

\$~7

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

Date of Decision 06th May, 2021

+ W.P.(C) 1082/2021 with CM. APPL. 3022/2021

COLLEGE OF EDUCATION & ANR.

..... Petitioners

Through: Mr. Amitesh Kumar, Advocate

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION & ANR.

..... Respondents

Through: Mr. Tushar Gupta & Mr. Sumit
Kumar Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

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

1. By way of this petition under Article 226 of the Constitution, the petitioners assail an order of the Eastern Regional Committee ["ERC"] of the National Council for Teacher Education ["NCTE"] dated 27.06.2019 withdrawing the petitioner's recognition for conduct of the B.Ed. Course. The petitioners also assail an order of the Appellate Committee of the NCTE dated 22.01.2021, by which the aforesaid order of the ERC was affirmed.

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 08.05.2021

04:46:09

W.P.(C) 1082/2021

Page 1 of 16

Facts

2. The petitioner institution was established for running a B.Ed. Course in the year 1998, and was granted a recognition order on 06.03.1998. After the NCTE (Recognition Norms and Procedure) Regulations, 2014 [hereinafter, “2014 Regulations”] came into force, the petitioner was issued a revised recognition order dated 22.05.2015. The revised recognition order was in respect of the petitioner’s course for two units of 50 students each, i.e., for a total of 100 students. It *inter alia* contained the following conditions:-

“ xxxx xxxx xxxx
 xxxx xxxx xxxx

4. **AND WHEREAS, it has been decided to permit the institution to have two basic units of 50 students each subject to fulfilling following conditions namely:**

(i) **The institution shall create additional facilities that include (a) additional built-up area, (b) additional infrastructure, (c) additional fund, (d) adhere to staff norms as per Regulations, 2014 and inform Regional Committee with required documents by October 31, 2015.**
(Emphasis supplied.)

3. At a meeting held on 16/17.04.2018, the ERC considered the issue of compliance with the revised recognition orders, and a show cause notice was issued to the petitioners on 20.04.2018. The petitioners responded thereto by a communication dated 15.05.2018. However, a second show cause notice was issued on 14.12.2018, to which the petitioners responded on 31.12.2018. The response was not accepted by the ERC and a third show cause notice dated 21.02.2019

was issued. Once again, the petitioners responded on 05.03.2019, but a fourth show cause notice was issued pursuant to a decision taken on 24/25.04.2019. The petitioner institution responded to the said decision to issue a show cause notice.

4. However, the ERC decided at its meetings held on 30/31.05.2019 & 01.06.2019 and 14.06.2019, to withdraw the petitioner's recognition with effect from the academic session 2020-21. The first impugned order dated 27.06.2019 was issued by the ERC consequent upon this decision. In the order dated 27.06.2019, the ERC has noted *inter alia* that the petitioner had not submitted the building completion certificate, as required.

5. The petitioner unsuccessfully challenged the aforesaid decision before the Appellate Committee of NCTE, which affirmed the aforesaid order by its decision dated 26.09.2019.

6. The petitioners approached this Court against the aforesaid orders dated 27.06.2019 and 26.09.2019 by way of W.P.(C)10473/2020. The writ petition was disposed of by an order dated 16.12.2020. The Court noted the aforementioned facts and relied upon the judgment of the Supreme Court in *National Council for Teacher Education and Anr. vs. Vaishnav Institute of Technology and Management* (2012) 5 SCC 139, wherein the Supreme Court had occasion to interpret Sections 13 and 17 of the NCTE Act, 1993 [hereinafter, "the Act"]. Having regard to the contention of the petitioners that the NCTE ought to have examined whether the petitioner institution fulfils the requisite norms and standards for conducting the course for either one basic unit (50 students) or two

basic units (100 students), the Court found that this aspect had not been considered in the impugned orders. The writ petition was therefore disposed of with the following operative order:-

“11. Accordingly, I allow the present writ petition and quash the order of the Appeal Committee dated 26.09.2019 and remand the matter back to the Appeal Committee to consider the matter afresh. The appeal committee shall consider all the compliances made by the Petitioner institute and if considered necessary, the appeal committee may cause inspection of the institution under Section 13 of the Act. If the Appeal Committee concludes that the institute fulfils the requirement for either one basic unit (50 seats) or two basic units (100 seats), it will accordingly allow to Petitioners to admit students for the present academic year 2020-21. The Appeal Committee shall consider and decide the matter as expeditiously as possible and will dispose off the appeal preferably within four weeks from today.”

