

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 2844/2017.

(Agnihotri College of Pharmacy, Wardha Vs. The Fees Regulating Authority)
with

Writ Petition No. 3961/2017.

(Jijamata Nursing School, Buldana Vs. The Chairperson, Fees Regulating
Authority.)
with

Writ Petition No. 4514/2017.

(Jaidev Education Society, Nagpur & anr. Vs. The State of Maharashtra & ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Shri A, Parchure, Advocate, Shri A.S. Kilor, Advocate,
Mrs. D.V. Sapkal Advocate, Shri Firdos Mirza & T.S.
Deshpande, Advocate for petitioners.
Shri A.S. Fulzel, Acting Government Pleader for respondent
Nos. 1 & 3.
Shri N. Vyawahare for petitioner.

CORAM : B.P. DHARMADHIKARI & ARUN D. UPADHYE, JJ.

DATED : AUGUST 29, 2017.

Petitions filed under Article 226 of the Constitution of India by the respective Educational Institutes under the provisions of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015, question orders passed in their matters by respondent – Fees Regulating Authority (FRA) functioning under said enactment. This enactment is hereinafter referred to as “2015 Act”.

2. In Writ Petition No. 2844 of 2017, the Petitioner – Institute challenges order dated 18.04.2017 refusing to entertain its

application for review on the ground that it has been filed belatedly by 15 days and in 2015 Act, the respondent – authority is not vested with power to condone delay.

3. In Writ Petition No. 3961 of 2017, identical order dated 05.05.2017 has been questioned. Additionally, original order dated 17.02.2017 of which review was applied for, has also been questioned.

4. In Writ Petition No. 4514 of 2017 order refusing to entertain review passed on 05.07.2017 as also original order dated 18.02.2017 of which review was sought, are both questioned.

5. In Writ Petition No. 4514 of 2017 after hearing respective counsel on 14.07.2017, this Court has passed following order:-

“Exception is taken to the refusal of the Pay Regulating Authority constituted under the Maharashtra Unaided Private Professional Education Institutions (Regulating of Admissions and Fees) Act, 2015 to entertain an application for review under Section 14(1)(e) on the ground that the application is preferred beyond the stipulated period of fifteen days.

It is not in dispute that there is no provision for condonation of delay. The Fees Regulating Authority is not a Court and in view of the settled legal position, the provisions of the Limitation Act, 1963 including Section 29(2) thereof may not be applicable.

*The Hon'ble Supreme Court in **M.P. Steels Corporation vs. Commissioner of Central Excise** reported at (2015) 7 SCC 58, has taken a view that even if the provisions of the Limitation Act do not apply to the proceedings before a quasi judicial authority or Tribunal, the principles underlying Section 14 of the Indian Limitation Act could be invoked to exclude the time. Certain observations in the said judgment make a reference to difference between condoning the delay under Section 5 and exclusion of time*

under Section 14 of the Limitation Act.

The question which may fall for adjudication in the present petition and other petitions in which similar issues are raised, is whether delay can be condoned by applying principles analogous to Section 5 of the Limitation Act, 1963 to the proceedings before quasi judicial authority or tribunal to which the provisions of the Limitation Act not not apply.

We, therefore, list the matter on 17.07.2017 along with Writ Petition No. 2844 of 2017.

Assistant Government Pleader waives notices for respondent Nos. 1 and 3.

We expect all the learned counsel to assist the Court and address us on the issue framed.”

6. Accordingly, in the light of that order, all these petitions involving common questions are placed together.

7. We have heard Advocate Parchure, Advocate Anil Kilor and Advocate Firdos Mirza for respective petitioner, Advocate N. Vyawahare for Fees Regulating Authority and learned Acting Government Pleader for State Government in all matters.

8. During arguments, Shri Parchure by way of abundant precaution had also sought leave to amend prayer clause to add challenge in original order dated 9th December, 2016.

9. Respective counsel for petitioner however, invited our

attention to the fact that under Section 14(1)(e) review application can be filed within 15 days from the date of communication and it has to contain reasons in detail in support. It is pointed out that as per its sub-section (d), Fees Regulating Authority has to approve fees within stipulated time of 120 days and communicate the details of the fees so approved. Submissions, if review is to be sought, communication of these details is essential and in its absence, remedy of review can not be effectively utilized. It is contended that in present matter, a common chart containing names of other institutes and mentioning only final figure of fees (quantum) has been displayed and it does not contain reasons as contemplated by Section 14(1)(d) of 2015 Act.

