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

%   **Date of decision: 9th September, 2015.**

+   **W.P.(C) 4473/2014**

V.K. KAPOOR ..... **Petitioner**

Through: Mr. Bijender Singh, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS ..... **Respondents**

Through: Mr. Satyakam, Adv. for R-1.
Mr. Latika Chaudhary, Adv. for R-2 to 4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition, i) impugns the order dated 18th June, 2009 of the Board of Governors of the respondent No.3 Netaji Subhas Institute of Technology (NSIT), Dwarka, New Delhi to charge the petitioner according to the NSIT House Allotment Rules, ii) seeks a direction to the respondents viz. Government of NCT of Delhi (GNCTD), NSIT and its President and Estate Manager to refund the amount of Rs.3,29,283/- deducted from the dues of the petitioner on account of market rent of the house, iii) seeks a direction for payment to petitioner of honorarium for discharge of duties and responsibilities of the post of Registrar, and iv) seeks a direction for fixing the responsibility of the officer who failed to act on the application dated 18th

July, 2008 of the petitioner.

2. Notice of the petition was issued. Counter affidavit has been filed on behalf of respondents. The counsels have been heard.

3. It is the case of the petitioner that:

(i) He joined the respondent No.3 NSIT as a Visiting Associate in the School of Applied Sciences (Mathematics) on 19th August, 1999, initially on ad-hoc basis and was subsequently on 29th June, 2000 appointed to the post of Assistant Professor (Mathematics).

(ii) On 16th October, 2002 he was assigned the function of the Registrar and was, in addition to his academic duties, also discharging duties of a Registrar.

(iii) On 16th October, 2002 he was also allocated accommodation, as per the Rules, within the NSIT Campus.

(iv) On 1st August, 2007 he was appointed to the post of Professor-cum-Director at MERI College of Engineering and Technology, Bahadurgarh and the Board of Governors of the respondent No.3 NSIT granted on year long leave (Extraordinary Leave) without pay w.e.f. 1st August, 2007 to 31st July, 2008 to the petitioner to enable him to take up the said assignment.

(v) The petitioner on 26th May, 2008 applied to respondent No.3 NSIT seeking extension of his Extraordinary Leave for another one year from 1st August, 2008 to 31st July, 2009 and which was granted vide communication dated 18th June, 2008.

(vi) The petitioner during the first one year of his Extraordinary Leave had been allowed to retain the house aforesaid allotted to him; the petitioner upon extension of his Extraordinary Leave for the period from 1st August, 2008 to 31st July, 2009, on 18th July, 2008 submitted an application to retain the house on the conditions as applicable to the previous year and further stated that he will pay all dues in respect of licence fee, electricity and water charges etc.

(vii) Neither any reply was received to the aforesaid application dated 18th July, 2008 nor was the petitioner called upon to vacate the house.

(viii) On 9th February, 2009 the petitioner was served with a consolidated bill for Rs.1,66,934/- on account of house rent for the period from 1st August, 2008 to 31st January, 2009 at the market rate of Rs.25,125.40 per month.

(ix) The petitioner represented to the Board of Governors of the respondent NO.3 NSIT thereagainst and which was vide impugned Resolution dated 18th June, 2009 decided to charge the petitioner for the period from 1st August, 2008 to 31st July, 2009 at the market rate only.

The counsel for the petitioner informs that the petitioner on 30th June, 2009 surrendered the possession of the aforesaid house to the respondent No.3 NSIT and further informs that the petitioner has since joined the MERI College of Engineering and Technology, Bahadurgarh on a permanent post and has ceased to be an employee of respondent No.3 NSIT.

4. The counsel for the petitioner does not controvert that as per the House Allotment Rules of the respondent No.3 NSIT, the petitioner could retain the house during the Extraordinary Leave, maximum for a period of one year only and retention if permitted beyond the said one year for a further period of maximum one year is to be on payment of market rent. His contention however is that since the petitioner vide his letter dated 18th July, 2008 supra had represented / sought permission for being allowed to retain the house for another one year on the “conditions as applicable presently” and which means without payment of market rent and further since no

response was given thereto, the petitioner has been caught unaware with the claim for market rent. It is further contended that had the respondent No.3 NSIT raise the bills for market rent month by month, immediately after the period of one year of Extraordinary Leave had expired, the petitioner would have been cautioned that he would be charged market rent and would have surrendered the house earlier.

5. The counsel for the respondent No.2 to 4 NSIT states that the representation of the petitioner for being allowed to retain the house for another one year without payment of market rent could have been considered only by the Board of Governors of the respondent No.3 NSIT and who vide the impugned Resolution dated 18th June, 2009 have resolved that the petitioner cannot be so permitted. She further contends that the petitioner at the time of availing of the Extraordinary Leave had filed an undertaking in the form of an affidavit in which he had stated that he will abide by the House Allotment Rules of the respondent No.3 NSIT.

6. The relevant Rule of the respondent No.3 NSIT in this regard is as under:-

> *"10. **Concessional period for further retention of Residence:***
>
> *10.1 A Residence allotted to any employee may be retained on the occurrence of any of the events specified in column 1 in the Table below*

for the period specified against each except as specified for earmarked houses, provided that the residence is required for the bonafide use of the officer or members of his family:

	Event	*Maximum period for retention of residence*
i)	....	
ii)	....	
iii)	....	
iv)	....	
v)	....	
vi)	....	
vii)	....	
viii)	*Deputation / Lien*	*One year or period of Deputation / lien Whichever is less.*

Note: For (vi), (vii) and (viii) the retention of residence on normal rent will be allowed only if the residence is retained for bonafide use by the members of the employee's family. The retention of residence beyond the periods indicated above may be allowed at the discretion of the Director on payment of Market Rent, upto a maximum of further one year. Thereafter, the matter may be put up to the Board of Governors."

7. A reading of the aforesaid Rule makes it abundantly clear that the Rules do not permit any discretion in the matter of levy of market rent, even if the house is allowed to be retained for a period of more than one year. It is thus felt that it was not within the domain and power of the Board of Governors of the respondent No.3 NSIT to allow the petitioner to retain the house for the further period of one year at any rate lower than the market rent.

8. Faced therewith, the counsel for the petitioner contends that the petitioner was not aware of the Rules.

9. Not only ignorance of law / rules is no defence in law but the petitioner, as appointed out by the counsel for the respondents No.2 to 4 NSIT, had in the affidavit aforesaid expressly undertaken to abide by the House Allotment Rules and today cannot turn around and state that he was not aware thereof.

10. As far as the argument of the counsel for the petitioner of his having been misguided by no decision on his representation dated 18th July, 2008 having been taken immediately and the bills towards market rent having not been raised month by month is concerned, a reading of the letter dated 18th July, 2008 shows that the petitioner therein was in fact seeking permission to retain the house beyond one year and which discretion, as per the Note aforesaid to the Rules, vested in the appropriate authorities of the respondent No.3 NSIT. If the intent of the petitioner was that the market rent which was necessarily payable for the said period of extension should be waived, he ought to have expressly applied for the same and stated that if the market rent was not being waived, he be informed immediately to be able to vacate the accommodation.

11. The petitioner did not do anything of that sort and under the garb of his application for being allowed to retain the house for a further period of one year, is trying to retain the same without paying the market rent payable as per Rules.

12. No other argument has been raised. No other reference has been pressed.

13. There is thus no merit in the writ petition, dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 09, 2015
'gsr'..