

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7164 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TRANSWAD B.ED COLLEGE - Petitioner(s)

Versus

HEMCHANDRACHARYA NORTH GUJARATUNIVERSITY & 2 - Respondent(s)

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Appearance :

MR SAURIN MEHTTA with MRS VD NANAVATI for Petitioner(s) : 1,
 MR AMIT PANCHAL for Respondent(s) : 1,
 NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/05/2012

ORAL JUDGMENT

1. **RULE.** Shri Amit Panchal, learned advocate waives service of notice of rule on behalf of respondent no. 1.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, more particularly, Shri Amit Panchal, learned advocate appearing on behalf of respondent no. 1, who is the only contesting party so far as the present Special Civil Application is concerned, the present Special Civil Application is taken up for final hearing today.

3. By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, order or direction directing respondent no. 1-University to grant affiliation to it from the academic year 2012-13 and to issue direction to respondent no. 1-University, which has been passed in Special Civil Application No. 6933/2012.

4. It is the case on behalf of the petitioner that the petitioner-Institution has been de-affiliated pursuant to the decision of the National Council for Teacher Education (NCTE) dated 19/24-01-2012. It is submitted that the petitioner has been communicated the decision of de-affiliation vide communication dated 26/03/2012 only. It is submitted that therefore the petitioner was required to get fresh affiliation with respondent no. 1-University and, therefore, the petitioner submitted the form. However, the same has not been accepted by respondent no. 1-University on the ground that the last date for submitting the application for affiliation with respondent no. 1-University has expired on 31/03/2012. It is the case on behalf of the petitioner that as such the Vice-Chancellor and the syndicate has authority to condone the delay in submitting the application for affiliation.

5. Shri Saurin Mehta, learned advocate appearing on behalf of the petitioner has submitted that in identical facts and circumstances, the learned Single Judge in Special Civil Application No. 6933/2012 has disposed of the aforesaid Special Civil Application recording the statement of Shri Panchal, learned advocate appearing on behalf of respondent no. -1 University that if the petitioner found otherwise eligible in accordance with the applicable Rules and Regulations of the University and NCTE then the petitioner's case shall be considered for affiliation and appropriate decision shall be taken on merits of the application by the competent authority/committee without taking into account or rather by condoning the delay, if any, in making the application, and, therefore, it is requested to pass similar order, which has been passed in Special Civil Application No. 6933/2012.

5.1. Shri Mehta, learned advocate appearing on behalf of the petitioner has submitted that the petitioner shall submit an appropriate application in prescribed format with a request to condone the delay in making the application and the same may be directed to be considered by the appropriate authority/committee/syndicate.

6. Shri Amit Panchal, learned advocate appearing on behalf of the respondent no. 1-University has submitted that the order passed in Special Civil Application No. 6933/2012 will not be applicable to the facts of the present case. It is submitted that in the aforesaid case, as such, the application of the petitioner was already submitted and pending. It is submitted that in the present case, as such, as on today, there is no application

submitted by the petitioner with a prayer to condone the delay. It is submitted that even the delay in filing the application is required to be condoned or not depends upon the facts of the case and the formalities that have been completed. Shri Panchal, learned advocate appearing on behalf of respondent no. 1-University has stated that as such the petitioner was already communicated by NCTE vide communication dated 19/24-01-2012 with respect to its de-affiliation from SNDT Women's University and still the application was not submitted till 31/03/2012, which was the last date for submitting the application for affiliation. However, it is submitted that the aforesaid aspects are required to be considered as and when the petitioner submits an application for affiliation with a prayer to condone the delay.

7. Heard the learned advocates appearing on behalf of the respective parties at length. It is not in dispute that as such vide communication dated 19/24-01-2012 the Regional Director informed the petitioner with respect to de-affiliation from SNDT Women's University. It is also not in dispute that the last date for submitting the application for affiliation with respondent no. 1-University was 31/03/2012. However, it is the case on behalf of the petitioner that the petitioner was informed by SNDT Women's University vide communication dated 26/03/2012 only with respect to its de-affiliation and, therefore, the petitioner could not make an application for affiliation with respondent no. 1-University on or before 31/03/2012.

8. Be that as it may. The fact remains that the application for affiliation with respondent no. 1-University has not been made on or before 31/03/2012. However, it appears that the

power vests with the syndicate to condone the delay in submitting the application for affiliation and, therefore, while submitting the form for affiliation after 31/03/2012 the petitioner was not only required to submit the form in prescribed format as required under the Rules and Regulations but even the petitioner is required to pray for condonation of delay by making out a case and if the appropriate authority/committee/syndicate is satisfied that cause has been made out to condone the delay only thereafter the application of the petitioner for affiliation is required to be considered on merits. Therefore, the petitioner has to submit an appropriate application for affiliation with a prayer to condone the delay and for that the petitioner has to make out a case first to condone the delay and straightaway the application of the petitioner for affiliation cannot be directed to be considered on merits unless the delay is condoned by appropriate authority/committee/syndicate.

9. Shri Saurin Mehta, learned advocate appearing on behalf of the petitioner has stated at the bar that the petitioner shall submit an appropriate application for affiliation in prescribed format as per the Rules and Regulations with proper condonation of delay application with necessary averments in the application to condone the delay and if such an application is made within a period of two weeks from today with a prayer to condone the delay in prescribed format, the appropriate authority/committee, who is vested with the power to condone the delay, is directed to consider the said application whether to condone the delay or not. If appropriate case is made and the authority/committee is satisfied that a case is made out to condone the delay it may condone the delay and only

thereafter the case of the petitioner for affiliation with respondent no. 1-University be considered on merits. As unless and until the delay is condoned there is no question to consider the case of the petitioner for affiliation on merits. The aforesaid direction is issued as it is stated at the bar by Shri Saurin Mehta, learned advocate appearing on behalf of the petitioner that the meeting of the syndicate/committee, which was scheduled to take place on 15/05/2012 has been adjourned and the meeting as per the schedule is to take place in near future.

10. With this, the present Special Civil Application is allowed. Rule is made absolute to the aforesaid extent with the above direction.

Direct service is permitted.

(M.R. SHAH, J.)

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