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

+ W.P.(C) 6797/2011

% **Judgment dated 08.01.2013**

NAVEEN SWAMI VIVEKANAND B.ED COLLEGE Petitioner
Through : Mr.Sanjay Shahrawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION
& ANR Respondents
Through : Mr.Amitesh Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Pleadings in this matter are complete. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.
2. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking a direction to quash the impugned order dated 26.5.2011 passed by the Appeal Committee of respondent no.1 NCTE in an appeal filed by petitioner against the order dated 30.1.2011 passed by Western Regional Committee by which the recognition granted to the petitioner on 07.11.2003 for B.ED Course from 2004-2005 academic session subsequently extended on regular basis by WRC by order dated 09.07.2004 stands withdrawn.
3. The necessary facts, to be noticed for disposal of the present writ petition, are that the petitioner institute is stated to be an unaided and self-financed institution, which was established with the object of imparting teacher

training courses. The petitioner submitted its application with the respondent no 2 Western Regional Committee (WRC) a constituent Regional Committee set up by National Council for Teacher Education/respondent no 1 a statutory body created under the National Council for Teacher Education Act, 1993 for commencing B.Ed course somewhere in the year 2001-2002. On 27.9.2002 the society sponsoring the petitioner obtained land of survey no.146 and 147, Barkhedi Kalan, Bhopal, measuring 2.56 acres on a 20 years registered lease executed by one Sh.Joginder Singh Tomar and Sh.Yogender Singh Tomar to establish a college. On 13.12.2002 the said society purchased 0.55 acres of land out of the aforesaid 2.56 acres of land vide a registered Sale Deed dated 13.12.2002 from the said owners. Accordingly, the petitioner was in possession of 2.01 acres of land on lease and 0.55 acres of land as an owner.

4. Pursuant to the application of the petitioner for grant of recognition inspection to the premises of the petitioner was carried out by a visiting team, constituted by the WRC, on 12.6.2002. Meanwhile permission to use the said 2.56 acres of land for educational purposes was granted by the Sub-Divisional Officer, Bhopal vide order dated 21.01.2003 under section 172 of the M.P. Land Revenue Code, 1959. Thereafter on 25.01.2003 the Municipal Corporation Bhopal granted building permission to build the college building on the said land. Thereafter the visiting team constituted by WRC again inspected the college on 06.02.2003, on 13.06.2003 and again on 13.9.2003. After the said inspections, reports were submitted to WRC. According to the petitioners these inspections were carried out at the building situated in survey no.146 and 147, Barkhedi Kalan, Bhopal. Pursuant to the inspections carried out recognition was granted to the petitioner vide order dated

7.11.2003 for B.Ed course from 2004-2005, academic session which was extended on regular basis by another order dated 9.7.2004.

5. It is the case of the petitioner that the Municipal Corporation of Bhopal granted building permission to extend the built up area of the petitioner college by 285.27 sq. mts. and approved the building plan on 27.2.2004. Vide communication dated 06.01.2009, NCTE intimated the petitioner about the proposed inspection under section 13 of the NCTE Act. Subsequent to the said intimation inspection was conducted on 15.01.2009. Based on the said inspection report WRC refused recognition to petitioner vide order dated 06.04.2009. Vide order dated 07.10.2009, the recognition of the petitioner was restored by WRC in an appeal by NCTE. The petitioner was informed by a communication dated 23.7.2010 that an inspection under Section 17 of NCTE Act, 1993, would be conducted between 25.7.2010 and 5.8.2010 to verify the infrastructure, instructional facilities, human resources, library, labs, books, furniture, equipments, etc., available in petitioner college, with respect to the norms and standards laid down by the NCTE for B.Ed course. Accordingly, an inspection of the premises of the petitioner was conducted on 3.8.2010 by the visiting team constituted by WRC. Being dissatisfied with the inspection a show cause notice was issued to the petitioner on 20.9.2010 by which it was proposed to withdraw the recognition granted to the petitioner and the petitioner was asked to file a reply to the show cause notice. The petitioner submitted reply to the show cause notice stating therein that the petitioner college exists at the land on Khasra no.146 and 147/1/1 of Barkhedhi Kalan, Neelbad Road, Bhopal from its inception and not on the land where it was permitted i.e. Khasra no.27, 63 and 64/1/2 of Barkhedhi Kalan, Neelbad Road, Bhopal. Being dissatisfied with the reply submitted by the petitioner, by an order dated 30.1.2011 WRC withdrew

the recognition of the petitioner. Being aggrieved by the said order an appeal was preferred by the petitioner before NCTE which was also dismissed on 25.03.2011, which has led to the filing of the present writ petition.

