

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

Writ Petition No. 805 of 2021

Vivekanand Education Society's & Anr. Vs. Rajesh Thakur

WITH

Writ Petition No. 3719 of 2020

Vivekanand Education Society's & Anr. Vs. Gautam Bhinzade

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

Court's or Judge's orders

Mr. G.M. Shitut, Advocate for the petitioners
Mrs. Gauri Venkatraman, Advocate for the respondents

CORAM : MANISH PITALE, J.

DATED : JUNE 30, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. These are Writ Petitions filed by the same Management being aggrieved by orders dated 13/03/2020, passed in applications for condonation of delay filed on behalf of respondent No.1 before the School Tribunal at Nagpur.

3. The first respondents in both these Petitions had filed Appeals before the School Tribunal along with applications for condonation of delay. Insofar as Writ Petition No.3719 of 2020 is concerned, delay of

485 days was condoned by the impugned order and in Writ Petition No. 805 of 2021, delay of 432 days was condoned by the impugned order.

4. Although, the learned counsel appearing for the petitioner and the respondents made vehement submissions in respect of the correctness or otherwise of the orders impugned in these Petitions, a particular aspect brought to the notice of this Court warrants that the impugned orders be set aside and the matters need to be remanded for the question of condonation of delay to be decided afresh by the Tribunal.

5. The learned counsel appearing for the petitioner in both these Petitions did make an attempt to indicate before this Court that sufficient cause for condonation of delay was not made out by the first respondents and that the Tribunal had erred in passing the impugned orders. Equally, the learned counsel appearing for the first respondents in these Petitions sought to justify the orders passed by the Tribunal.

6. But, as noted above, a particular aspect has assumed significance in both these Petitions. During the course of arguments, the learned counsel appearing for the petitioner in both these Petitions invited attention of this Court to copies of roznamas, pertaining to proceedings before the Tribunal in these cases. In both these cases on 12/03/2020, identical proceedings were recorded by the Tribunal. Initially, it

was recorded that while the respondent i.e. appellant before the Tribunal with his counsel was present and that the respondent therein i.e. petitioner – management before this Court was absent and there was no representation on behalf of the said party. It was further recorded that the applications were being posted for 13/03/2020, to enable the respondent therein i.e. the petitioner before this Court to submit replies. Surprisingly, in the roznama pertaining to the same date i.e. 12/03/2020, at the bottom, further notings are found. It is stated that at 4:15 p.m. the first respondents along with their Counsel were present, the matter proceeded without say of the respondents therein i.e. the petitioner before this Court and having heard the respondents i.e. the appellant before the Tribunal and his counsel, the matter was closed for judgment. Thereafter, it was noted that the matter has been posted on 13/03/2020.

7. By the impugned orders passed on 13/03/2020, the delay was condoned. The aforesaid procedure adopted by the Tribunal was wholly erroneous for the reason that having initially posted the matter on 13/03/2020, for filing of reply by the petitioner – management, there was no propriety for the Tribunal to have taken up the matter again at 4:15 p.m. and after hearing only respondents and their counsels, closing the matter for judgment on the question of condonation of delay. It is only on this ground that this Court is inclined to partly allow the

present Writ Petitions.

8. Although, the learned counsel appearing for the first respondents in both these Petitions vehemently submitted that the petitioners and its Counsel had appeared before the Tribunal as far back as in January 2020, this Court is of the opinion that the manner in which the Tribunal proceeded on 12/03/2020, renders the impugned orders unsustainable.

9. Hence, the Writ Petitions are partly allowed. The impugned orders are quashed and set aside. The matter is remanded to the Tribunal in both these Petitions for decision afresh on the applications for condonation of delay.

10. It is informed that the next date of listing of the appeals before the Tribunal is 13/07/2021. The petitioner – management in both these petitions is granted liberty to file replies to the applications for condonation of delay on 13/07/2020, before the Tribunal. Such replies shall be taken on record by the Tribunal. Thereafter, the Tribunal shall immediately take up the said applications for condonation of delay for consideration and after giving proper opportunity to the rival parties, decide the same at the earliest and in any case on or before 31/07/2021.

11. Writ Petitions stand disposed of in above

terms.

12. Needless to say, this Court has not expressed any opinion on the merits of the contentions of the rival parties insofar as the prayer for condonation of delay is concerned.

JUDGE

MP Deshpande