya) belongs to OBC – Other Backward Class of society. He suffers from hearing impairment to the extent of 64%. Aditya is a native of the State of Maharashtra. Aditya was successful in securing admission to the seat reserved for the physically handicapped candidate on the basis of his score in the JEE Mains and Advanced examination results. Aditya got himself admitted in the Mechanical Branch of the B.Tech Course in IIT Gandhinagar (Gujarat).

2.2 The Indian Institute of Technology, Gandhinagar (Gujarat) noticed that Aditya had indulged in plagiarism in the philosophy assignment. He was held guilty of plagiarism and an order dated **27<sup>th</sup> December, 2017** was passed by the Institute whereby Aditya was interalia, suspended for two semesters during December 2017- November 2018. However, the suspension for both the semesters was kept in abeyance and was to come into effect immediately, if Aditya was found involved in another act of misconduct. According to the Institute, Aditya accepted the order of punishment imposed upon him by the Indian Institute of Technology, Gandhinagar (Gujarat).

2.3 According to the Institute, they received a complaint from the concerned Professor as regards the unfair means of copying from a reference book in the test paper of Fluid Mechanic Course, by Aditya. The Institute, thereafter, initiated proceedings against Aditya on the charges of having indulged in cheating and unfair

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means in the subject of ES212 Fluid Mechanic Course, mid semester exam. The Senate Student Affairs Committee considered the charges against Aditya and found him guilty of cheating in ES 212 Fluid Mechanic course mid semester exam. The Institute by its order dated 9<sup>th</sup> April, 2018 *interalia* suspended Aditya for two semesters during December 2017 – November 2018 and also held him ineligible for hostel accommodation during his suspension.

2.4 Aditya, thereafter, filed R/Special Civil Application No.6537 of 2018/Writ Application before the High Court of Gujarat at Ahmedabad under Article 226 of the Constitution of India, for interalia quashing and setting aside of the orders dated 27<sup>th</sup> December, 2017 and 9<sup>th</sup> April, 2018 passed by the Indian Institute of Technology, Gandhinagar (Gujarat).

2.5 The learned Single Judge of the High Court of Gujarat at Ahmedabad after hearing the detailed arguments advanced by the Advocates for the parties, considered the issue as to whether the Indian Institute of Technology, Gandhinagar, committed any error in punishing Aditya for indulging in plagiarism and adopting unfair means in copying from the reference book and by his detailed Judgment dated 11<sup>th</sup> January, 2019 rejected the Writ Application filed by Aditya. However, a fervent appeal was made by the learned Counsel appearing for Aditya to the Court that it would be in the interest of justice if the concerned authorities may sympathetically consider the application of Aditya to transfer and admit him at Indian Institute of Technology (IIT Bombay) in

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the subject of mechanical engineering since the proximity of the family may help him in effectively and efficiently carrying on his studies. The learned Judge requested the Ministry of Human Resources Department, New Delhi, to look into the matter at the earliest and take an appropriate decision keeping in mind the observations made by the Court and subject to the rules and regulations in this regard.

2.6 On 8<sup>th</sup> October, 2018 an application vide Case No.10453/1033/2018 was also filed on behalf of Aditya with the Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India on 8<sup>th</sup> October, 2018 with a request to direct transfer and rehabilitation of Aditya from IIT Gandhinagar to IIT Mumbai pursuant to the directions of High Court of Gujarat in Special Civil Application No.6537 of 2018.

2.7 IIT Bombay submitted a letter before the Court of Chief Commissioner for Persons with Disabilities pointing out the following :

*“With reference to a letter cited above (unsigned), it is stated that there is a defined process by which seat allocations are made based on JEE (Advanced) ranking and options submitted by the candidates by joint seat allocation authority (JoSAA). There is no process of transfer of students from one IIT to other IIT after seat allocation by JoSAA as it may violate the JEE(Adv) rank vis a vis preference submitted by other PwD candidates.”*

2.8 The Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, as per Section 75(b) of the Act, *This order is corrected and modified as per Suo Moto Speaking to the minutes of order dated 10<sup>th</sup> December, 2019.*

advised IIT Bombay to process the transfer application of Aditya as per the norms and judgment of the High Court of Gujarat at Ahmedabad dated 11<sup>th</sup> January, 2019.