6. Learned counsel for the petitioner points out that during the pendency of the present writ petition an additional affidavit has been filed by petitioner wherein it is stated that initially the petitioner college had submitted an application to the WRC on 31.12.2001 seeking recognition for the course to be conducted from a rented premises bearing no.85, Durga Chowk, Barkhedi Kalan, Bhopal, which was processed as per NCTE Regulation 1995. On 12.6.2002 the visiting team inspected the petitioner college and reported that the space was small and inadequate. On 3.9.2002 petitioner purchased 3.00 acres of land at Barkhedi Kalan having Survey no.27, 63, 64/1/3 and 169/63. On 27.9.2002, the petitioner took on rent 2.56 acres of land at Barkhedi Kalan in survey no.146 and 147 and 0.55 acres out of this land was purchased vide registered sale deed dated 13.12.2002. It has further been stated in the additional affidavit that the visiting team comprising of Dr.Mani and Dr.Gaikwad visited the college on 6.2.2003 at Survey no.146 and 147 and reported that the construction work till the foundation level was completed. On 13.6.2003 again a visiting team comprising of Dr. Guha and Prof. R.P. Singh visited the petitioner college at survey no.146 and 147 and reported that construction work was complete and the management was fully prepared. Additional affidavit further states that another inspection was carried out on 13.9.2003 at survey no.146 and 147 and reported that infrastructural facilities were adequate.
7. Relying on the additional affidavit, learned counsel for the petitioner submits that the documents pertaining to land of the society located in

survey no.27, 63, 64/1/3 and 169/63 were submitted to WRC. These documents were sent by the WRC to their Advocate, namely, Ms.Shobha Maheshwari for her opinion with respect to title. By a letter dated 27.01.2003, the Advocate opined that the building plan of the college was not approved by the Municipal authorities and further opined that further recognition process be continued only after receipt of approved building plans. Counsel for the petitioner further submits that the building plan with respect to the aforesaid survey was obtained only in the year 2005. Counsel has placed reliance on the reports of the inspection team in support of his submission that the first inspection was carried out at the premises at Durga Chowk and thereafter at survey No.146 & 147.

8. It is further submitted by counsel for the petitioner that the observations of the Committee would suggest that the premises at Durga Chowk were hired and was of a very small area. Counsel has further relied on a communication dated 9.9.2002 addressed by the Advocate of the petitioner to the Regional Director Western Regional Committee, National Council for Teacher Education, Bhopal with regard to the land and since this communication mentions the area of the land to be 06 acres it is contended that the counsel was referring to land no.27, 63, 64/1/3.
9. Learned counsel for the petitioner submits that after the legal opinion of Ms.Shobha Maheshwari, Advocate, was obtained, the petitioner deemed it appropriate to substitute the land taken on long lease at survey no.146 and 147 measuring 2.56 acres out of which 0.55 acres were purchased. Coupled with the fact that the inspections were carried out at Survey no.146 and 147, recognition was granted by the respondents to the petitioner for running a college at Survey no.146 and 147 and, thus, the show cause notice, and the impugned order dated 30.01.2011 by which the recognition of the petitioner institute was withdrawn and the order

dated 25.03.2011 passed by NCTE in appeal are bad in law and the same are liable to be quashed.