(Emphasis supplied.)

7. Pursuant to the aforesaid order of this Court, the Appellate Committee of NCTE has passed the second impugned order on 22.01.2021. The Committee has noted the direction of the High Court and observed as follows:-

*“**AND WHEREAS** Dr. Namita Goswami, Principal and Dr. D. Dutta, Adviser presented the case of appellant institution on 22/01/2021 and referred to the directions issued by Hon'ble High Court. Appellate Authority asked the appellants whether they are willing the case to be considered for an intake of 50 seats. Appellant categorically submitted in writing that institution has appointed a Principal and 15 faculty and the case shall be considered for intake of 100 seats. Appellate Authority according considered the case keeping in view the*

regulatory provisions for an intake of 100 seats (2 units) in the B.Ed. programme.

AND WHEREAS Appeal Committee noted that the appellant institution has submitted (i) the new list of faculty approved by the affiliating body on 08/10/2020, (ii) FDRs and (ii) Revised Building Completion Certificate.

AND WHEREAS Appeal Committee noted that for an intake of 100 seats the minimum required built up area is 2000 sq. metres. Appellant institution submitted a Building Completion Certificate (B.C.C.) with its letter dated 24/12/2020. The built-up area of 2218 sq. metres mentioned in the Building Completion Certificate included 302 sq. metres of area covered with G.I. roofing and 668 sq. metres of area in a leased building located nearby. Appellant during the course of appeal hearing on 22/01/2021 submitted copy of the same Building Completion Certificate where built up area having G.I. roofing as mentioned earlier is shown as R.C.C. slab. The Building Completion Certificate except for a change in the roofing is exactly the same as was furnished earlier. The entry pertaining to R.C.C. slab at 4th floor is therefore, not substantiated. Appeal Committee further noted that any built-up space leased at a place different than the address of institution particularly space in a warehouse cannot be held as conducive to conducting a programme in teacher education. Clause 8 (7) of NCTE Regulation, 2014 mentions that no temporary structure shall be allowed in the institution even if it is in addition to the prescribed built-up area. Clause 8 (11) of the NCTE Regulations provide that revised land area related norms shall not be applicable to the existing institutions but required built up area shall have to be increased by existing institutions to conform to the revised norms. NCTE Regulation, 2014 require a built-up area of 2000 sq. metres for an intake of 100 seats (2 units). Appeal Committee does not take into account the 668.90 sq. metres of built-up area located at a distance of 100

metres in a warehouse and stated to have been taken on lease by the institution on 30/12/2019.

AND WHEREAS Appeal Committee finally decided to confirm the impugned order of withdrawal dated 27/06/2019 and the Appellate order dated 26/09/2019.”

Submissions of counsel

8. Mr. Amitesh Kumar, learned counsel for the petitioners, submits that the order of the Appellate Committee is erroneous, inasmuch as no inspection was directed prior to coming to the conclusion that the petitioner institution did not have built up area of 1500 sq. metres (as required for an institution with one unit), or 2000 sq. metres (as required for an institution with two units). He further submits that, having come to the conclusion that the petitioner did not have 2000 sq. metres of built-up area, as required for two units, the Appellate Committee was required by the order of this Court dated 16.12.2020, to record its reasons for rejection of the petitioner’s case in respect of one unit. Mr. Kumar has placed the relevant paragraphs of the judgment of the Supreme Court in *Vaishnav Institute* (supra).

