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

Date of Decision: 19th May, 2021

+ W.P.(C) 94/2021

MAYA DEVI PRIVATE ITI Petitioner

Through: Mr. Sanjay Sharawat, Advocate

versus

DIRECTORATE GENERAL OF TRAINING Respondent

Through: Ms. Nidhi Raman, Advocate

+ W.P.(C) 99/2021

SARASWATI PRIVATE ITI Petitioner

Through: Mr. Sanjay Sharawat, Advocate

versus

DIRECTORATE GENERAL OF TRAINING Respondent

Through: Ms. Anju Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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

1. The petitioners in these two cases are industrial training institutes ("ITIs"), affiliated to the Directorate General of Training [hereinafter, "DGT"]. They assail decisions of the DGT by which they have been refused affiliation in respect of additional units, i.e. to increase their intake of trainees, for the trades in which they are affiliated. As the writ petitions concern a substantially similar issue, they are taken up for hearing and disposal together.

Facts

2. The relevant facts in W.P.(C) 94/2021 are as follows:

- (a) The petitioner, Maya Devi Private ITI, applied for affiliation to the DGT in the year 2008. The DGT granted affiliation to the petitioner in two trades – (i) Fitter Trade, and (ii) Electronics Mechanic Trade, for two units of 20 trainees each.
- (b) The petitioner's application for addition of an extra trade [Electrician Trade] was also approved, and it was granted affiliation for four units [2+2] in respect of the Electrician Trade on 28.06.2012.
- (c) By an application made on 25.05.2019, the petitioner applied for eight additional units [2+2+4] in the Electrician Trade.
- (d) The DGT conducted inspection on 11.06.2020 and 24.08.2020, and the Inspection Committee recommended grant of affiliation for the additional trades/units.
- (e) The petitioner's application was considered at a meeting of the Recommendation Committee of the DGT held on 22.09.2020. The decision taken by the Recommendation Committee at the said meeting reads as follows:
“Recommended additional 2+2 units (3rd shift not allowed), ITI shall apply for remaining one trade and for Re-affiliation before Session 2021 as per norms and lease to be renewed beyond 2022.”
- (f) The petitioner's grievance, however, arises out of a decision taken at a subsequent meeting of the Recommendation Committee, held on 25.11.2020, where the aforesaid decision was reconsidered. The minutes of the meeting dated

25.11.2020, insofar as it concerns the petitioner, records as follows:

“Course Correction: M.D(Maya Devi) Pvt. ITI, Nagla Murari Sarsol Phalmandi, G.T. Road Aligarh, Uttar Pradesh-202001 (PR09000106) which was considered in 11th Recommendation Committee meeting held on 22nd September at agenda 2.2 also "Not Recommended" as ITI is more than 5 years old and conducting training in two trades, this ITI shall comply with minimum 4 trades and accordingly shall apply for remaining two trades before Session 2021.” (Emphasis supplied.)

3. The facts of the W.P.(C) 99/2021 are broadly similar:
- (a) The petitioner in this case, Saraswati Private ITI, was first granted affiliation by an order dated 20.09.2011, for four units [2+2] in the Electrician Trade.
 - (b) On 10.07.2019, the petitioner applied for eight additional units [2+2+4] in the Electrician Trade and six units [2+2+2] in the Fitter Trade.
 - (c) The DGT conducted inspection on 08.06.2020 and 18.08.2020, and the Inspection Committee recommended grant of affiliation for the additional trades/units.
 - (d) The petitioner’s request was, however, rejected in the meeting of the Recommendation Committee on 20.10.2020 with the following remarks:

“Not Recommended
Since ITI is more than 5 years old, it need to apply for re-affiliation with minimum 4 trades.”

(e) Although the petitioner made representations against the aforesaid denial, the Recommendation Committee reiterated its decision at its meetings on 17.11.2020 and 25.11.2020.