2.9 On behalf of Aditya, representations were made to the Ministry of Human Resources and Development and also to the Director of IIT Bombay. The Director, IIT Bombay, by his letter dated 30<sup>th</sup> January, 2019 addressed to the parent of Aditya, interalia informed :

- (i) that the Chief Commissioner for Persons with disabilities has advised IIT Bombay to process the transfer of Aditya from IIT Gandhinagar to IIT Bombay as per the norms and as per the Judgment dated 11<sup>th</sup> January, 2019 passed by the Hon'ble High Court of Gujarat at Ahmedabad;
- (ii) that the Hon'ble High Court of Gujarat has directed IIT Bombay to sympathetically take into consideration the request made on behalf of Aditya to transfer him at IIT Bombay, subject to the rules and regulations in this regard and there is no positive directions to IIT Bombay regarding admission related issue of Aditya;
- (iii) that there is a well defined process by which seat allocations are made based on JEE (Advanced) ranking and options submitted by the candidates. Such seat allocation is made by Joint Seat Allocation Authority. Thus every student is given proper opportunity to prefer IIT of his / her choice at the time of admission;
- (iv) that as of today there are no such rules / regulations / Act to deal with such cases

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of transfer of student of one IIT to another IIT, who are admitted through Common entrance test;

- (v) that IIT Bombay, being a public authority which is covered in the term “State” as envisaged in Article 12 of the Constitution of India, it requires to follow principles of fundamental right of equality by uniformly applying and strictly adhering to the rules, regulations and provisions of law including admission related process / law; and
- (vi) that in absence of rules / regulations governing the transfer of student from one IIT to another IIT, it is legally not possible for IIT Bombay to give admission to Aditya Dayanand Tare in IIT Bombay.

2.10 Aditya’s parent, therefore, filed Writ Petition No.4898 of 2019 before this Court impugning the communication dated 30<sup>th</sup> January, 2019 issued by the Registrar, IIT Bombay, rejecting the Application seeking inter IIT transfer of Aditya. The prayers that were sought in the Writ Petition filed before this Court are as under :

“(A) This Hon’ble Court may graciously be pleased to call for the records of the case from respondents and after examining the same issue a writ of Mandamus or Writ in the nature of Mandamus or any other appropriate writ, order or direction and quash and set aside communication dated 30<sup>th</sup> January, 2019 and 7<sup>th</sup> February, 2019 issued by Registrar, IIT Bombay communicating in so far as rejection of process of inter IIT transfer of the applicant;

(B) This Hon’ble Court may graciously be pleased to issue writ of mandamus or suitable direction to respondent No.2 IIT Bombay to

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process the transfer of the applicant in the stream of Mechanical Engineering or alternatively Engineering Physics (5 Years Course) without violating the preferences and Right of Equality of other candidates as per Rank 49 of the Applicant in OBC-NCL-PwD category as per JoSAA;

(C) This Hon'ble High Court will be pleased to grant an interim relief to direct the respondent No.2 to allow the Applicant to pursue his studies in Summer Vacation May-June, 2019) at IIT Bombay;"

2.11 The said Writ Petition was disposed of by an order of this Court (Coram : S.C.Dharmadhikari & G.S.Patel, JJ.) dated 20<sup>th</sup> June, 2019, wherein the Court held that *"in academic matters, we should not be seen as interfering with the decisions of the academic bodies and experts. There are certain standards which have been maintained in the IITs in India. Merit is given prominence and rightly so. In matters of this nature, it is best left to the Government and the Government functionaries to take a call. Any order that the High Court may pass in such cases is likely to become a precedent"*. This Court has thereafter recorded that *"we have indicated to both the sides that the Writ Petition with all its annexures would be treated as a representation in writing by the Secretary in the Department of Human Resources, Government of India and after calling for the necessary remarks and opinions, it is left to the Secretary to take a final call or decision in the matter."* The Court also clarified that *"even this order/direction (to the Secretary in the Department of Human Resources) may become a precedent in such cases in future."*

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*We clarify that in the peculiar facts and circumstances and given that the Petitioner has a disability for which he is required to pursue his educational prospectus in Mumbai, that the Secretary's intervention was the course suggested. Else, we do not think that we should be passing such orders in every matter. Hence, this order shall not be treated as a precedent in future cases".*

2.12 Pursuant to the above order dated 20<sup>th</sup> June, 2019, the Secretary, Ministry of Human Resource Development, Department of Higher Education, Government of India (the Secretary), by his order issued through the Under Secretary, Ministry of Human Resources Development, Department of Higher Education, Technical Section, dated 31<sup>st</sup> July, 2019, rejected the transfer application as follows :

