

(2011) 07 UK CK 0142

In the Uttarakhand High Court

Case No : Delay Condonation Application 3001 of 2011 in Special Appeal No. 77 of 2011

National Council for Teacher Education and Another

APPELLANT

Vs

Chaudhary Bharat Singh Institute and Another

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Citation : (2011) 07 UK CK 0142

Hon'ble Judges : Barin Ghosh, C.J;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—In the writ petition, the Respondents contended that for no just reason, the appeal preferred by the writ Petitioners has been rejected. The Regional Council, on being approached by the Petitioners, did not accord permission only on the ground that the Petitioners have not been able to establish that the land, claimed to be owned by the Respondents, was, in fact, owned by them.

2. Before the appellate authority, the Respondents contended that they had produced appropriate documents to establish their ownership over the land, in question. Before the appeal was heard, orders were passed by the Consolidation Officer, recognizing that the land, in question, claimed to be owned by the Respondents, in fact, belongs to the Respondents. The Petitioners produced the said orders of the Consolidation Officer before the appellate authority. Appellate authority did not look into the said orders of the Consolidation Officer because the same were not produced before the Regional Council. In the circumstances, the appellate authority concluded that in such view of the matter, there is no scope of interference with the original order of the Regional Council.

3. The writ petition has been allowed by the judgment and order under appeal holding that it was obligatory on the part of the appellate authority to take note

of those orders of the Consolidation Officer. Aggrieved thereby, the present appeal has been filed, and while filing the appeal, there has been delay of 193 days. Accordingly, an application for condonation of delay has been filed. The reason for the delay, as disclosed in the application, is correspondence, inter se, the regional office and the head office and also correspondence between the client and the Advocate. In answer to a query whether exchange of such correspondence can be said to be sufficient reason, the learned Counsel for the Appellants submitted that in the interest of justice, the same may be treated as sufficient reason for delay.

4. In order to highlight interest of justice, it was contended that the order impugned is not sustainable inasmuch as the Committee, managing the affairs of the Appellants, has decided not to accept on record any further document, after a decision has been taken not to accord permission. If such a decision has been taken, the same is unfortunate inasmuch as the object of the Act is not to discourage establishment of institutions contemplated there under, but to ensure that such institutions, having such facilities as are required, are established to impart appropriate education to the class of people addressed by the enactment, under which the Appellants too have been established. In the event, a requirement has been fixed by the Appellants, it is obligatory on the part of the Appellants to see that the person, establishing such an institution, has complied with such requirement, and for that matter, to give him appropriate opportunity. Furthermore, the statute, the rules and regulations, governing the Appellants, do not prevent the appellate authority to consider a document, produced for the first time, before the appellate authority, which could not be produced before the original authority as the same was not in existence at that time. The appellate authority could refuse to look into a fresh document provided the same was available, but despite that the same was not produced before the regional authority, namely, Regional Council.

5. In the instant case, at the time when the Regional Council dealt with the matter, the orders of the Consolidation Officer were not available. We are, therefore, of the view that interest of justice would not require condonation of delay of 193 days, for the Appellants corresponded with their head office and with their Advocates. We, accordingly, dismiss the application for condonation of delay in preferring the appeal. Consequentially, the appeal fails and the same is dismissed.