Submissions of counsel

4. Mr. Sanjay Sharawat, learned counsel for the petitioners, submits that the DGT's insistence upon existing institutions having a minimum of four trades for consideration of their applications for addition of units, is unsupported by the affiliation norms published by the DGT. He has taken me to the contents of the Affiliation Norms for ITIs Year – 2018 [hereinafter, "2018 Norms"] and the minutes of DGT meetings held on 09.10.2019 and 11.12.2020, to contend that no such condition appears in the Norms or in the decisions taken by the DGT itself.

5. Mr. Sharawat has also referred to a Division Bench judgment dated 08.01.2021 of the Himachal Pradesh High Court in CWP No. 6128/2020 [*Takshila Private Industrial Training Institute vs. State of H.P. & others*], wherein the High Court has come to a conclusion in favour of the institution in a substantially similar factual situation.

6. Ms. Nidhi Raman and Ms. Anju Gupta, learned counsel appearing for the DGT in these petitions, have referred to various provisions of the 2018 Norms to submit that in the case of institutes which are more than 5 years old, the norms incorporate a requirement of re-affiliation, which can only be granted upon the institutions having a minimum of four trades. However, learned counsel candidly

point out that the process of re-affiliation is on hold at present, due to interim orders passed by various High Courts, and the pendency of a transfer petition before the Supreme Court.

7. According to learned counsel for the DGT, a perusal of the 2018 Norms, particularly clauses 3.1.2, 3.7.1 and 4.2.3, indicate that an existing institution applying for an increase in the number of units is also required to have a minimum of four trades.

Analysis

8. Before dealing with the contentions of the parties, the relevant provisions of the 2018 Norms are required to be discussed:

a) Section 2.1 deals with the advertisement for inviting applications. Under clause 2.2.1, an applicant is required to submit the application through the web portal, the format whereof is provided in Annexures-2, 2(a) and 1. The instructions with regard thereto provide *inter alia* as follows:

“ITI’s can be opened for minimum of 4 trades and minimum of 1 units per shift per trade. ITIs with 3 and above star ratings on NCVT portal would be appreciated to add more units after two years/one year depending upon duration of trade.”

b) Clause 3.1.2 deals with applications for additional trades/units. The instructions in this regard are as follows:

“Instructions for 3.1.2:

I. No increase in intake shall be given to ITIs where FIR/CBI/CVC/ any other Investigation agency/punitive action is initiated by DGT for any violation in the norms and standards and where enquiries are pending. Applications of such

institutions shall be placed before the NCVT Subcommittee for taking appropriate action.

II. The ITIs shall mandatorily opt for “grading” before addition of trades/units in existing institutes.

III. Addition of trades/units in existing ITIs shall be permitted only if the ITI is complying with latest NCVT norms at least for additional trades/units.”

- c) Clause 3.7.1 concerns renewal of affiliation, and reads as follows:

“All the institutes shall be re-affiliated for every 5 years from date of affiliation. The institutes shall submit online application at least one year prior to expiry of affiliation/completion of five years of affiliation.”

- d) Clause 4.2 contains transitional provisions for implementation of the 2018 Norms. Clause 4.2.3 thereof is substantially similar to Clause 3.1.2 described above.

9. Having regard to the aforesaid provisions of the 2018 Norms, the principal question which requires to be resolved, is whether existing institutions were required to upgrade to a minimum of four trades in terms thereof.

10. It has been candidly submitted by learned counsel for the DGT that the provisions relating to re-affiliation of institutions every five years, have been put on hold due to the intervention of various High Courts and the pendency of the proceedings before the Supreme Court. A communication to this effect dated 22.01.2020, addressed by the DGT to all State Directorates of Training, has been annexed to the petition as Annexure P-13. It states as follows:

“As aware, every Institute affiliated with NCVT is to be re-affiliated for every 05 years from date of affiliation and the Institute has to submit online application at least one year prior to expiry of affiliation/completion of five years of affiliation. Accordingly, DGT is receiving number of applications from the ITIs for renewal of affiliation.