9. Mr. Kumar further submits that the decision of the Appellate Committee to disregard part of the built-up area claimed by the petitioner institution on the ground that it had only a G.I. Roof and was not a permanent structure was not put to the petitioner prior to the passing of the impugned order.

10. The contention of Mr. Tushar Gupta, learned counsel for the respondents, on the other hand, is that the case laid out by the petitioner itself shows that it did not possess 1500 sq. metres of built-

up area by way of a permanent structure, which is the minimum necessary requirement under the 2014 Regulations, even for establishment of an institution with one unit. He has cited paragraphs 29 and 32 of the judgment in *Vaishnav Institute* to submit that the respondents are not required to carry out an inspection in every case prior to withdrawal of recognition.

Relevant provisions of the Act and Regulations

11. Before dealing with the contentions of the parties, the relevant provisions of the Act and the 2014 Regulations are set out below:-

Sections 13, 17(1) and 17(3) of the NCTE Act, 1993 –

“13. Inspection.— (1) For the purpose of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution, to be made by such persons as it may direct, and in such manner as may be prescribed.

(2) The Council shall communicate to the institution the date on which inspection under sub-section (1) is to be made and the institution shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the said institution, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that institution, recommend to that institution the action to be taken as a result of such inspection.

(4) All communications to the institution under this section shall be made to the executive authority thereof, and the executive authority of the institution shall report to the Council the action, if any, which is proposed to be

taken for the purpose of implementing any such recommendation as is referred to in sub-section (3).

17. Contravention of provisions of the Act and consequences thereof.— (1) *Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing:*

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution:

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order.

xxx

xxx

xxx

(3) Once the recognition of a recognised institution is withdrawn under sub-section (1), such institution shall discontinue the course or training in teacher education, and the concerned University or the examining body shall cancel affiliation of the institution in accordance with the order passed under sub-section (1), with effect from the end of the academic session next following the date of communication of the said order.

xxx

xxx

xxx ”

Regulation 8 (4), (7) and (11) of 2014 Regulations –

“8. Conditions for grant of recognition –

xxxx

xxxx

xxxx

“(4) (i) No institution shall be granted recognition under these regulations unless the institution or society sponsoring the institution is in possession of required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than thirty years. In cases where under relevant State or Union territory laws the maximum permissible lease period is less than thirty years, the State Government or Union territory administration law shall prevail and in any case no building shall be taken on lease for running any teacher training programme.

(ii) The society sponsoring the institution shall have to ensure that proposed teacher education institution has a well demarcated land area as specified by the norms.

(iii) The society sponsoring the institution shall be required to transfer and vest the title of the land and building in the name of the institution within a period of six months from the date of issue of formal recognition order under sub-regulation (16) of regulation 7. However, in case, the society fails to do so due to local laws or rules or bye-laws, it shall intimate in writing with documentary evidence of its inability to do so. The Regional Office shall keep this information on record and place it before the Regional Committee for its approval.

xxxx

xxxx

xxxx

(7) At the time of inspection, the building of the institution shall be complete in the form of a permanent structure on the land possessed by the institution, equipped with all

necessary amenities and fulfilling all such requirements as prescribed in the norms and standards. The applicant institution shall produce the original completion certificate issued by the competent Authority, approved building plan in proof of the completion of building and built up area and other documents to the visiting team for verification. No temporary structure or asbestos roofing shall be allowed in the institution, even if it is in addition to the prescribed built up area.

xxxx

xxxx

xxxx

(11) Whenever there are changes in the norms and standards for a programme in teacher education, the institution shall comply with the requirements laid down in the revised norms and standards immediately. However, the revised land area related norms shall not be applicable to the existing institutions, but the required built up area shall have to be increased by existing institutions to conform to the revised norms and the institutions not having land area as per the revised norms, shall not be allowed to expand by way of additional programmes or additional intake.

(Emphasis supplied.)