10. Our attention is also invited to Section 15 to show the factors relevant in determination of fees structure. It is urged that unless and until some application of mind qua those factors is made known to petitioners, they can not prefer review application as required in Section 14(1)(e).

11. It is submitted that as till date, there is no such communication, review application as filed could not have been treated as belated at all.

12. Without prejudice to this contention, our attention is also invited to judgment dated 23rd June, 2017 in Writ Petition No. 7591 of 2017 and other similar judgments. This Court has directed Fees Regulating Authority to entertain review application on merits. Those directions and judgments have been accepted and acted upon. Hence, petitioners contend that this conduct of Fees Regulating Authority estopps it from placing reliance upon law laid down in *M.P. Steels Corporation vs. Commissioner of Central Excise*.

13. Advocate Vyawahare points out that except for the judgment dated 23rd June, 2017 in Writ Petition No. 7591 of 2017 and some grounds in Writ Petition Nos. 3961 and 4514 of 2017 in support of prayer for condonation of delay, there is no other material before this Court. He contends that in Writ Petition No. 2844 of 2017, no reasons whatsoever, are separately given even in application for condonation of delay submitted to Fees Regulating Authority. He contends that application of mind by authority on the delay is apparent in impugned order and it can not be said to be either perverse or without jurisdiction. He therefore presses for dismissal of all the petitions.

14. Learned Acting Government Pleader supports arguments of Advocate Vyawahare.

15. The orders refusing to entertain review application due to delay mentions following heads:-

- (i) Fee Finalization
- (ii) Date of decision uploaded
- (iii) Date of application of worksheet
- (iv) Date of receipt of worksheet
- (v) Review application.

16. In all orders, above five details and Section 14(1)(e) are mentioned. After this, there is only one line “even if limitation is counted from the date of receipt of worksheet, it is beyond limitation”. In Writ Petition No. 3961 of 2017, delay of 5 days in filing review application has been taken note of. In Writ Petition No. 2844 of 2017, period of delay taken note of is 15 days. Thereafter, there is one more sentence FRA has observed that under the 2015 Act, no power is vested with any authority to condone delay.

17. As pointed out by Advocate Vyawahare, the order of which review is sought by petitioner in Writ Petition No. 2844 of

2017 is not made available with the petition. However, perusal of such orders forming part of other petitions shows that there under head “final fee for ----- course for academic year -----”, several institutions in which that particular courses is taught, are listed. Against name of each institute, tuition fees, development fees and then total is separately specified.

18. Thus, in Writ Petition No. 3961 of 2017 at Annexure IV, final fees for Health Science course for academic year 2016 – 2017 has been specified. Date of this document is 17th February, 2017 and in it, 56 institutes are listed.

19. In Writ Petition No. 4514 of 2017 identical chart prescribed for Higher and Technical course for academic year 2017 - 2018 is at Annexure-D. Date upon it appears to be 18.02.2017. In that chart, in similar fashion, about 35 institutes are placed and their tuition fees, development fees and total fees have been pointed out together.

20. Petitioners in Writ Petition No. 3961 of 2017 and 4514 of 2017 have come up with grievance that final fees in previous academic year for their respective courses was much more and it has been brought down by impugned orders.

21 The information contained in charts therefore, only is about final fees under head of Tuition Fees and Development Fees. Application of mind by authority qua the norms specified in Section 15 is therefore, not seen in it. In absence of such demonstration, the petitioners can not file review application with detail reasons. The detail reasoning as contemplated in Section 14(1)(d) and (e) is obviously with reference to factors mentioned in Section 15.

 The necessary details revealing application of mind are therefore, still not communicated to the petitioners.

22 Under this situation, we are not inclined to deal with the correctness or otherwise of earlier order passed by this Court. Those orders/judgments are already acquiesced into by FRA.

23. As the petitioners have still not received necessary details, they could not have legally filed application for review giving appropriate details warranting its exercise. In this situation, their review applications could not have been treated as belated.

24. However, we leave this issue open for appropriate consideration in suitable matter.

25. In these three matters, we prefer to follow the earlier judgment and accordingly direct the respondent – Regulating Authority to look into grievance made by the petitioners in their review application on merits. Accordingly, with this direction, we partly allow the petitions.

26. We direct petitioners to appear before the respondent – Regulating Authority on 14th September, 2017 and to abide by its further directions. Committee shall attempt to decide the review applications finally at the earliest.

Judge

Judge

Gohane