2. In this connection, it is to inform that due to administrative reasons the DGT will take up these applications applied for re-affiliation in due course of time. However, status of affiliation of the particular ITI will remain the same until ITI is de-affiliated. Hence, the competent authority has decided that ITIs will be allowed to take admissions without insisting them for re-affiliation until further orders, subject to fulfilment of other criteria. Unless otherwise stated, no ITI should send applications for Re-affiliation at this Directorate General.

3. The ITIs are advised to kindly visit the NCVT MIS Portal and follow the instructions published thereon on time to time.” (Emphasis supplied.)

11. In view of this position, it is not necessary for the purposes of the present case, to consider the requirements of re-affiliation. The position as articulated in the above communication makes it clear that, at the present time, the status quo continues in respect of institutions which are more than five years old. The case of the petitioners herein therefore has to be adjudicated without reference to the requirement of re-affiliation. The question of whether an institute is required to have four trades while applying for re-affiliation is left open for a decision when the occasion arises.

12. The other requirements of the 2018 Norms do not appear to me to put such a condition upon any old institution, so as to bar them

from applying for increase in the number of units if they do not have a minimum of four trades. Each of the clauses cited on behalf of the DGT is dealt with below:

- (a) Clause 2.1 referred to hereinabove clearly refers only to new institutes. This is evident from the fact that this provision forms part of Chapter 2, which is titled “***Accreditation and Affiliation Process for Establishing of ITI(s)***”. The quoted stipulation also expressly refers to the conditions upon which ITI(s) can be “opened”.
- (b) As far as Clauses 3.1.2 and 4.2.3 are concerned, the condition stipulated for permission to add trades/units is that the institution should be in compliance with latest NCVT Norms for addition of additional trade/units. I am unable to accept the contention of learned counsel for the DGT that this introduces a substantive obligation upon the existing institutes to establish at least four trades, if they are to be granted permission for additional trades/units. The reference in these instructions, is to compliance with the latest NCVT Norms. In the absence of a norm requiring the existing institutions to have four trades, the instruction does not assist the case of the DGT at all. On a plain reading, it appears that the stipulation in fact requires the institute to comply with the latest norms regarding infrastructure etc. for the additional trades/units being permitted. The condition is intended not to address the minimum number of trades which the institutes must have, but the standards and infrastructure that must be available in the

institute, for the additional trade or units which it proposes to establish.

13. This position is supported by reference to the minutes of two meetings of the DGT's committees to which my attention has been drawn. The Recommendation Committee of the DGT at a meeting on 09.10.2019 [Agenda Item no. 9.5.7] recommended as follows:

"Agenda Item no. 9.5. 7

REVIEW OF NORMS & CONDITIONS I.R.O. TRADE CAPACITY OF ITI(s) FOR SEEKING AFFILIATION

It was informed that as per existing Affiliation norms, ITI(s) have to apply for minimum 4 trades for seeking affiliation. In some of cases, it was noticed that ITI(s) have applied for four trades but not having sufficient infrastructure against the 4 trades. In such cases, due to deficiencies in infrastructure, this committee had granted affiliation only in two/ three trades subject to condition that the ITI should fulfil the deficiency for the remaining trades within two months.

The committee opined to issue clarifications in connection to the above norms/guidelines that ITI(s) have to get affiliation of at least in 4 different trades. In case, ITI does not have sufficient infrastructure, T&E etc. against the minimum 4 trades, neither partial nor conditional affiliation would be granted. Committee also advised to seek approval of the competent authority before issuing necessary clarifications."

(Emphasis supplied.)

14. The aforesaid decision was further considered in a meeting of the Committee held on 11.12.2020 [Agenda no. 17.9] wherein it was decided as follows:

"Agenda No 17.9: ITIs with minimum 4 trades-uniform policy on PAN India basis

As decided in 9th Recommendation Committee meeting held on 9th October, 2019 vide agenda item 9.5.7 that New ITIs shall get affiliated for minimum 4 trades, however many existing ITIs are still running with less than 4 trades. Hence it is proposed that all ITIs shall run with minimum 4 trades, accordingly It is proposed the following:

1. New ITIs shall get affiliated for minimum 4 trades, no partial affiliation will be granted.
2. Existing ITI with less than 4 trades which are more than 5 years old shall get affiliated for minimum four trades by next admission session, failing which admissions to such ITIs will not be allowed in Future sessions.