Analysis

12. From a reading of Regulation 8 (11) set out above, it is clear that an existing institution was required to comply with the provisions of the revised norms and standards. Although an exception was carved out with respect to norms relating to the land area, the institution was required to have the requisite built-up area to conform to the revised norms. The provision with regard to the required built-up area is contained in Regulation 8 (7) which requires a permanent structure to

be completed and the original competition certificate and approved building plan to be produced. It is specifically stated that no temporary structure or asbestos roofing shall be allowed in an institution, even if it is in addition to the prescribed built-up area. It is undisputed that under the prescribed norms, the required built-up area for one unit is 1500 sq. metres, and for two units is 2000 sq. metres, by virtue of Appendix-4 to the 2014 Regulations.

13. In the petitioner's case, the building completion certificate referred to in the order of the Appellate Committee, adverts to two buildings – one building owned by the petitioner and another leased by it. On the basis of the built-up area available in both these buildings, the petitioner claimed 2218.9 sq. metres, rendering it eligible for recognition for two units.

14. The relevant extracts of the building competition certificate are as follows:-

15.	Total land area earmarked for teacher training programme – 100 Intake (Name of course to be mentioned)	535 Sq. Mtr. (2 Katha 1 Lecha) B.Ed. (Bachelor of Education)
	Total built up area earmarked for teacher training programme (Name of course to be mentioned)	2218.90 Sq. Mtr. B.Ed. (Bachelor of Education)

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 08.05.2021

04:46:09

W.P.(C) 1082/2021

Page 11 of 16

16.	Details of construction of building (Roofing – pl. mention RCC/ Asbestos/ Tiled/ any other pl. Specify) A. Own Building Campus (College of Education, Guwahati)		Area	Roofing
		Ground Floor	342 Sq. Mtr.	RCC Slab
		First Floor	302 Sq. Mtr.	RCC Slab
		Second Floor	302 Sq. Mtr.	RCC Slab
		Third Floor	302 Sq. Mtr.	RCC Slab
		Fourth Floor	302 Sq. Mtr.	G.I. Roof
	B. Leased Building (Nearby own building with a distance of 100 meter)	First Floor & Fifth Floor	668.90 Sq. Mtr.	RCC Slab
		TOTAL – 2218.90 Sq. Mtr		

15. The Appellate Committee of the NCTE has discounted the petitioner's claim in respect of the leased building [668.90 sq. metres], relying upon Regulation 8 (4) (i) set out above. As far as this aspect is concerned, Mr. Kumar does not dispute that the lease taken by the petitioner institution was not just in respect of the land, but also of the building. He also concedes that the lease was for a period of five years only. In both these respects, therefore, the area of 668.90 sq. metres claimed by the petitioner could not be considered in terms of Regulation 8 (4) (i) of the 2014 Regulations.

16. Once the area of 668.90 sq. metres is excluded from the petitioner's total claimed built-up area 2218.90 sq. metres, it is clear that the petitioner did not possess the minimum required built up area for two units, viz. 2000 sq. metres, and its application for recognition

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 08.05.2021

04:46:09

W.P.(C) 1082/2021

Page 12 of 16

in respect of two units was therefore correctly rejected by the respondents.

17. What remains then is Mr. Kumar's submission with regard to the consideration of the petitioner's application in respect of one unit. In this regard, it may be noticed from the building completion certificate that the total area claimed by the petitioner in its own building was 1550 sq. metres, divided into the ground floor of 342 sq. metres and four upper floors of 302 sq. metres each. However, the built-up area on the fourth floor is stated in the building completion certificate to have a G.I. Roof and not an RCC Slab. The aforesaid area of 302 sq. metres was therefore excluded from the area claimed by the petitioner. The petitioner's built up area was thus counted as 1248 sq. metres, which is less than the 1500 sq. metres required even for one unit.

18. Mr. Kumar's submission that the respondents ought to have nevertheless conducted an inspection of the premises, is unmerited. The order of this Court dated 16.12.2020 in the earlier round of litigation makes it clear that the inspection was required to be carried out "*if considered necessary*". When the petitioner's own document demonstrated that it did not possess a permanent structure of 1500 sq. metres, the Appellate Committee cannot be faulted for its failure to direct an inspection.

