

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 27th October, 2022.

Pronounced on: 04th November, 2022.

+ W.P.(C) 6391/2021, CM APPLs. 20066/2021, 3557/2022 & 36572/2022

VIDYADHARI COLLEGE OF EDUCATION Petitioner

Through: Mr. Sanjay Sharawat, Mr. Divyank Rana, Mr. Akash Sahraya and Mr. Ashok Kumar, Advocates.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION & ANR.

..... Respondents

Through: Mr. Subhoday Banerjee and Mr. Jai Sahai Endlaw, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.:

1. Petitioner-institute impugns, (i) order dated 6th November, 2020 of Respondent No. 2-Southern Regional Committee [**“SRC”**] withdrawing recognition to Petitioner-institute [*hereinafter “**withdrawal order**”*], and (ii) order dated 4th June, 2021 of Appellate Committee of Respondent No. 1-National Council for Teacher Education [**“NCTE”**] confirming the withdrawal order [*hereinafter “**appeal order**”*] [*collectively referred to as “**impugned orders**”*].

2. Facts: -

2.1 Petitioner-institute’s sponsoring society desirous of seeking

recognition for B.Ed. course obtained land and building on lease, from its President—Sri Jami Bheemasankara Rao for a period of 30 years w.e.f. 20th December, 2006. Thereafter, Petitioner-institute's submitted an application with SRC which was accepted and recognition was granted on 6th October, 2008 for conducting B.Ed. course with an annual intake of 100 seats.

- 2.2 On promulgation of NCTE (Recognition Norms and Procedure) Regulations, 2014 [*hereinafter* "**NCTE Regulations, 2014**"], Petitioner-institute submitted an affidavit dated 28th January, 2015 for adherence to provisions of said regulations. Consequently, a Revised Provisional Recognition Order was granted on 26th May, 2015 for two units [*hereinafter* "**revised recognition order**"]. Subsequently, Petitioner-institute requested for reduction of seats from two to one (i.e., 100 students to 50 students) which was allowed *vide* order dated 21st July, 2017 of SRC.
- 2.3 In due course, on 18th February, 2019, SRC issued a show cause notice for non-submission of documents in compliance with revised recognition order [*hereinafter*, "**First SCN**"], to which Petitioner-institute submitted its reply on 6th March, 2019.
- 2.4 Subsequently, SRC, in its 381st meeting held from 31st October to 1st November, 2019, SRC decided to seek a set of 13 documents from all institutions who had not complied with SRC's revised recognition order. The said decision was conveyed to Petitioner-institute *vide* show cause notice dated 6th December, 2019 [*hereinafter*, "**Final SCN**"], which was responded by Petitioner-institute on 30th December, 2019.

2.5 Thereafter, withdrawal order was issued by SRC, which was confirmed by the Appellate Committee.

3. The relevant portion of Appellate Committee's appeal order [Annexure P-18] reads as under:

“AND WHEREAS Appeal Committee noted the submissions made by appellant by its letter dated 01/04/2021 submitted at the time of appeal hearing on 06/04/2021. Appeal Committee also noted that appellant institution is recognised to conduct B.Ed. programme since 2008 and the present intake for the course is one unit (50 seats). Appeal Committee in its meeting (virtual) held on 29.05.2021 further noted the submission made through E-mail on 25.05.2021.

AND WHEREAS Appeal Committee noted that NCTE Regulation, 2014 provide for a minimum built up area of 1500 sq. meters for conducting B.Ed. programme with an intake of one unit (50 seats). The Building Completion Certificate (B.C.C.) submitted by appellant indicates that 3rd floor and Parking lot of 3800 and 1000 sq. feet are having A.C.C. roofing. Clause 8(7) of NCTE Regulation, 2014 provide that No temporary structure or asbestos roofing shall be allowed in the institution, even if it is in addition to the prescribed built-up area. Further the Building Completion Certificate (B.C.C.) submitted is not signed and authenticated by Competent Civic Authority. Appeal Committee also noted that faculty placed at Serial no. 8 i.e. Sh. K. N. Rao (Lecturer in Education) is appointed on 11/11/2020 and is neither Ph.D. nor NET (SET qualified). After considering the submission made by appellant. Appeal Committee decided to confirm the impugned order of withdrawal dated 06/11/2020 on grounds of (i) inadequate built up area, (ii) Building Completion Certificate not having been issued by Competent Authority and (iii) one the faculty not being qualified as per NCTE, Regulation amended in June, 2017.”

[Emphasis Supplied]

4. The decision of Appellate Committee rests on three grounds namely, [a] inadequate built-up area; [b] building completion certificate not having been issued by competent authority; and [c] one of the faculty not being qualified as per NCTE Regulations, 2014 as amended in June, 2017.