10. Present petition has been opposed by learned counsel for the respondents on the ground that the petitioner had made an application seeking recognition for running a B.Ed course. Along with the said application the petitioner had annexed 13 annexures. Relying on the original record, which has been produced in Court, learned counsel for the respondents submits that the said 13 annexures include documents pertaining to the land at Survey no.27, 63, 64/1/2; No objection certificate from the State Government; Building plan; photocopy of passbook of the society; copy of the map of house, rent agreement of the building; copy of letter of schools for field work; etc.
11. Learned counsel for the respondents submits that although in the application seeking recognition the details of the land were not mentioned but the supporting documents would lead to only one conclusion that petitioner was proposing to run a B.Ed college at land Survey no.27, 63, 64/1/2. Petitioner had also included a copy of the rent agreement with respect to Durga Chowk property, and thus the first submission of learned counsel for the petitioner is factually incorrect that the petitioner was proposing to commence a college at Durga Chowk. Counsel for the respondents further submits that till the recognition was granted to the petitioner not a single document has been filed by petitioner to inform the respondents that it wishes to substitute the land for running the B.Ed college from survey no.27, 63, 64/1/2 to survey no.146 and 147, nor such a document has been filed along with the writ petition. It is reiterated by counsel for the respondents that neither a single document, nor any covering letter, nor any information was supplied by the petitioner to the respondent nor any such document is available in the original record,

which has been produced in Court. Counsel also submits that as far as the inspection is concerned it is virtually impossible for the Professors, who comprise of the visiting team, to identify the area where the inspection is to be carried out. Mr.Kumar, submits that it seems that the inspection team was led by the petitioner or those who are running the college to the site where they proposed to run the college with mala fide intentions. Counsel also contends that merely because the area has been mentioned as 2.56 acres that by itself cannot lead to the conclusion that the visiting team visited the Survey no.146 and 147 as the petitioner had not made a request for change of the site and, thus, the petitioner cannot gain any advantage on this account. It is next contended that petitioner has created this confusion intentionally knowing it fully well that the land no.27, 63, 64/1/2 was a barren land and no construction could have come up till the year 2005 and only then the application of the petitioner would have been considered by the respondents. The petitioner was also fully aware that in case the application was made for substitution of the land from survey no.27, 63, 64/1/2 to survey no.146 and 147 the application would have been rejected as it was mandatory for the petitioner to be the owner of the land and admittedly the petitioner was owner only with respect to the land measuring 0.55 acres and the remaining land of 2.01 acres was on lease basis.

12. Learned counsel for the respondents submits that the application seeking recognition for a B.Ed course does not give the details of the land on which the college was proposed, nor the communication issued by the respondents granting conditional recognition dated 7.11.2003 nor the letter dated 9.7.2004 specifies the land on which the petitioner was to conduct classes for students in the B.Ed course. Learned counsel for the petitioner however submits that at the time when the application was

made in the year 2001 the procedure was simple, there was no formal application and, thus, there was no requirement to fill up the details with regard to the land. It is also contended by counsel for the petitioner that respondents are estopped from raising the plea that the college is not being run at the land on the basis of which recognition was granted as respondents have inspected the said land at least on three occasions and it is an afterthought to state that the respondents were misled.

13. Learned counsel for the petitioner submits that the matter has now put to rest by the inspection carried out pursuant to the orders passed by the predecessor of this Court on 13.10.2011. Consequent to this order an inspection was carried out by a joint inspection team comprising of one expert from NCTE, four members of the AICTE and an expert from Pharmacy Council of India (PCI).
14. Reliance is placed on the report of the Joint Inspection Committee, relevant portion of which reads as under:

“... it is further observed that the same land documents of Khasra no.146, 147/1/1 and the approved plans of the same building were submitted to NCTE and PCI for seeking grant of recognition.”

15. Counsel for the respondent submits that the report of the Joint Inspection Committee does not portray the factual position accurately inasmuch as it had been observed in paragraphs 1 and 2 (at page 76 of the paper book). Paragraphs 1 and 2 of the Joint Committee Report of AICTE, PCI and NCTE read as under:

“1. On the khasras nos.146, 147/1/1 in village Barkhedi in one building two colleges namely Naveen Swami Vivekanand B.Ed. college and Swami Vivekanand College of Pharmacy (Diploma in Pharmacy) are being run.