19. Mr. Kumar's reliance upon the judgment of the Supreme Court in *Vaishnav Institute* (supra) is similarly misplaced. The Supreme Court, in paragraph 24 of the judgment, certainly acknowledged an enhanced right in respect of a recognised institution which is being

subjected to an order of withdrawal, as opposed to a new institution which is being considered for recognition. The Court harmonised the provisions *inter alia* of Sections 13 and 17 of the Act and came to the conclusion that the NCTE may inspect a recognised institution, and if deficiencies are found, it may recommend the remedial measures to be taken by the institution. The Court emphasised that action under Section 17 could be taken where the institution does not rectify the deficiency. However, I do not read the judgment of the Supreme Court, or the order of this Court dated 16.12.2020, to require that the NCTE *must* inspect the premises in question, even when the building completion certificate itself *ex facie* does not disclose the existence of the minimum required permanent structure. Paragraphs 29 and 32 of the judgment in *Vaishnav Institute* (relied upon by Mr. Gupta) also support the conclusion that inspection is not mandatory prior to action being taken under Section 17 of the Act.

20. It may also be noted that the judgment of the Supreme Court in *Vaishnav Institute* was extensively considered by this Court prior to passing of the order dated 16.12.2020. Paragraphs 24-28 and 35 of the judgment in *Vaishnav Institute*, which are the very observations upon which Mr. Kumar seeks to rely today, have been set out in the order dated 16.12.2020. It is upon a consideration of the said observations that this Court passed the directions quoted in paragraph 6 hereinabove. Those directions empowered the NCTE to conduct an inspection if considered necessary, but did not mandate such inspection. Viewed in this light, Mr. Kumar's argument, in essence, seeks to go behind the order dated 16.12.2020, after the petitioner has

taken the benefit thereof. Such a course cannot be permitted at this stage.

21. Mr. Kumar further argues, relying upon an observation in the impugned order of the Appellate Committee, that a revised building completion certificate was issued to the petitioner institution in which it was shown that the built-up area on the fourth floor of the building in question, also had an RCC slab roof. Mr. Kumar submits that the petitioner had in fact converted the G.I. roofing into an RCC roofing and obtained a revised certificate which was produced during the hearing of the appeal on 22.01.2021. I do not find any such averment in the writ petition, or in the communication submitted by the petitioner to the Appellate Committee. The observation of the Appellate Committee, in fact, is that the *same certificate* which had earlier shown the roofing to be a G.I. roofing, was submitted before it, now showing the roofing as an RCC Slab. Further, only one building completion certificate is referred to in the petitioner's communication dated 22.01.2021, which was placed before the Appellate Committee. There is no statement that the roofing of the fourth floor was changed or that a revised building completion certificate was ever issued. The writ petition similarly contains no such averment and no revised building completion certificate has been placed before the Court. In the event the petitioner had in fact changed the roofing, and a revised building completion certificate had been issued, it would have been the most significant factor in its favour. No prudent institution would have withheld such a statement and revised certificate from the Appellate Committee, and from this Court.

22. Mr. Kumar suggests that the petitioner was unaware that this was the ground of rejection until service of the Appellate Committee's order dated 22.01.2021 upon it. Even assuming this contention to be correct, surely the requisite averments and grounds would have found place in the present writ petition, and the revised document placed before this Court.

23. In the aforesaid circumstances, I do not consider it necessary to remand the matter to the Appellate Committee of the NCTE yet again for a decision on the question of whether the petitioner institution is entitled to recognition for one unit. When the petitioner's documents themselves demonstrate that it did not comply with the minimum requirements with respect to the built-up area, such an order would be entirely fruitless.

Conclusion

24. For the reasons aforesaid, the petitioner has failed to make out a case for interference under Article 226 of the Constitution. The writ petition is consequently dismissed.

PRATEEK JALAN, J.

MAY 6, 2021

j'