*"I am directed to refer to your appeal dated 26.05.2019 addressed to the Secretary, Department of Higher Education, in pursuance of the judgment dated 20.06.2019 of the Hon'ble High Court of Judicature at Bombay in Writ Petition No.4895 of 2019.*

*Secretary, Department of Higher Education, after considering your appeal in the light of the orders passed by the Hon'ble High Court, relevant documents available in the Ministry and the comments received from IIT Gandhinagar and IIT Bombay, is of the view that there is a well defined policy for allocation of seats by Joint Seat Allocation Authority (JOSAA) on the basis of the rank in JEE (Advanced) and the choices filled in by the candidates. Hence, there is no reason for the Ministry to interfere in the matter of transfer of a student from one IIT to another, since such a precedent may lead to a flurry of similar representations being made by*

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*many other students for one reason or the other. This may eventually lead to students with lower rank getting into top institutions, superseding or being at par with those having higher ranks. However, considering the disability of the student and his academic career, IIT Gandhinagar may be requested to consider his appeal for revocation of his termination, so that he completes his B.Tech Programme.”*

3. The parent (mother) of Aditya has on his behalf filed the above Contempt Petition against the Secretary (Respondent No.1) and the Under Secretary (Respondent No.2) on the ground that the order of the Secretary dated 31<sup>st</sup> July, 2019 substantially interferes in the due course of justice and is in willful disobedience of the directions given vide order dated 20<sup>th</sup> June, 2019 passed by the Division Bench of this Court.

4. The Petitioner has in the Contempt Petition listed seven Acts of Contempt allegedly committed by the Respondents i.e. the Secretary in the Department of Human Resources and the Under Secretary, Human Resources Development. Since the matter pertains to a student, having a hearing impairment to the extent of 64%, we have in detail gone through the entire record and for reasons set out hereinafter, are of the view that no case whatsoever of contempt is made out by the Petitioner against the Respondents.

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5. Alleged Contemptuous Act No. 1 :

The Petitioner has alleged that as per para 5 of the Order of the High Court, the Writ Petition with all its annexures was to be treated as a representation in writing by the Secretary in the Department of Human Resources, Government of India. However, in the Order of the Secretary dated 31<sup>st</sup> July, 2019, there is not even a whisper that the Secretary has considered the Writ Petition of the Petitioner as a representation in writing as directed by this Court. This in itself is in direct defiance of the Order of this Court.

5.1 As regards the above allegation, we are of the view that it was not at all necessary for the Secretary to record in his order that he has considered the Writ Petition filed by the parent of Aditya as a representation in writing as directed by the Division Bench of this Court. In any event, it is clearly stated in the order that “*the Secretary, Department of Higher Education, after considering your appeal in the light of the orders passed by the High Court, relevant documents available in the Ministry and the comments received from IIT Gandhinagar and IIT Bombay, is of the view that there is a well defined policy for allocation of seats by Joint Seat Allocation Authority (JoSAA) on the basis of rank in JJE (advanced).....*”. In these circumstances, we do not think that there is any violation of the order dated 20<sup>th</sup> June, 2019 of this Court, much less any willful disobedience by Respondent No.1 and/or Respondent No.2.

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6. Alleged Contemptuous Act No. 2 :

The Petitioner has alleged that the Secretary in his Order dated 31<sup>st</sup> July, 2019 has not even made a whisper that he has considered the prayer in Writ Petition No. 4898 of 2019 filed before this Court i.e. para 33 (B).

6.1. As regards the above allegation, we are once again of the view that it was not necessary for the Secretary to record in his order that he has considered the prayers sought in Writ Petition No.4898 of 2019. The Secretary has interalia clearly given reasons for not allowing transfer by recording in his order that “ ..... *that there is a well defined policy for allocation of seats by Joint Seat Allocation Authority (JoSAA) on the basis of rank in JEE (advanced) and the choices filled in by the candidates. Hence, there is no reason for the Ministry to interfere in the matter of transfer of a student from one IIT to another, since such a precedent may lead to a flurry of similar representations being made by many other students for one reasons or the other. This may eventually lead to the students with the lower rank getting into top institutions, superseding or being at par with those having higher ranks. However, considering the disability of the student and his academic career, IIT Gandhinagar may be requested to consider his appeal for revocation of his termination, so that he completes his B.Tech Programme.*” In this instance also, we do not think there is any violation of the order dated 20<sup>th</sup> June, 2019, much less any willful disobedience by Respondent No.1 and/or Respondent No.2.