2. It is further observed that the same land documents of Khasra nos.146, 147/1/1 and the approved plan of the same building were submitted to the NCTE and PCI for seeking grant of recognition.”

16. Counsel for the respondent next contends that the original record shows that along with the application for recognition the documents pertaining to land Khasra No.27, 63, 64/1/2 were filed and it is only when the petitioner made a request for commencing additional courses, did the petitioner place documents pertaining to land Khasra No.146, 147/1/1, in reply to the show cause notice.
17. I have heard the counsel for the parties. The case of the petitioner is that initially, the petitioner made an application for grant of recognition with WRC on 31.12.2001 and documents pertaining to a rented premises, known as ‘Durga Chowk’ was filed with the respondents. It is also the case of the petitioner that documents pertaining to the property No.146 and 147/1/1 of Barkhedi Kalan, Neelbad Road, Bhopal, were filed but after the legal opinion of Ms.Shobha Maheshwari, Advocate, the petitioner requested the respondent to substitute the property to Khasra no.146-147. The original file which has been produced in court and also inspected by counsel for the respondent does not support the submission of the counsel for the petitioner. The original file reveals that the documents pertaining to the properties having survey Nos. 27, 63, 64/1/3 and 169/3 were also filed along with the rent agreement of the premises at Durga Chowk. Further the property at Durga Chowk was found to be small and inadequate. There is nothing on record to show that the petitioner informed the respondents that the property at Durga Chowk and property having survey Nos. 27, 63, 64/1/3 and 169/3 be substituted with the property Nos. 146 & 147.
18. Mr. Sharawat, counsel for the petitioner contends that construction of 146

& 147/1/1 was completed and the joint inspection team inspected the College at this site and finally granted recognition, whereas the case of the respondents is that at no point of time the petitioner informed the respondents that the property is being substituted from survey Nos. 27, 63, 64/1/3 and 169/3 to property Nos. 146 & 147/1/1. It is contended that without admitting that the joint team inspection carried out inspection at property Nos. 146 & 147/1/1. Counsel for the respondent submits that this was on account of the petitioner misleading the personnel of the inspecting team to visit a wrong property/ site. When this fact came to the knowledge of the respondents, the recognition granted was withdrawn as the College was not found existing at survey Nos. 27, 63, 64/1/3 & 169/3 on the basis of which the recognition was granted. The original record shows that when the petitioner made an application seeking recognition, documents pursuant to Durga Chowk and survey Nos. 27, 63, 64/1/3 and 169/3 etc. were filed. In the entire file upto the date for grant of recognition, there is not a single document pertaining to survey Nos. 146 & 147/1/1 except copy of approved building plan of 146 and 147/1/1.

19. Counsel for the petitioner has also urged before this Court that at the time when the first application was made, the policy of the respondents was to encourage coming up of educational institutions and thus, the procedure was simple and informal. He further submits that the petitioner has been successfully running the College for 6 to 7 years at 146 & 147 and thus in case the matter is remanded back to the respondents, he will be able to satisfy the respondents that recognition was in fact granted on the basis of documents of land of survey no. 146 & 147 Barkhedhi Kalan, Bhopal. While *prima facie* I find no infirmity in the order passed by the respondent on 26th May, 2011. Having regard to the peculiar facts of this case where the petitioner made an application seeking recognition way

back in the year 2001, the said recognition was granted in the year 2003 and the petitioner was running the College till the year 2011, when the recognition was withdrawn. It would be in fitness of the things that the matter is remanded back to the Appeal Committee NCTE to enable the Appeal Committee NCTE to scrutinize the entire original record and permit the petitioner a personal hearing and keep the background of this case in mind and thereafter, pass a speaking order. The NCTE will also consider the joint committee report of AICTE, PCI and NCTE dated 21.10.2011 which was carried out pursuant to the directions passed by this Court by an order dated 13.10.2011. The NCTE will grant one hearing to the petitioner and decide the matter within five weeks from receipt of this order.

20. DASTI to counsel for both the parties.

G.S.SISTANI, J

JANUARY 08, 2013
msr/ssn