

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th September, 2010.

+ W.P.(C) 5890/2010

MAHENDRA COLLEGE OF EDUCATION Petitioner
Through: Mr. Subhasish Mohanty, Advocate

Versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR** Respondents
Through: Mr. Vaibhav Kalra, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner by this petition impugns the communication dated 10th August, 2010 of the Deputy Secretary of the National Council for Teacher Education (NCTE) intimating to the petitioner that its appeal against the order of the Northern Regional Committee (NRC) rejecting its application for recognition for D.Ed. course was late by one year, two months & five days; that the Appeal Committee had considered the reasons put forward by the petitioner for condonation of delay and had not accepted the said reasons. The petitioner was thereafter intimated that his appeal had not been admitted and hence the Demand Draft for ₹10,000/- deposited by the petitioner as fee for the appeal was returned to the petitioner.

2. The contention of the petitioner is that the appeal had been preferred within time and the Appeal Committee has wrongly treated the appeal to have been preferred belatedly.

3. The petitioner, save for the letter dated 10th August, 2010 aforesaid has not filed any order of the Appeal Committee rejecting the application of the petitioner for condonation of delay in preferring the appeal. The letter is but an intimation of the order. The counsel for the petitioner however states that no other order was delivered to the petitioner. The letter also does not state that any order is enclosed therewith. The counsel for the respondents appearing on advance notice is unable to state whether any order was passed by the Appeal Committee or not. However this Court in another matter also had found that the Appeal Committee does not pass any order on applications for condonation and the office of the Appeal Committee merely intimates the rejection of application.

4. An application for condonation of delay in preferring the appeal is to be considered and decided giving reasons by the Appeal Committee and the manner in which the petitioner has been intimated about the “rejection” of his appeal is not in consonance with the settled practice of quasi judicial functioning which powers the Appeal Committee is exercising. The orders of the Appeal Committee are subject to judicial review under Article 226 of the Constitution of India and unless the reasons for rejecting the application for condonation of delay are given, the powers under Article 226 cannot be properly exercised. Giving of reasons is now a principle of natural justice and without reasons it is not known what prevailed with the Appeal Committee in deciding one way or the other and as to whether all relevant material was considered while taking a decision. The counsel for the respondents is directed to bring this to the notice of the Appeal Committee so that in future, the orders are passed by the authority i.e. the Appeal

Committee only in which the power to consider the appeal and the applications for condonation of delay is vested and are not dealt with by the officials (non-members of the Appeal Committee) of the NCTE.

5. The counsel for the respondents appearing on advance notice however contends that the petitioner has misrepresented facts. It is stated that the petitioner besides applying for recognition for D.Ed. had also applied for recognition for B.Ed. course and vide orders of the same date, the applications for recognition for both the courses were rejected by the NRC. It is further informed that the petitioner preferred only one appeal to the Appeal Committee of the NCTE against both the orders and with payment of one fee only of ₹10,000/- and which was not permissible. It is stated that notwithstanding the said defect, the Appeal Committee treated the appeal as against the order of rejection of the application for B.Ed. and dismissed the said appeal vide order dated 7th August, 2009 which had attained finality. The counsel for the respondents has handed over the copy of the said order dated 7th August, 2009. In the said order, there is no mention that the appeal filed by the petitioner was defective or was a common appeal and had been treated as the appeal against rejection of recognition for B.Ed. course only or that the said appeal also was barred by time.

6. It is stated that it is only thereafter that the petitioner gave another Demand Draft for consideration of the appeal against the rejection of application for recognition for D.Ed. course and the appeal against the rejection of recognition for D.Ed. course was treated to have been filed on that date only and by which date it was time barred by one year, two months and five days as aforesaid.

7. In the absence of any order of the Appeal Committee, this Court cannot have the benefit of whether all the said facts disclosed before this Court were considered by the Appeal Committee or not. It is also to be

considered whether the petitioner was intimated of the deficiency, if any, in the common appeal preferred by it against the rejection of the applications for recognition for B.Ed. as well as D.Ed. course. Ordinarily, if there were any defects in the appeal preferred, such defects / deficiencies ought to have been intimated and opportunity given to the petitioner to remove the said defect. I see no reason why the principle adopted in the Courts, of the date of first filing being taken as the date of filing for the purpose of limitation is not adopted in appeals to NCTE also and on which date according to the petitioner, the appeal preferred was within time. Rule 10 of NCTE Rules, 1997 provides that the appeal shall be preferred in Form I appended to the Rules. The said Form I (as available on the official website of NCTE) has a Note appended to it as under:

“If there are any deficiencies in the form or content of the appeal or any other shortcomings, the appellant shall be given an opportunity to cure them within 15 days of the issue of a communication in this regard from the Council. No extension of time will be allowed for this purpose.”

8. As aforesaid, it is not known whether any communication giving opportunity to the petitioner to cure shortcoming in common appeal was issued or not and whether all the said facts were considered by the Appeal Committee or not.

9. In the circumstances, there is no option but to quash the later dated 10th August, 2010 and to remand the matter to the Appeal Committee of the NCTE for consideration of the matter afresh. The Appeal Committee shall consider in the light of the aforesaid observations as to whether the appeal against the rejection of application for recognition for D.Ed. course was preferred within time or not; whether any intimation was given to the petitioner of deficiency in the said appeal and opportunity given to remove

the same and whether the petitioner removed the deficiency or not. If the Appeal Committee decides in favour of the petitioner on all these aspects, the Appeal Committee to decide the appeal on merits.

With the aforesaid directions, the writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

10th September, 2010

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