



GAHC010030552020

Page No.# 1/14



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/986/2020

KAMALA BEZBARUAH MEMORIAL COLLEGE OF TEACHER EDUCATION
BOHOTIA GAON, 71, COLLEGE PATH, WEST JORHAT CIRCLE, JORHAT,
JORHAT- 785001, ASSAM REP. BY ITS PRINCIPAL-CUM- MEMBER
SECRETARY SRI LAMBODAR SAIKIA, AGED 62 YEARS, S/O- LT. BHOLA
SAIKIA, R/O- SONALI JAYANTI NAGAR, BYE LANE- 8, P.S. JORHAT, DIST.-
JORHAT, ASSAM.

VERSUS

UNION OF INDIA AND 6 ORS.
REP BY SECY., DEPTT. OF SCHOOL EDUCATION AND LITERACY, MINISTRY
OF HUMAN RESOURCE DEVELOPMENT, GOVT. OF INDIA, SHASTRI
BHAWAN, NEW DELHI- 110001.

2:NATIONAL COUNCIL OF TEACHER EDUCATION
G-7
SECTOR-10
DWARKA
LANDMARK- NEAR METRO STATION
DELHI- 110075
REP. BY ITS MEMBER SECY.

3:MEMBER SECY.
NATIONAL COUNCIL OF TEACHER EDUCATION
G-7
SECTOR-10
DWARKA
LANDMARK- NEAR METRO STATION
DELHI- 110075.

4:REGIONAL DIRECTOR
EASTERN REGIONAL COMMITTEE (NCTE)



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NEEL KANTH NAGAR
NAYAPALLI
BHUBANESWAR- 751012
ORISSA.

5:THE STATE OF ASSAM
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (ELEMENTARY) DEPTT.
DISPUR
GHY-06.

6:DIRECTOR SCERT
ASSAM
KAHILIPARA
GHY.-19.

7:REGISTRAR
DIBRUGARH UNIVERSITY
DIBRUGARH
ASSAM 786004

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri TJ Mahanta
Shri PP Dutta

Advocate for respondents : Shri I. Alam, SC - NCTE
Ms. M. Devi, SC - DU

Date of hearing : 30.05.2023

Date of judgment : 27.06.2023

Judgment & Order

The legality and validity of an order dated 28.08.2019 passed by the Eastern Regional Committee, National Council of Teacher Education (NCTE) by which the recognition of the petitioner College was withdrawn is the subject matter of challenge. The petitioner is also aggrieved by an order dated 05.12.2019 passed in the Statutory Appeal preferred before the NCTE Delhi against the aforesaid order of withdrawal of recognition. During the pendency of the writ petition, the matter was reconsidered in the 306th meeting of the ERC held on 14/15 September 2022, in which the impugned decision was affirmed and therefore, such affirmation has also been taken into the purview of the present challenge to do substantial justice to the parties before the Court. The principal ground of challenge is that the impugned decision has been taken on wholly irrelevant factors and extraneous considerations.

2. Before going to the issue which has arisen for consideration, it would be convenient if the facts of the case are narrated in brief.

3. The petitioner is a College of Teacher Education which was established in the year 1990 in the district of Jorhat for imparting teacher education. The College building was constructed in the year 2003. In the year 2015, the NCTE had granted the recognition for conducting B.Ed course for one year with annual intake of hundred numbers of students for the academic session 2015–16.

4. After coming into force, the NCTE (Recognition, Norms and Procedure) Regulation, 2014 the petitioner College had come under the purview of the said Regulation. It is the case of the petitioner that while the B.Ed. courses is being conducted in the College, the Eastern Regional Committee (hereinafter ERC) of the NCTE had issued a letter dated 14.02.2019 asking the petitioner to show cause with regard to compliance of certain additional requirements as per the Regulation of 2014.



The petitioner replied to the same on 26.03.2019, whereby all the requisite documents were furnished. However, as projected by the petitioner, on 14.05.2019, a further show cause notice was issued by which the Approved Faculty list, Building Plan and Building Completion Certificate were sought for. The said requirements, according to the petitioner were furnished on 14.06.2019, however, vide order dated 28.08.2019, the recognition of the petitioner College was withdrawn on the allegation that there were certain deficiencies in the College. The petitioner has contended that a Statutory Appeal was preferred before the NCTE, Delhi which was also rejected on 05.12.2019.

