

\$~18

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

Date of Decision: 2nd February, 2021

+ W.P.(C) 1238/2021

SHRI VINAYAK COLLEGE Petitioner

Through: Mr. Sanjay Sharawat, Advocate.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION & ANR.

..... Respondents

Through: Mr. Jai Sahai Endlaw, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner assails an order dated 27.04.2017, by which the Northern Regional Committee ("NRC") of the National Council for Teacher Education ("NCTE") rejected an application for recognition of its B.A.B.Ed./B.Sc.B.Ed. courses. The petitioner also challenges an order dated 26.09.2019, by which the Appellate Committee of the NCTE dismissed the petitioner's application on the ground of delay.

2. The petitioner filed the application for recognition on 29.05.2016. A show cause notice was issued by the NRC on

19.03.2017, to which it replied on 18.04.2017. The NRC rejected the petitioner's application by an order dated 27.04.2017. The contention of the petitioner is that this order was never received by the petitioner.

3. In the meantime, on 06.05.2017, the Secretary of the petitioner's parent body, which is a registered society (hereinafter, "the Society"), met with a road accident, which necessitated his hospitalisation for approximately 15 months. He was discharged from hospital only on 23.07.2018. The petitioner claims that the Secretary of the Society was the only person looking after the application for recognition, and no one else in the Society knew about the user ID or password in order to access the online portal of the NCTE.

4. According to the petitioner, the Secretary of the Society was able to apprise other members about the status of the application only in March, 2019, at which point the petitioner came to know about the order dated 27.04.2017 issued by the NRC.

5. The petitioner filed an appeal under Section 18 of the NCTE Act, 1993 on 11.07.2019, which was rejected by the impugned order of the Appellate Committee dated 26.09.2019.

6. The Appellate Committee having rejected the petitioner's application on the ground of delay, reference may be made to Section 18 of the NCTE Act, which provides as follows:

"18. Appeals - (1) Any person aggrieved by an order made under section 14 or section 15 or section 17 of the Act may prefer an appeal to the Council within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor, if the appellant satisfies the Council that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disallowing an appeal, the appellant shall be given a reasonable opportunity to represent its case.

(5) The Council may confirm or reverse the order appealed against.”

(Emphasis supplied)

7. The period of limitation for filing of an appeal is, in turn, prescribed by Rule 10 of the NCTE Rules 1997, which is in the following terms:

“10. Appeals – Any person aggrieved by an order made under section 14, section 15 or section 17 may prefer an appeal in Form I appended to these rules, to the Council within sixty days of issue of such orders, along with a fee of Rs. 10,000 payable with the memorandum of appeal in the form of crossed demand draft drawn in favour of the Council:

Provided that an appeal may be admitted after the expiry of the said period of sixty days, if the appellant satisfies the Council that he had sufficient cause for not preferring the appeal within the period of limitation of sixty days.”

(Emphasis supplied)

8. The relevant observations in the impugned order of the Appellate Committee dated 26.09.2019 are as follows: -

“AND WHEREAS the Committee noted that the submission of the appeal has been delayed by 2 years and 14 days beyond the prescribed period of sixty days. The appellant submitted that the delay was on account of their Secretary meeting with a road accident on 06/05/2017, who on account of fracture of both the legs and deep wound in the brain, remained in coma for about six months and in the hospital for about 15 months. Further he alone knew the ID password and others did not know the papers connected with B.A. B.Ed./B.Sc. B.Ed. course. After the health of the Secretary improved the appeal was filed on 11/07/2019. The appellant, in support of the ill-health of their Secretary enclosed copies of various test reports conducted and prescriptions of medicines from time to time. But as far as hospitalisation is concerned, the copies of the documents furnished indicate that it was only for the period from 06/05/2017 to 23/07/2018.

AND WHEREAS the Committee noted that according to the provisions of Section 18(1) of the NCTE Act, 1993, any person aggrieved by an order made under Section 14 or Section 15 or Section 17 of the Act may prefer an appeal to the Council within such period as may be prescribed. According to the Provisions of Rule 10 of the NCTE Rules, 1997, any person aggrieved by an order made under the above mentioned Sections of the Act may prefer an appeal to the Council within sixty days of issue of such orders. According to the provisions of Section 18(2) of the NCTE Act, no appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor, provided such an appeal may be admitted after the expiry of the prescribed therefor, if the appellant satisfies the Council that he had sufficient cause for not preferring the appeal within the prescribed period.

AND WHEREAS the Committee noted from the documents submitted for delay in appeal that even after the discharge of their Secretary on 23/07/2018, the appellant took one more year to appeal. The appellant

*has not produced any proof for reported hospitalisation for 15 months. **Further the stand taken about non-availability ID password to persons connected with the institution, other than the injured Secretary, is not understandable.** In these circumstances the Committee concluded that delay in appeal cannot be condoned and therefore, the appeal is not admitted.*

AND WHEREAS after perusal of the memorandum of appeal, affidavit, documents available on records and considering the oral arguments advanced during the hearing, the Committee concluded that the delay in appeal cannot be condoned and therefore, the appeal is not admitted.”

(Emphasis supplied)

9. Mr. Sanjay Sharawat, learned counsel for the petitioner, submits that the delay in filing of the appeal was occasioned by the injury and consequent hospitalisation of the Secretary of the Society, and that the Appellate Committee ought to have taken a liberal approach. He cites the judgments of Supreme Court in *Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh and Anr.* AIR 2020 SC 5753, as well as an order of the Coordinate Bench of this Court dated 18.12.2020 in W.P.(C) 10709/2020 [*Mayur College vs. National Council for Teacher Education & Anr.*], in support of his contentions.