Recommendation committee:

As per the Affiliation norms 2018, it is existing rule and shall be continued, as per the existing orders. However, for 2nd point the subcommittee will examine.”

(Emphasis supplied.)

15. Although reliance has been placed upon these minutes by both sides, I am of the view that they clearly indicate that even in the interpretation of the DGT, existing institutes were not required by virtue of the 2018 Norms to upgrade to a minimum of four trades. The meeting of 09.10.2019 refers to the requirement in the existing affiliation norms that ITI(s) have to apply for a minimum four trades for seeking affiliation. The implication is that this agenda item was concerned with applications of new institutes and not of existing institutes. Indeed, the opening words of the minutes of the meeting of 11.12.2020 quoted above, reflect the same understanding of the Recommendation Committee itself.

16. At the meeting of 11.12.2020, however, the Recommendation Committee proposed that all ITI(s) should run with a minimum of four trades and made the two recommendations quoted above. After noting the aforesaid proposal, the Committee specifically decided that the existing rule of the 2018 Norms would be continued as per the existing orders, and the second proposal would be examined by the Sub-Committee. These minutes place the matter beyond the pale of doubt. It was DGT's own interpretation that existing ITI(s) are, under the existing norms, permitted to run with less than four trades, and a proposal was made to establish a uniform rule that ITI(s) would not be permitted to run with less than four trades. It was also decided to refer this issue to a Sub-Committee. The DGT has not suggested that the proposal was accepted by the Sub-Committee or that any final decision was taken. Such a proposal therefore remains just that, and does not constitute a binding decision which entitles the DGT to require affiliation with four trades, in respect of existing institutions, without notifying any fresh norms.

17. In the case of Maya Devi Private ITI, the matter is further compounded by the reversal that the DGT has taken between 22.09.2020 - when the case of the petitioner was recommended - and the meeting of 11.12.2020, where a "course correction" has *suo moto* been taken. The minutes of meetings of the Recommendation Committee are published on the DGT's website. If a decision in favour of an institution is taken in a particular meeting, I am *prima facie* of the view that a reversal in a subsequent meeting should at least require a notice to be issued to the institute concerned. In view of

my decision on the substantive issue, however, it is not necessary to decide this conclusively in the present petition.

18. In reaching the aforesaid conclusion, I also respectfully adopt the reasons given by the Division Bench of the Himachal Pradesh High Court in the judgment in *Takshila Private ITI* (supra), cited by Mr. Sharawat. The Himachal Pradesh High Court was considering a challenge to the rejection of an application for addition of an additional unit in the Electrician Trade by the petitioner-institution. The Recommendation Committee had rejected the request at its meeting on 25.11.2020, the very same meeting where the case of the two petitioners in these petitions was also considered. The case of the institution in the Himachal Pradesh case was rejected in exactly the same terms – that the institute, being more than five years old, should apply for minimum four trades for affiliation for Session 2021. Before the Himachal Pradesh High Court, the DGT relied upon the requirement of re-affiliation and clauses 3.7.1. and 3.1.2 of the 2018 Norms. The High Court rejected these contentions with the following reasoning:

“It is evident from the above extracted paras of respondent No.3’s reply that according to the respondent as per Affiliation Norms for ITIs-year 2018:- (a) Affiliated ITIs are required to get re-affiliation for every five years from the date of affiliation (b) ITIs are required to get affiliation for minimum 4 trades and minimum one unit per trade. Petitioner unit is running since 2011 and has never ever applied for re-affiliation. Instead of applying for re-affiliation and for affiliation to the other three new trades, the petitioner had applied for additional unit in the same electrician trade. The

application filed by the petitioner for additional 4th base Unit in Electrician Trade was therefore rejected by the Recommendation Committee (DGT) in its 16th meeting held on 25.11.2020.