5. The claim of the respondents - NCTE, however, is that the impugned order of withdrawal of recognition was passed on relevant factors and therefore no interference is called for.

6. I have heard Shri TJ Mahanta, learned Senior Counsel assisted by Shri PP Dutta, learned counsel for the petitioner whereas the NCTE is represented by its Standing Counsel, Shri I. Alam. I have also heard Ms. M. Devi, learned Standing Counsel, Dibrugarh University. The materials produced before this Court have been carefully examined.

7. Shri Mahanta, the learned Senior Counsel for the petitioner has submitted that the impugned order dated 28.08.2019, by which the recognition granted to B.Ed. course was withdrawn under Section 17 (1) of the NCTE Act from the academic session 2020–2021 on the following grounds:

- “a) Approved faculty list is not submitted as per prescribed norms of NCTE.*
- b) Building plan is not legible. Built up area does not clearly indicated.*
- c) Building completion certificate is not in accordance with NCTE prescribed proforma.*
- d) The validity of FDRs expired.”*

8. Against the aforesaid order dated 28.08.2019, an appeal was preferred on 17.09.2019. Along with the Memo of Appeal, all the relevant documents were furnished. That apart, a written explanation was also submitted on 21.11.2019.



However, the Appellate Authority vide order dated 05.12.2019 had rejected the appeal by holding that the ERC was justified in its action. The following observations were made while rejecting the said appeal.

“AND WHEREAS the Committee noted from the documents submitted to the ERC that the staff profile has not been signed by the Registrar on every page but has been signed only on the last page; and out of total built up area of 16840.225 sq. ft., only 9806.250 sq. ft. is having RCC roofing, the rest having only CI sheet roofing. According to the provisions of Clause 8(7) of the NCTE Regulations, 2014, no temporary structure or asbestos roofing shall be allowed in the institution, even if it is in addition to the prescribed built up area. If the CI sheet roofing is excluded, the built up area with RCC roofing available is not adequate for the B.Ed. course as per the NCTE Norms, which should be 1500 sq. mts.”

9. The learned Senior Counsel for the petitioner has submitted that from the observations made in the appeal, the following two grounds are discernible for rejection of the appeal.

- i) The documents submitted to the ERC regarding staff profile were not signed by the Registrar on every page and was signed only on the last page.
- ii) Out of total built-up area of 16840.225 sq.ft., only 9806.250 sq. ft. was having RCC roofing and the rest had CI sheet roofing. Recourse to the provision of clause 8 (7) of the NCT Regulations, 2014 has been taken in which it has been stated that temporary structure or asbestos roofing shall not be allowed in the institution even if it is in addition to the prescribed built up area. The order of the Appellate Authority further states that if the CI sheet roofing is excluded, the built-up area with RCC roofing available is not adequate for B.Ed. course, as per the NCTE norms which should be 1500 sq. mtrs.



10. The learned Senior Counsel submits that so far as the first ground is concerned, the same was rectified later and each page was signed by the Registrar. So far as the second ground is concerned, the learned Senior Counsel has submitted that both the findings as well as the interpretation of the term 'temporary structure' are fallacious and wholly unreasonable by which gross injustice has been caused to the petitioner.

11. The Senior Counsel submits that the College in question has three floors and to substantiate the same, photographs of the building have also been annexed to the writ petition. He submits that under Clause 8(7) of the Regulations, any area which is temporary in nature or which is covered by asbestos are not to be taken into consideration while calculating the minimum requirement of 1500 sq. mtrs. of built-up area. He submits that the built up area of all the three floors of the building is more than 1500 sq. mtrs. and therefore the findings arrived at by the authorities in withdrawing the recognition are absolutely incorrect. Reference has been made to the order dated 25.05.2022 passed by this Court in the present proceeding in which the statements of the Regional Director, NCTE who had appeared personally have been recorded. It is submitted that the aforesaid statement would make it clear that the controversy was resolved and therefore there is no occasion for continuing with the withdrawal of recognition.