10. I am unable to accept the aforesaid contentions of Mr. Sharawat.

11. Firstly, in the case of a society which is desirous of establishing an institution of this nature, it is difficult to appreciate that only one office-bearer would have authority or knowledge over all matters. As the facts of the present case show, it is, at the very least, an

imprudence for which the petitioner alone is responsible.

12. Further, the undisputed facts show that even after the Secretary of the Society was discharged from the hospital on 23.07.2018, a period of one year lapsed before the appeal was filed. Mr. Sharawat seeks to explain this delay of one year on the ground that the Secretary was still in poor health and could not follow up on the matter. As stated above, particularly in a situation when the Secretary has suffered an unfortunate accident of such seriousness and was incapacitated for a very prolonged period, the Society ought to have made alternative arrangements for its interests to be protected and followed up. It must be borne in mind that the Society claimed to have the necessary wherewithal to establish and administer an educational institution. That is no small enterprise, and could not conceivably have been undertaken by a one-man show.

13. In these circumstances, I do not find any infirmity in the Appellate Committee coming to the conclusion that the petitioner had not demonstrated “sufficient cause” for condonation of delay, as required by the provisos to Section 18(2) of the Act and Rule 10 of the Rules.

14. Another significant factor which weighs with me in declining relief is the gross delay in filing of the present writ petition, even after the dismissal of the appeal on 26.09.2019. The petition was filed only on 28.01.2021, 16 months thereafter.

15. Mr. Sharawat submits that this delay is occasioned by the

Covid-19 pandemic and consequent restrictions. I do not find merit in this contention either. The Covid-19 pandemic and the national lockdown took effect almost six months after the Appellate Committee's order was passed. Even assuming that the entire period from March 2020 until the filing of the petition can be excused on the ground of the pandemic, certainly the period of six months was sufficient for a litigant to approach the writ court. The Appellate Committee had dismissed the appeal for want of due diligence on the part of the petitioner; the belated filing of the writ petition itself diminishes the credibility of the petitioner's assertion to the contrary.

16. Reference in this regard may be made to the judgment of the Supreme Court in *Chairman/Managing Director, U.P. Power Corporation Ltd. and Ors. vs. Ram Gopal* 2020 SCC Online SC 101 [C.A. No. 852/2020, decided on 30.01.2020]:

*“16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*², this Court observed thus:*

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(emphasis supplied)

17. Similarly, in Vijay Kumar Kaul v. Union of India (2012) 7 SCC 610 this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

“27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.””

17. This judgment of the Supreme Court has been followed by the Division Bench of this Court in *Mother Teresa College for Girls vs. National Council for Teacher Education & Ors.* [LPA 395/2020, decided on 18.12.2020] (to which I was a party). It has been *inter alia* held, in the context of the NCTE itself, that gross delay in preferring an appeal before the Appellate Committee, as well as in filing a writ petition, are valid grounds for the Court to decline to entertain the petition.

18. The judgment of the Supreme Court in *Vetindia (supra)*, cited by Mr. Sharawat, [which was also followed in *Mayur College (supra)*] deals with this aspect in paragraph 14:

“14. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in Basanti Prasad vs. Bihar School Examination Board and others, (2009) 6 sec 791, after referring to Moon Mills Ltd. vs. Industrial Court, AIR 1967 SC 1450, Maharashtra SRTC vs. Balwant Regular Motor Service, AIR 1969 SC 329 and State of M.P. and Others vs. Nandlal Jaiswal and others, (1986) 4 sec 566, held that if the delay is properly explained and no third party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows:

"18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a

petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained."

19. It is clear from these observations that the Court recognises delay as a factor for declining relief, albeit one within the Court's discretion. Amongst the elements to be considered in the exercise of this discretion is whether the delay has been properly and sufficiently explained. For the reasons stated above, I have come to the conclusion that it has not, and the judgment therefore offers little assistance to the petitioner.

20. The judgments cited by Mr. Sharawat emphasise a pragmatic rather than a pedantic approach to the question of delay. Various factors have been enumerated for the consideration of the Court in such a case. Relying upon the aforesaid judgments, Mr. Sharawat emphasises that the petitioner had nothing to gain from the delay. While that is one of the considerations emphasised in the judgments cited, it is not the sole determinative factor. To regard it as such would denude the limitation provisions of all meaning.

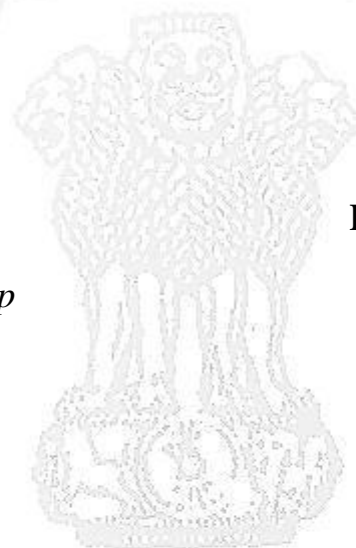
21. To the contrary, I am of the view that the pragmatic considerations commended by the Court in these judgments, seen holistically in the present case, weigh against the petitioner. It is difficult to accept that a society which seeks to set up an institution of this nature, would be content to wait for a period of one year even after the Secretary had been discharged from the hospital to file its appeal, and a relatively long period even after the dismissal of its

appeal to approach the Court. Similarly, as stated above, pragmatism required an effort of this nature not to be entrusted to the hands of one person alone. Further, to hold in favour of the petitioner would result in reopening an application made five years ago, and rejected four years ago, in respect of an institution not yet established. The better course, in my view, would be to leave it to the petitioner to make a fresh application for recognition when called for by the NCTE.

22. For the reasons aforesaid, the writ petition is dismissed.

PRATEEK JALAN, J

FEBRUARY 2, 2021/vp



न्यायमेव जयते