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7. Alleged Contemptuous Act No. 3 :

The Petitioner has alleged that the reasoning given by the Secretary in his order dated 31<sup>st</sup> July, 2019 reproduced in paragraph 8 hereinabove, that “*the assertion of respondents that there is a well defined policy for allocation of seats by joint seat allocation authority (JoSAA) on the basis of the rank in JEE (Advanced) and the choices filled in by the candidates. Hence, there is no reason for the Ministry to interfere in the matter of transfer of student from one IIT to another, since such a precedent may lead to a flurry of similar representations being made by many other students for one reason or the other. This may eventually lead to students with lower rank getting into top institutions, superseding or being at par with those having higher ranks.*” is a deliberate attempt to mislead and outreach the decision of this Court, despite being clearly stated therein that this case shall not be treated as a precedent.”

7.1 As regards the above allegation, we are of the view that the above observations of the Secretary, cannot be termed as an attempt to mislead or outreach the Court. Apart from the fact that the order dated 20<sup>th</sup> June, 2019 passed by the Division Bench of this Court needs to be read as a whole, in paragraph 4 of the said order, it is categorically stated by the Court “*that in matters of this nature, it is best left to the Government and the Government functionaries to take a call. Any order that the High Court may pass in such cases is likely to become a precedent and “it is left to the Secretary to take a final call or decision in the matter.”*” What is clarified by the Court *This order is corrected and modified as per Suo Moto Speaking to the minutes of order dated 10<sup>th</sup> December, 2019.*

in para 6 of the order is that the Court is of the view that it should not be passing any such orders i.e. suggesting intervention of the Secretary, and the same should not be treated as precedent in future cases. This, therefore, would clearly not amount to contempt from any angle.

8. Alleged Contemptuous Act No. 4 :

It is submitted that the Secretary has disregarded and defied the observations of this Court namely *“we clarify that in peculiar facts and circumstances and given that the Petitioner has a disability for which he is required to pursue his educational prospect in Bombay that the Secretary’s intervention was the course suggested”*.

8.1 As regards the above allegation, it is true that in view of the peculiar facts and circumstances of the case, this Court had suggested intervention of the Secretary. However, this Court had in paragraph 5 also specifically recorded that *“.....it is left to the Secretary to take a final call or decision in the matter.”* The order of the Secretary therefore cannot be said to have disregarded or defied the observations of the Division Bench of this Court in its Order dated 20<sup>th</sup> June, 2019, especially when one reads the said order as a whole.

9. Alleged Contemptuous Act No.5 :

It is submitted that as per para 5 of the Order of this Court, the Writ Petition with all its annexures was to be treated as a representation in writing by the

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Secretary. However, the Order of Secretary dated 31<sup>st</sup> July, 2019 nowhere even whispers that he has considered the issues in paragraph 12 of the Writ Petition, which relate to JoSAA and non violation of the Rules.

9.1. As regards the above allegations and the issues set out in Clause (E) of the Contempt Petition, in our view, the Secretary is not expected to write a Judgment in the manner written by the Courts of Law. There is no breach or violation of the Order of this Court by the Secretary as alleged or otherwise since this Court had in its Order clearly stated that the Secretary has to take a final call / decision in the matter, which the Secretary has taken. Even if we have to assume that the decision of the Secretary was erroneous (which we haven't), the Petitioner in the garb of a Contempt Petition cannot impugn the Order of the Secretary before this Court.

10. Alleged Contemptuous Act No. 6 :

It is submitted by the Petitioner that the Secretary by his order dated 31<sup>st</sup> July, 2019, has not considered the observations of this Court made in paragraph 3 of its Order dated 20<sup>th</sup> June, 2019 i.e. *“.....he was enrolled as a student in IIT Gandhinagar in the State of Gujarat in the year 2016 to the course of Mechanical Engineering. There were some events and which led to initiation of legal proceedings, but in the State of Gujarat. The Petitioner says that he has otherwise meritorious record. He has, on account of certain difficulties faced by him, been pressing his request for transferring his*

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*admission from that of the IIT Gandhinagar to IIT Bombay. The Petitioner says that there are reasons, and which have been set out in details for him being advised not to pursue the studies at IIT Gandhinagar. That is how he approached the IIT Bombay, but the Registrar says that in the matters of this nature, there are neither any prescribed rules nor are there any guidelines and any migration from one IIT or permission to transfer a student from one IIT to another is an issue which cannot be decided by the Directors. It is in these circumstances, a request is made to issue Writ which we have referred above.”*

It is submitted that the Secretary has therefore ignored and defied the reasoning given by this Court and has unilaterally taken a decision against the Petitioner’s son to send him to the same place i.e. at IIT Gandhinagar, which is not even prayed in the said Writ Petition.