12. The learned Senior Counsel has submitted that the 309th (Virtual) Meeting (Part-2) of the ERC held on 14.09.2022 and 15.09.2022 reaffirms the same finding. However, the finding appears to be fallacious as the Amendment of the Rules made on 04.07.2022 was not taken into consideration at all. The learned Senior Counsel submits that vide the aforesaid Amendment, the restriction was only on temporary structures and asbestos whereby tin sheets were deleted. It is also submitted that this Court under the aforesaid circumstances and taking into account the Amendment had made a further direction on 03.08.2022 to consider the case of the petitioner under the Amended Rules. The respondent, however, by the impugned finding had stated that since the roofing on the third floor is by CI sheet, it is a temporary structure. It

further transpires from the records placed that in the 306th meeting held on 14th and 15th September 2022 the case of the petitioner College was again taken up for consideration whereby the decision for withdrawal of recognition was affirmed.

13. Reference has also been made to the definition of 'Building' appearing in Rule 2(14) of the Assam Notified Urban Areas (other than Guwahati) Building Rules, 2014 which reads as follows :

“2. Definitions-

(1)...

(14) "building" means a structure constructed with any materials whatsoever for any purpose, whether used for human habitation or not, and includes, —

(a) foundation, plinth, walls, floors, roofs, chimneys, plumbing and building services, fixed platforms, etc.

(b) verandahs, balconies, cornices, projections etc;

(c) parts of a building or anything affixed thereto;

(d) any wall enclosing or intended to enclose any land or space, sign and outdoor display structures, etc:

Provided that all types of permanent building defined here, but structure of temporary nature like tents, hutment as well as shamianas erected for temporary purposes for ceremonial occasions, with the permission of the competent authority, shall not be considered to be "buildings";"

14. The definition of 'Permanent' appearing in the Black's Law Dictionary has also been pressed into service which reads as follows: "Permanent, fixed, continuing, lasting, stable, enduring, abiding, not subject to change. Generally opposed in law to "temporary", but not always meaning "perpetual."

15. Learned Senior Counsel submits that by virtue of the interim order passed by this Court, the petitioner College is operating. However, the NCTE has removed the



name of the petitioner from its website as a result of which the College is suffering as students are reluctant to get themselves enrolled in the said College.

16. *Per contra*, Shri Alam, learned Standing Counsel for the NCTE has relied upon a decision of the Hon'ble Delhi High Court in WP(C)/1082/2021 (College of Education and Another Versus National Council for Teacher Education and Another). In the said case, the Hon'ble Single Judge had upheld the decision of the NCTE to withdraw the recognition by holding that the area of a leased building which was near to own building of the College at a distance of hundred meters could not have been included to meet the total built-up area of 1550 sq. mts. As regards the issue of having GI roof on the fourth floor, the Hon'ble Court did not have the occasion to deal with directly as there was no averment by the College that the same was replaced by RCC structure nor any documents annexed with the petition.

17. Shri Alam, learned Standing Counsel has referred to the discussion concerning the petitioner College in the meeting held on 12.07.2022 and 13.07.2022 in which the ERC had come to a finding that Clause 8 (7) of the Regulations of 2014 clearly mentioned that no temporary structure or asbestos roofing would be allowed in the institution, even if it is in addition to the prescribed built up area. The Committee was also of the opinion that the structure/roofing of the institution which is made by CI Sheets cannot be considered as permanent structure as per the Regulations of 2014.

18. This Court has however noticed that the aforesaid findings were of July, 2022 whereas the amendment in the Regulations were of May, 2022, which clearly appears to have been overlooked.

19. The learned Standing Counsel has thereafter referred to the minutes of the 306th meeting held on 14th and 15th September 2022 wherein the case of the petitioner College was again taken up for consideration. After taking into account the earlier notes and also the observation made by this Court in the order dated 03.08.2022, the Committee, after referring to the Amendment dated 05.05.2022 had



reconsidered the matter and had decided that the Committee was of the opinion that the structure/roofing of the institution which is made by CI Sheet is a temporary structure and cannot be considered as permanent under the Regulations.

20. The learned Standing Counsel has also drawn the attention of this Court to a communication dated 16.08.2022, which has been annexed as Annexure B to the affidavit-in-opposition to contend that the submission made by the Under Secretary (CDN), NCTE before the Court was a correct submission and therefore show cause notice was issued to him which was replied on 02.09.2022.

21. Shri Alam, the learned Standing Counsel submits that a structure with CI Sheet roof cannot be termed as a permanent structure as the same can be changed. He accordingly submits that there is no merit in the writ petition and the decision taken by the respondent authorities are in accordance with law and therefore this writ petition is liable to be dismissed.