5. The afore-noted three grounds of rejection are being dealt separately as follows:

[A] Inadequate Built-up Area as mandated by NCTE Regulations, 2014

6. Mr. Sanjay Sharawat, counsel for Petitioner-institute, submits that the

objection with regard to inadequate built-up area was not taken in SRC's Final SCN. In withdrawal order, as per Building Completion Certificate [hereinafter "**BCC**"] built up area was found to be less than 1500 sq. mtrs. The appeal order observes that BCC indicates that third floor and parking lot of 3,800 sq. ft. and 1,000 sq. ft. are having A.C.C. roofing, which is impermissible as per Regulation 8(7) of NCTE Regulations, 2014. He argues that withdrawal order and appeal order are at variance, which is impermissible, as the Appellate Committee cannot expand the scope of order passed by the original authority.

7. The total land area of the premises was 2711.36 sq. mtrs and the total built up area was 15200 sq. ft. There was an additional hall measuring 1000 sq. feet. Thus, the total built up area was 16,200 sq. feet, of which 3800 sq. feet of built up area comprised of A.C.C. roofing. The inspection of Petitioner-institute was conducted as per NCTE Regulations, 2007 which provides that at the time of inspection the building shall be complete in the form of permanent structure and that no temporary structure/asbestos roofing shall be allowed. Further, the requirement of land area was 2500 sq. mtrs. and built-up area was 1500 sq. mtrs. Despite this, SRC conducted inspection and granted recognition to Petitioner-institute. Thus, the Petitioner-institute already has more than 1500 sq. mtrs. of area [16,146 sq ft.] and there has been no change in building of Petitioner-institute since grant of recognition. Therefore, the Petitioner-institute cannot be said to have contravened any condition of recognition or any provision of the relevant regulations. Recognition of an institution can be withdrawn on a ground which takes place post recognition and accordingly, power under Section 17 of NCTE Act, 1993 cannot be used to review recognition once it

has been validly granted. Reliance in this regard is placed on law declared by this Hon'ble Court in the decision dated 19th July, 2010 in *Shyama Prasad Mukherji College for Women v. NCTE and Anr.*¹

8. *Per contra*, Mr. Subhoday Banerjee, counsel for Respondents, argues that Petitioner-institute does not have the adequate built up area as mandated by NCTE Regulations, 2014, which is evident from the schedule to the lease deed dated 27th August 2008 being relied upon by Petitioner-institute. Since the Petitioner-institute himself admits that he does not have the requisite built-up area, there is no infirmity in the withdrawal order or the appeal order.

9. The Court has considered the afore-noted contentions. It is not in dispute that on 26th May, 2015 was granted a revised recognition order for two basic units of B.Ed., subject to creation of additional built-up area as per NCTE Regulations, 2014 and Petitioner-institute had consented to come under the purview of NCTE Regulations, 2014. Petitioner-institute also requested for reduction of intake from two units to one, which was accepted by NCTE subject to it fulfilling the conditions stipulated in said revised recognition order. Petitioner-institute was therefore bound to comply with NCTE Regulations, 2014. In this regard, SRC issued First SCN seeking, *inter alia*, production of building completion certificate, building plan and other documents. In response, Petitioner-institute *vide* letter dated 6th March, 2019, submitted lease deed dated 27th August, 2008 and BCC. As per schedule of said lease deed, Petitioner-institute has two buildings wherein third floor of both buildings has ACC roofing of 1900 sq. ft. The said lease

¹ 171 (2010) DLT 459

deed mentions the built-up area of both the buildings as 15200 sq. ft.

10. At this juncture, it must be noted that as per Clause 8(7) of NCTE Regulations, 2014, no temporary structure of asbestos roofing is allowed in the institution and further, Clause 8 (11) of the said NCTE Regulations, 2014 stipulates that the existing institutions have to increase the built-up area, to conform to said regulations. The lease deed relied upon by Petitioner-institute itself shows that the total built up area of 15200 sq. ft. which is equivalent to 1412.12 sq. mtr. Further, as third floor of both the buildings has A.C.C. roofing, a total of 3,800 sq. ft. is temporary in nature and thus, the total built up area has to be calculated by subtracting the area under temporary structure. On such calculation, the covered area comes down to 11400 sq. ft. which is equivalent to 1059 sq. mtr. This calculation is also reflected in the BCC [Annexure P-15, at page 155]. It is also pertinent to note that in response to the Final SCN, Petitioner-institute relied upon said BCC showing total built up area of 15200 sq. ft. with third floor of both buildings being a temporary structure of 3800 sq. ft. Thus, the Court finds merit in the submission of Respondents that Petitioner-institute does not have the requisite built up area of 1500 sq. mtr. as prescribed by NCTE Regulations, 2014.

11. There is no merit in the contention of the Petitioner-institute *qua* the afore-noted objection. In the circumstances, there is no infirmity in the withdrawal order, inasmuch as it rightly holds that the built-up area is less than 1500 sq. mtr.

