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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3581/2016

BHARTIYAM COLLEGE OF EDUCATION Petitioner

Through Mr. Sanjay Sharawat with Mr. Ratish
Kumar, Advocates

versus

**NATIONAL COUNCIL FOR TEACHER EDUCATION
AND ANR**

..... Respondents

Through Mr. Anil Soni, St. Standing Counsel
with Mr. Naginder Benipal, Advocate

WITH

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W.P.(C) 3582/2016

BHARTIYAM COLLEGE OF EDUCATION Petitioner

Through Mr. Sanjay Sharawat with Mr. Ratish
Kumar, Advocates

versus

**NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR**

..... Respondents

Through Mr. Anil Soni, St. Standing Counsel
with Mr. Naginder Benipal, Advocate

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Date of Decision: 29th April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petitions have been filed with virtually common prayers.

The prayers in W.P.(C) 3581/2016 are reproduced hereinbelow:-

“[a] Issue a writ of mandamus and direct an enquiry to be conducted by an appropriate authority against the Chairperson, Member Secretary, Regional Director and other concerned officials of the Respondents in terms of para 87.4 and 91.2 of judgment passed by the Hon’ble Supreme Court of India in Maa Vaishno Devi Mahila Mahavidyalaya vs State of U.P. & Ors., (2013) 2 SCC 617 for disobeying the schedule and overreaching the directions contained therein and also initiate contempt proceedings against the concerned officials of the Respondents as per the said decision; and

[b] Issue a writ of certiorari and quash the decision taken by the Respondent No. 2 in its 252nd meeting held from 19th April to 2nd May, 2016 [Part-2]; and

[c] Issue a writ of mandamus and direct the Respondent No. 2 to decide the application of the Petitioner for grant of recognition under clause 7[16] of National Council for Teacher Education [Recognition Norms and Procedure] Regulations, 2014 for M.Ed. course from academic session 2016-17; and

[d] Pass any other and further order(s) as may be deemed fit.”

2. It has been averred in the petitions that petitioners initially filed writ petitions and vide the order dated 26th May, 2015, the petitioners were granted liberty to submit an application to the respondents for the desired courses. It has been further averred that in pursuance to the aforesaid orders, petitioners two applications for two courses, namely, B.A. B.Ed. / B.Sc.

B.Ed. and M.Ed.

3. Mr. Sanjay Sharawat, learned counsel for the petitioners states that in petitioner's application for B.A. B.Ed. / B.Sc. B.Ed. course was rejected on the ground that petitioner did not submit any reply to the show cause notice issued on 25th February, 2016. He states that though the petitioner in W.P.(C) 3582/2016 never received said show cause notice, yet as it had already seen the decision of NRC on the website, it sent a formal reply on 24th February, 2016 itself through speed post.

4. Mr. Sharawat states that without taking into consideration the reply of the petitioner, respondents passed the impugned order.

5. Mr. Sharawat also states that in W.P.(C) 3581/2016 petitioner's application for M.Ed. course was rejected on the ground that petitioner did not submit the processing fee of Rs. 1,50,000/- along with the online application. He further states that petitioner submitted the processing fee along with the online application by way of DD No. 883389 dated 28th May, 2015 drawn upon Punjab Sind Bank, NIT, Faridabad and it appears that the same had been lost by the respondent no.2-NRC.

6. Mr. Sharawat states that petitioner upon receiving a show cause notice got a new DD made on 19th March, 2016 but the same was not accepted by the respondent-NRC on the ground that the same should have been filed along with the online application.

7. Mr. Sharawat also refers to and relies upon the Division Bench's judgment in ***Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd., 128 (2006) DLT 417 (DB)*** wherein it has been held as under:-

“19. Since the writ petitioner had given its explanation to the show-cause notice it was incumbent on the respondent to deal with these explanations in the order dated 10.4.2003, but that

has not been done.

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21. It is well settled that natural justice requires reasons to be given vide S.N. Mukherjee v. Union of India, AIR 1990 SC 1984; Union of India v. M.L. Capoor and ors. AIR 1974 SC 87 and; Veekay Connectors (P) Ltd. v. National Small Industries Corpn. Ltd., AIR 2005 All 57.

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27. In this connection, it may be mentioned that earlier there were only two rules of natural justice viz:

- (i) Giving opportunity of hearing (audi alteram partem)*
- (ii) the rule against bias.*

28. However, in recent times a third rule of natural justice has been developed by Courts all over the world, namely, the requirement to give reasons in the order affecting rights or liabilities”

8. On the other hand, Mr. Anil Soni, learned standing counsel for respondents, who appears on advance notice, submits that present writ petitions are not maintainable as they involve disputed questions of fact. He points out that petitioner had itself written to its bank on 19th March, 2016 that the demand draft had been lost by the bank in its branch.

9. Mr. Soni also submits that the petitioners have an alternate effective remedy by way of an appeal before NCTE.

10. Having heard learned counsel for parties this Court is of the view that the issues whether petitioner received the show cause notice dated 25th February, 2016 or that the initial demand draft had been lost by the respondent no. 2-NRC or by petitioner's own bank as stated by the petitioner in its own reply dated 19th March, 2016, are disputed questions of fact which

cannot be decided in the writ proceedings.

11. Moreover, as the petitioners have an alternate effective remedy by way of an appeal, all these issues need to be raised and agitated in the said proceeding.

12. This Court may also mention that it is of the opinion that prayer clauses in the writ petitions have deliberately been drafted in a particular manner so as to obviate the need to file an appeal. Just by drafting a prayer clause differently the remedy cannot be changed, especially when disputed questions of fact are involved.

13. This Court is further of the opinion that in the present case the impugned orders are not unreasoned. There is a distinction between an unreasoned order and an order which allegedly lacks sufficient or adequate reasons. Consequently, judgment in *Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd.* (supra) is not applicable to the facts of the present cases.

14. Accordingly, present writ petitions are dismissed with liberty to petitioners to avail of the alternate effective remedy in accordance with law. It is directed that as and when the appeals are filed by the petitioners, the same would be taken up by respondent no. 1 in its next meeting.

MANMOHAN, J

APRIL 29, 2016

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