22. Ms. M. Devi, learned Standing Counsel for the Dibrugarh University submits that permanent affiliation to the petitioner College was given on 21.10.2011 with effect from 2011–12. She however submits that she would have a reservation with regard to terming the building of the petitioner College as a temporary structure as in the State of Assam, it is common that most of the houses are A-type, which has got corrugated iron sheets on the roof and that by itself would not make the structure a temporary one.

23. Rejoining his submissions, the learned Senior Counsel for the petitioner has submitted that the entire objective of the Regulation is to bring uniformity and discipline for the Colleges under the NCTE so that there cannot be any misuse of the benefits granted. He however submits that the objective of the provisions involved is that temporary structures of the College should not be taken into consideration for ascertaining the area required under the Regulations. He submits that such temporary structures can be in the form of Car Parking Zone, Cycle Parking etc. which should not



be counted. The learned Senior Counsel submits that there is no violation of any provisions of the Regulations and on the contrary, the authorities have misinterpreted the expression 'permanent structure' vis-a-vis 'temporary structure' by which grave prejudice has been caused to the petitioner College. It is finally submitted that confusion, if any, has been done away with by the Amendment which clarifies the entire issue. The learned Senior Counsel has also informed this Court that though the stay order has been passed by this Court and is operating, the NCTE has removed the name of the petitioner College from its website for which the petitioner is suffering immensely as candidates are dissuaded from taking admission.

24. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

25. The initiation of the dispute would relate back to 14.02.2019, when a general exercise was carried out by the NCTE in respect of a number of Colleges imparting Teacher Education and notices were issued mainly on four grounds which has been discussed above. The said notice was replied to by the petitioner College on 26.03.2019, whereafter another show cause notice dated 14.05.2019 was issued individually to the petitioner on two grounds namely Approved Faculty List and the Building Plan and Building Completion Certificate not being approved by the Competent Government Engineer. The second show cause notice was replied by the petitioner on 14.06.2019, with which the Building Completion Certificate by the Chartered Engineer was also annexed. However, by the impugned order dated 28.08.2019, the recognition to the petitioner College was withdrawn under Section 17 (1) of the NCTE Act from the academic session 2020–2021. The said order had recorded that on four grounds, the institution was still deficient.

26. The records would reveal that on 17.09.2019, as provided by the Act, the petitioner had preferred an appeal annexing all the documents. The same was also



followed by a written explanation by the petitioner wherein the issue of FDR was adequately explained. The appellate authority vide order dated 05.12.2019 however rejected the appeal and confirmed the order dated 28.08.2019. A reading of the said order dated 05.12.2019 would however reveal that the rejection was mainly on two grounds. Firstly, that the documents submitted to the ERC were not signed by the Registrar on every page and was signed only on the last page; secondly it was held that out of total built up area of 16840.225 sq. ft., only 9806.250 sq. ft. was having RCC roofing and the rest where having CI sheet roofing which was in alleged violation of Clause 8 (7) of the Regulations of 2014. It has been stated that if the CI sheet roofing is excluded, the built up area which RCC roofing is not adequate for the B.Ed. Course, which should be 1500 sq. mtrs. It is admitted that the first ground of rejection was rectified as all the pages of the appeal were later on signed. The controversy therefore is with regard to the use of CI sheets on the roof and if the area under such CI sheet is excluded, the required area becomes less than 1500 sq. mtrs.

27. A perusal of the records would show that the main building is having three numbers of floors and the total area is admittedly more than 1500 sq. mtrs. The ERC in its 306th Meeting held on 14th & 15th September, 2022 while discussing the various Colleges including the petitioner College has recorded that the roofing of the College is made with CI sheet which cannot be considered as permanent structure in the light of the Regulations of 2014. It may be noted that before the said meeting was held on 12th and 13th July 2022, the Regulations had undergone an amendment which was notified in the Gazette of India dated 04.05.2022 was overlooked. As mentioned above, by the said Amendment the use of CI sheet was deleted, and as per the amended provision, only temporary structures shall not be allowed in the institution even if it is in addition to the prescribed build up area. The records further reveal that the same lapse was noticed, upon which, another meeting was held on 14 and 15 September 2022, being the 306th meeting. While discussing the case of the petitioner, the amended Regulation was also mentioned this time. After discussion, a decision

was arrived at that the structure /roofing of the institution, which is made by CI Sheet is a temporary structure and cannot be considered as permanent in the light of the NCTE (Amendment) Regulations, 2022.

