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

Date of Decision: 1st June, 2019

+ W.P.(C) 6641/2019 & CM APPL. 28063/2019 (*for stay*)

JANTA ADARSH MAHAVIDYALAYA Petitioner

Through: Mr. Mayank Manish and Mr.
Ravi Kant, Advs.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION
AND ANR. Respondents

Through: Mr. Arunima Dwivedi, SC for
AICTE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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JUDGEMENT (ORAL)

1. The impugned order dated 27th March, 2019 dismisses the petitioner's appeal, against order dated 4th January, 2017, passed by the Northern Regional Committee (NRC) of the National Council for Teachers' Education (NCTE), whereby the recognition, granted to the petitioner for conducting its B.Ed course, was withdrawn.

2. The impugned order rejected the petitioner's appeal solely on the ground of delay. The findings of the Appellate Committee, on the issue of delay, may be reproduced thus:

"AND WHEREAS the Committee noted that the submission of the appeal has been delayed by one year, four months and 17 days beyond the prescribed period of

60 days. According to the proviso under Rule 10 of the NCTE Rules, 1997, and appeal may be admitted after the expiry of the said period of sixty days, if the appellant satisfied the Council that he had sufficient cause for not preferring the appeal within the period of limitation of sixty days. The appellant, in the appeal, has stated that the delay occurred as their management took time to gather the information regarding the authenticity of the compliant dt. 28/07/2016 (i.e. the letter from the university addressed to N.R.C about various institutions).

AND WHEREAS the Committee noted that the Hon'ble High Court of Delhi in their order dt. 18/07/2018 directed that the appeal should be accompanied by an application for delay. The Committee noted that the reason adduced by the appellant for delay is vague and an afterthought. The letter of the Veer Bahadur Singh Purvanchal University dt. 28/07/2016 was brought to the notice of the appellant by the N.R.C. through their show cause notice dt. 1/09/2016 and the appellant replied to the Show Cause Notice on 25/10/2016. The appellant, from the date of issue of show cause notice had ample time to gather information about the authenticity of the university's letter. Even in the appeal he has not questioned the authenticity of that letter. In these circumstances, the Committee concluded that the reason for delay adduced by the appellant is not satisfactory and acceptable. Hence the delay is not condoned and therefore, the appeal is not admitted."

3. *Prima facie*, the aforesaid findings of the Appellate Committee are unsustainable on facts and in law. The finding that the communication dated 28th July, 2016, had been brought to the notice of the petitioner, by the NRC through show cause notice dated 1st September, 2016, is not borne out on a reading of the said show cause notice. For ready reference, the show cause notice, dated 1st September, 2016, may reproduced thus:

“File No. NRC/NCTE/NRCAPP'9477/256(Part-2)
Meeting/2016 dt. 1st September, 2016

To,

The Secretary/Chairman
Janta Adarsh Mahavidyalaya,
Plot Number-137, 138, 69, 71, 72, 75, 76 77,
Street /Road-Mubarakpur, Villae/Town/
City-Mubarakpur, Post Office-Gangauli,
Tehsil/Taluka-Mohammadabad, Town/
City-Ghazipur, District- Ghazipur (UP),
State- UP, Pin Code-233222

**Subject:- Show Cause Notice Under Section 17 of the
NCTE Act, 1993 before withdrawal the recognition**

In terms of section 14/15 of the NCTE Act, NRC, NCTE had granted recognition to Janta Adarsh Mahavidyalaya, Plot Number- 137, 138, 69, 71, 72, 74, 75, 76, 77, Street/Road-Mubarakpur,Village/Town/City-Mubarakpur Post Officer- Gangauli, Tehsil/Taluka-Mohammdabad, Town/City- Ghazipur, District-Ghazipur(UP), State- UP, Pin Code- 233222 for B.Ed. Course vide order No.- File No. NRC/NCTE/NRCAPP-7804, 9186, 7329, 9477, 7135, 7951, 7609/238th Meeting/106673-87 dated-29.05.2015.

In light of letter No. 01/2016/8559 dated-28.07.2016 received from Registrar of Veer Bahadur Singh Purvanchal Univsersity Jaunpur, Uttar Pradesh the case of your institution was-considered by NRC in its 256th (Part-2) Meeting and the Committee decided that show cause notice under section 17 of the NCTE Act 1993 be issued to the institution before withdrawal the recognition of the said course on the following points:

- As per letter no. 01/2016/8559 dt. 28.07.2016 received on 07.08.2016 from the Registrar, Veer Bahadur Singh Purvanchal University, Jaunpur, U.P., the Committee decided that show

cause notice be issued to the institution under section 17 of the NCTE Act, 1993 before withdrawal of recognition of the institution on the ground that the list of faculty duly approved by the affiliating body and submitted by the institution in the office of NRC for getting recognition is fake.