3(iv). *Following clause from Affiliation Norms for ITIs year 2018 provides for re-affiliation:-*

“Instructions for 3.7.1:

All the institutes shall be re-affiliated for every 5 years from date of affiliation. The institutes shall submit online application at least one year prior to expiry of affiliation/completion of five years of affiliation.”

The petitioner institute was initially affiliated in the year 2011. The Affiliation Norms being pressed into service by respondent No.3 requiring re-affiliation after five years from the date of affiliation, came into existence in the year 2018. The ground of non-re-affiliation, as a reason for rejecting petitioner's case was taken in the reply by respondent No.3. To this reply, petitioner has filed rejoinder with specific averments in para-2 that ‘after 2018, the ITIs’ can apply for affiliation etc., only on online portal, however, no link for the purposes of re-affiliation was ever generated on the site of the respondent’. No substantive rebuttal to this factual averment has been made by respondent No.3. In such circumstances, the reason now put forth in the reply for rejecting the case of the petitioner on the ground of its non-re-affiliation after five years from the date of affiliation, does not hold good.

3(v). *The petitioner ITI had applied for additional 4th base Unit in Electrician Trade with three shifts. Respondent No.3 submits that the petitioner was required to get affiliation for minimum four trades and minimum one unit per trade. Since the petitioner failed to do it therefore, its case was rejected. Learned counsel for respondent No.3 could not point out any provision in the Affiliation Norms 2018, which provides that an existing*

ITI has to get affiliation for minimum four trades. Learned counsel for the petitioner invited our attention to Clause 3.1.2 of Affiliation Norms 2018 providing that existing ITI has to meet with NCVT norms for additional trade/unit. The clause reads as under:-

“Instructions for 3.1.2:

- I. No increase in intake shall be given to ITIs where FIR/CBI/CVC/ any other Investigation agency/punitive action is initiated by DGT for any violation in the norms and standards and where enquiries are pending. Applications of such institution shall be placed before the NCVT Subcommittee for taking appropriate action.*
- II. The ITIs shall mandatorily opt for “grading” before addition of trades/units in existing institutes.*
- III. Addition of trades/units in existing ITIs shall be permitted only if the ITI is complying with latest NCVT norms at least for additional trades/units.”*

In view of the above, we find that reasons as contained in the communication dated 9.12.2020/25.11.2020 (Annexure P-7) for rejecting the case of the petitioner seeking affiliation for additional 4th base Unit in Electrician Trade are not justified. Respondent No.3 has not considered the case of the petitioner for affiliation of additional 4th Base Unit in Electrician Trade in accordance with applicable Norms of Affiliation. Accordingly, writ petition is allowed. Annexure P-7, insofar as it pertains to rejection of the case of the petitioner is quashed and set aside. Respondent No.3 is directed to re-consider the case of the petitioner within a period of two weeks from today and pass an appropriate order in accordance with law.

With these observations, the instant writ petition is disposed of along with all pending application(s).”

19. Learned counsel for both parties have, during the course of hearing, checked on the website of the Supreme Court and state that no Special Leave Petition appears to have been filed against the aforesaid judgment of the Himachal Pradesh High Court. Mr. Sunil Kumar Gupta, Director (Affiliation Section), DGT, is also present in the video conference hearing and confirms that no SLP has been filed against the aforesaid judgment.

20. In view of the aforesaid position, the reliance of the DGT upon the requirement of a minimum of four trades in order for an existing institution [even one which is more than five years old] to apply for additional units or additional trades, cannot be sustained.

Conclusion

21. For the reasons aforesaid, the writ petitions are allowed and the impugned decisions of the DGT are set aside. The matters are remanded to the DGT for reconsideration of the petitioners' applications for additional units, in accordance with law. The DGT will render its final decision and communicate the same to the petitioners within six weeks from today so that the petitioners are, in the event of a favourable decision, able to admit additional students in the academic session 2021.

22. The petitions stand disposed of in the terms aforesaid.

PRATEEK JALAN, J

MAY 19, 2021

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