28. It is not in dispute that after the Regulations were amended in the year 2022 and the discussions itself made in the 306th Meeting of the ERC took note of the same. It is also not in dispute that it is the amended Regulation under which the case of the petitioner College was considered.

29. Prior to the amendment, as per the Regulation of 2014, the conditions for grant of recognition were laid down in Regulation 8. The relevant portion of Regulation 8, after the amendment is as follows:

“8(7)... Temporary structures shall not be allowed in the institution, even if it is in addition to the prescribed built up area.”

30. From the pleadings exchanged and the material placed before this Court, the built up area as per the norms should be 1500 sq. mtrs. It further transpires that the total built up area which is contained in the Building Completion Certificate duly issued by the Public Works Department and has been annexed as Annexure 2 to the affidavit-in-reply dated 28.01.2021 filed by the petitioner, is 16840.225 sq. ft. which would be equivalent to 1565 sq. mtrs. (approx.). The Completion Certificate issued by the Competent Authority namely, the PWD however has not been disputed as such. The only objection is with regard to the area under CI sheet.

31. As has been noted above, the restriction is of temporary structures. A careful reading of the amended Regulation is that such restrictions are generally for the institution as a whole which may be in addition to the prescribed built up area. The decision for rejection does not appear to be in consonance with the aforesaid requirement that temporary structure are not allowed in the institution. However, even giving benefit of doubt to such interpretation of the authorities to apply to the restrictions for calculating the built up area, the controversy would boil down to the

meaning of a temporary structure.

32. It is not in dispute that part of the building has CI sheet which is apparent from the Building Completion Certificate. Therefore, the question would arise is whether a structure covered by CI sheet *per se* becomes a temporary structure. It may be mentioned that under the amended regulation, there is no restrictions on the use of CI sheets.

33. As has been noted above, the dictionary meaning of "temporary" is something which is not permanent. Such meaning is relative in nature as nothing can be termed as a permanent structure as everything would cease to exist by the ravages of time. The Black's Law Dictionary, as noted above, has in its definition of "Permanent" used the expressions "fixed, continuing, lasting, stable, enduring, abiding, not subject to change. Generally opposed in law to "temporary", but not always meaning "perpetual."

34. Permanent, as explained above, is a relative term but would not always mean perpetual. The structure concerned of the petitioner College is a RCC structure of three-storey as would reveal from the Building Completion Certificate. The objection is that some part is having CI sheet roofing. The Certificate itself makes it clear that some part of the roofing (mainly of the 3rd floor) is of CI sheet. It may be mentioned that CI sheet, as such is not restricted. There is no dispute that the structure, as such has RCC roofing on the ground, first and second floors with brick walls. Therefore, merely because the third floor of the building has CI sheets as the roofing will not make the structure a temporary one.

35. In the considered opinion of this Court use of CI sheet on a structure cannot be sole determining factor to term such structure as temporary. This Court cannot be oblivious of the fact that in the northeastern region of the Country and also in the other parts where the monsoon is more pronounced, the roofing are mainly of CI sheets and the houses are mostly A-type. Many important buildings in the Northeast Region are having CI sheet roofing and are A-type structures and it would be almost



outrageous to term such structures as temporary.

36. As regards the judgment of the Hon'ble Delhi High Court referred to by the learned Standing Counsel for the NCTE, such judgment, apart from having persuasive value is also distinguishable on facts. The judgment by the Hon'ble Delhi Court is dated 06.05.2021 before the amendment of the NCTE Regulation which was done on 04.05.2022 and the present case was considered after the amendment in the 306th meeting.

37. Under the facts and circumstances, this Court is of the considered opinion that the impugned decision conveyed which has been taken by the ERC in its 306th meeting held on 12th and 13th July, 2022, so far as the petitioner College is concerned reiterating the earlier decision taken on 28.08.2019 and 05.12.2019 is unsustainable in law and accordingly set aside. Consequently, the NCTE is directed to restore the recognition to the petitioner College and also reflect the name the college in the website of the NCTE forthwith.

38. The writ petition accordingly stands allowed.

39. No order as to cost.

JUDGE

Comparing Assistant