[B] Building Completion Certificate not issued by Competent Authority

12. As regards the afore-noted objection, Mr. Sharawat argues that the show cause notice and findings in the withdrawal and appeal order are at

variance. He points out that the objection in Final SCN was that *“the institution is required to submit an attested/notarised copy of Building Completion Certificate issued by the competent authority”*. In withdrawal order, the finding was that *“the institution has submitted Notarised copy of Building Completion Certificate which is in the name of individual”*. Appeal order dated 4th June, 2021 observes that, *“Building Completion Certificate submitted is not signed and authenticated by Competent Civic Authority”*.

13. A perusal of the First SCN reveals that Respondents specifically pointed out that BCC was required to be submitted by Petitioner-institute as per prescribed format viz. *"as per Govt. Format issued by Govt. Engineer"*. Thereafter, Final SCN reiterated the said objection. The withdrawal order notes that Petitioner-institute has submitted a notarised copy of BCC which is in the name of an individual and is not as per prescribed format. The appeal order notes that the BCC is evidently not signed by competent civic authority. Petitioner-institute was put to notice of the afore-noted deficiency on various occasion and has not been able to satisfy Respondents that it has a BCC issued by such competent authority in the prescribed format. Thus, irrespective of variance in impugned orders, evidently Petitioner-institute does not possess the appropriate BCC and therefore, findings in respect thereof by Respondents have no infirmity.

[C] The faculty not being qualified as per NCTE Regulations amended in June, 2017

14. Regarding the afore-noted objection, Mr. Sharawat's contention is that the objection regarding the staff of Petitioner-institute is misconceived. The withdrawal order notes that, *"(i) The Principal does not have qualification of Ph.D as per NCTE Norms"; "(ii) Two Assistant Professor*

does not have NET/Ph.D. as per NCTE (Recognition Norms & Procedure (Amendment) Regulations, 2017"; and "(iii) The institution has not appointed the faculty for Performing Arts, Fine Arts and Physical Education".

15. In appeal, Petitioner-institute had placed on record the approved faculty list for academic session 2020-21. The said list was in two parts. The first part contained a list of 9 faculty members and the second part contained a list of 2 faculty members. Thus, Petitioner-institute had submitted a list of 11 faculty members, although the requirement was to submit the list of 8 faculty members. This fact is duly recorded in the appeal order. NCTE has considered the faculty member mentioned at Serial No. 8 viz. K.N. Rao, Lecturer in Education, [at page 164 of petition] and has concluded that he is neither Ph.D. nor 'NET/SET' qualified. This objection is totally misplaced as the Petitioner-institute has also appointed Siriseti Eswara Rao, Lecturer-in-Education, who is SET qualified and is mentioned at Serial No. 10 of the said faculty list. NCTE has failed to take note of the latter. During appeal hearing, members of Appellate Committee did not raise any objection in this regard. If clarification would have been sought, Petitioner-institute would have explained the correct position. It is contended that appeal order to this extent is bad in law and liable to be quashed.

16. In addition to the specific submissions *qua* the aforementioned grounds of rejection in appeal order, Mr. Sharawat further argued that broad reliance in respect of the grounds of rejection being placed upon Regulation 8(7) of NCTE Regulations, 2014 is not correct. Since the said provision applies to new institutions which are seeking recognition for the first time and thus, has no applicability to existing institutions such as Petitioner-institute.

Clause 8(7) of NCTE Regulations, 2014 is extracted below:-

“8. Conditions for grant of recognition.—

(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.”

17. Mr Sharawat argues that words occurring in the afore-extracted provision namely – “*at the time of inspection*”; “*the applicant institution shall produce*”; and “*to the visiting team for verification*” makes it abundantly clear that the said provision is applicable only to new applications and does not apply to existing institutions.

18. The Court has considered the above submissions. Petitioner-institute had to meet the requirement of Clause 8(7) of NCTE Regulations, 2014 as Petitioner-institute had expressly consented to come under the purview of the same. To that extent the contention of Mr. Sharawat has no merit. Further, the withdrawal order specifically notes that two Assistant Professors do not have requisite qualifications viz. NET/Ph.D. On this aspect, Petitioner-institute subsequently admitted before the Appellate Committee that two of its professors do not have NET/ Ph.D. qualifications [Annexure P-18, at page 169], and simply submitted a faculty list of 11 members, which is recorded in the appeal order. The onus was on the Petitioner-institute to satisfy Respondents that it was compliant with the applicable regulations. Petitioner-institute, thus, failed to satisfactorily

explain compliance with the requirements *qua* faculty members and Court finds no infirmity in the decision taken by Respondents. That said, the Court could have considered affording an opportunity to Petitioner-institute to make good its case regarding deficiency of faculty members before Appellate Committee, but since the Petitioner-institute has failed to demonstrate any justification in respect to the other two grounds for rejection stated above, no relief can be granted.

19. For the fore-going reasons, the Court does not find any merit in the present petition.

20. Dismissed, along with the pending applications.

SANJEEV NARULA, J

November 04, 2022

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