In view of the above, you are hereby requested to submit the representation of the institution accompanied with an affidavit from the authorized representative of the management as per provision of the NCTE Act, Rules & Regulations within 30 days.

Your written representation along with an affidavit must reach this office within 30 days of the issue of this notice. In the event, of this office not receiving any representation within 30 days of the issue of this notice. It will be presumed, that you do not wish to make any representation, and the Northern Regional Committee shall take the decision under Section 17 of the NCTE Act, 1993 as it deems fit and proper.

Receipt of this notice may please be acknowledged

Yours Faithfully,

(Dr. LK. Mansoori)
Regional Director"

4. It is clear that the aforesaid show cause notice merely makes a reference to the letter dated 28th July, 2016 (*supra*) and neither reproduces the said letter nor annexes any copy thereof. Ms. Arunima Dwivedi, learned Standing counsel for the NCTE, submits that the substance of the said communication dated 28th July, 2016 (*supra*) is extracted in the letter dated 1st September, 2016.

5. In the opinion of this Court, if a document is relied upon, by an authority issuing a show cause notice, it is one of the most fundamental of the principles of fair and transparent adjudication that a copy of the document has to be made available to the noticee. Even extraction thereof, in the body of the notice, may not suffice as compliance with the principles of natural justice in this regard. In the present case, the show cause notice dated 1st September, 2016 (*supra*) does not even indicate that it extracts the communication dated 28th July, 2016 (*supra*) on which it places reliance. As per the said communication, the NRC decided that the show cause notice be issued to the petitioner before withdrawal on the ground that the list of faculty duly approved by the affiliating body had submitted by institution in the office of the NRC for getting recognition was fake. This, in my view, cannot tantamount to the extraction of the said letter.

6. The order dated 4th January, 2017 of the NRC, which stands confirmed *vide* the Appellate order dated 27th March, 2019, places specific reliance on the aforesaid communication dated 28th July, 2016 (*supra*).

7. Without going into the question of whether the communication dated 28th July, 2016 (*supra*) could have been relied upon by the NRC, in the absence of any copy thereof having been provided to the petitioner, I am of the opinion that the Appellate Authority was clearly unjustified in refusing to condone the delay in filing the appeal, which was sought to be explained by the petitioner on the ground that the

petitioner had taken time to gather information regarding the authenticity of the said communication dated 28th July, 2016. To a pointed query from the Bench in this regard, Mr. Mayank Manish, learned counsel for the petitioner, submits that, in fact, his client had not been served any copy of the said decision till the time of filing the appeal before the Appellate Committee in the NCTE.

8. It may be noted that the appeal, of the petitioner, before the Appellate Committee had been filed pursuant to liberty, being granted, for the said purpose, *vide* order dated 18th July, 2018, passed by a Co-ordinate Single Bench of this Court in W.P.(C) 7353/2018 albeit with the further direction that an application for condonation of delay be filed along with the appeal.

9. It is well settled that a hypertechnical approach, while dealing with applications for condonation of delay, is not warranted and that, save and except cases of inordinate and unexplained delay, appellate authorities and appellate courts ordinarily should allow appeals to be argued on merits and pass orders on merits.

10. In the circumstances, I am of the opinion that the impugned order dated 27th March, 2019 of the Appellate Committee in the NCTE cannot sustain.

11. It is, accordingly, set aside.

12. The appeal is restored to the Appellate Committee in the NCTE for being decided afresh on merits.

13. The petitioner would be entitled to an opportunity of hearing, for which purpose the date and time would be intimated to it by the NCTE on its e-mail Id i.e. asingh9839@gmail.com.

14. The appellate Committee in the NCTE is directed to take a decision on the petitioner's appeal as expeditiously as possible and, at any rate, within eight weeks from today.

15. This writ petition is disposed of, along with pending applications, in the above terms with no order as to costs.

16. Ms. Arunima Dwivedi points out that this petition suffers from laches as the order of the Appellate Authority was passed on 28th March, 2019. Inasmuch as the petitioner's appeal has not been decided on merits, but has been thrown out on the ground of delay, and the said decision is not sustainable in law, I am of the opinion that the delay in filing the writ petition cannot be regarded as fatal.

17. Be that as it may, in the interests of justice, I deem it appropriate that the petitioner should be permitted to participate in the exercise of counselling for the academic session 2019-20 of the B.Ed course which is stated to be underway. This shall, however, be strictly subject to the outcome of the appeal and shall not create any equities in favour of the petitioner.

C.HARI SHANKAR, J

JUNE 01, 2019

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