10.1 As regards the above allegations, we have noted that what is recorded in paragraph 3 of the Order of this Court, are the submissions of the Petitioner. The Secretary has given his reasons for rejecting the Application seeking transfer. The Secretary has neither ignored nor defied the ‘reasoning’ as alleged. The Secretary has also not taken any unilateral decisions as alleged. Since he has rejected the plea of transfer he has only on sympathetic grounds recommended / suggested that *“considering the disability of the student, and his academic career, IIT Gandhinagar may be requested to consider his appeal for revocation of his termination, so that he completes his B.Tech program.”* We fail to see how this can be termed as a breach of the order dated *This order is corrected and modified as per Suo Moto Speaking to the minutes of order dated 10<sup>th</sup> December, 2019.*

20<sup>th</sup> June, 2019, much less any willful disobedience.

11. Alleged Contemptuous Act No. 7 :

It is submitted by the Petitioner that as per para 7 of the Order passed by the Division Bench of this Court dated 20<sup>th</sup> June, 2019, the Writ Petition with all its annexures was to be treated as a representation in writing by the Secretary. However, in the Order of the Secretary dated 31<sup>st</sup> July, 2019, there is not a whisper that he has considered the issues submitted in para 12 of the Writ Petition filed by the Petitioner before the Division Bench of this Court. The Petitioner has in support of the above submission relied on the following decisions :

- i. Urmila Mansion Private Limited Vs. Inspector General of Stamps<sup>1</sup>,
- ii. Diamond Hills Welfare Association Vs. Smt. Lakhesh Parthasarthy<sup>2</sup>.
- iii. Secretary, Hailakandi Bar Association Vs. State of Assam<sup>3</sup>.

11.1 As stated earlier, the Secretary is not expected to write an Order / Judgment in the manner written by the Courts of law. The Secretary has stated that he has after considering the appeal (representation) of the Petitioner in light of the orders passed by the High Court, relevant documents available in the Ministry and the comments received from IIT Gandhinagar and IIT Bombay, passed his order. He has given reasons for rejecting the Application of transfer. He is not expected or required

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1 2011 (4) ALT 259

2 2002 (3) ALT 57

3 AIR 1996 SC 1925

to set out all the submissions in the representation which he has considered. The decisions relied upon by the Petitioner lends no assistance to the Petitioner in the facts and circumstances of the present case.

12. In view of our specific findings on each alleged act of contempt, we are of the view that the Respondents have not committed any contempt as alleged or otherwise. The Petitioner who is aggrieved by the order of the Secretary rejecting the transfer of Aditya from IIT Gandhinagar to IIT Bombay has in the garb of a Contempt Petition sought to impugn the order passed by the Secretary dated 31<sup>st</sup> July, 2019. Government officials cannot be allowed to be intimidated in this manner, when in matters like in the instant case, they are requested by the Court to look into the matter by clearly observing that *“In academic matters, we should not be seen as interfering with the decisions of the academic bodies and experts. There are certain standards, which have been maintained in the IITs in India. Merit is given prominence and rightly so. In matters of this nature, it is best left to the Government and the Government functionaries to take a call. Any order that the High Court may pass in such cases is likely to become a precedent. It is in these circumstances, we indicated to both sides that this Writ Petition with all its annexures would be treated as a representation in writing by the Secretary in the Department of Human Resources, Government of India and after calling for the necessary remarks and opinions, it is left to the Secretary to take a final call or decision in the matter.”* (emphasis supplied).

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13. In view thereof, the Contempt Petition is dismissed. Under normal circumstances, we would have been justified in imposing costs on the Petitioner for filing such a frivolous Petition. However, considering that the son of the Petitioner suffers from hearing impairment, we refrain from doing so.

**( B.P.COLABAWALLA, J. )**

**( S.J.KATHAWALLA, J. )**

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