

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

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Reserved on: 4th August, 2022

Pronounced on: 16th September, 2022

+ W.P.(C) 7329/2018 & CM APPL. 33620/2022

W.P.(C) 8175/2019 & CM APPL. 33616/2022

W.P.(C) 8817/2020, CM APPL. 28358/2020 & CM APPL. 33617/2022

W.P.(C) 8862/2021, CM APPL. 27546/2021 & CM APPL. 33619/2022

W.P.(C) 10630/2022, CM APPL. 30830/2022 & CM APPL. 34427/2022

NEW MILLENNIUM EDUCATION SOCIETY & ANR

..... Petitioner

Through: Mr. H.S. Phoolka, Sr. Advocate
with Mr. Deepak Vohra, Ms.
Shilpa Diwan and Mr. Mayank
Kumar, Advocates

versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY &
ANR**

..... Respondent

Through: Ms. Ekta Sikri, Mr. Jasbir Bidhuri
and Mr. Sriwas, Advocates for R-
1.
Mr. Sameer Vashisht, ASC (Civil)
with Ms. Sanjana Nangia,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant set of writ petitions has been filed by the petitioners under Article 226 of the Constitution of India for issuance of writ of mandamus for direction to the Guru Gobind Singh Indraprastha University (hereinafter referred to as the “Respondent University”) to allocate 110 seats to the Ideal Institute of Management & Technology (hereinafter referred to as the “Petitioner Institute”) with respect to BA LLB Five Years’ Integrated Course for Academic Sessions 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. The details of the respective petitions are furnished hereunder:

Writ Petition	Academic Session	Prayer	Status
WP C 7329/2018	2018-19	Allocation of 110 Seats (25 Seats in addition to 85 Seats already allotted) in BA LLB Course	18.7.2018 – Interim Relief granted to admit 110 students
WP C 8175/2019	2019-20		1.8.2019 – Interim Relief granted to admit 110 students

WP C 8817/2020	2020-21		11.11.2020 – Interim Relief granted to admit 110 students
WP C 8862/2021	2021-22		24.8.2021 – Interim Relief granted to admit 110 students
WP C 10630/2022	2022-23		N/A

FACTUAL MATRIX

2. Having perused the instant set of writ petitions, the matter has arisen out of the facts as detailed hereunder:

(i) The Petitioner No.1 i.e. New Millennium Education Society is a registered society. The Petitioner No.2 is a private self-financing college founded under the aegis of the Petitioner No.1 Society. The Petitioner No.2 imparts various courses including BA LLB Five Years’ Integrated Course.

(ii) The Respondent No.1 is Guru Gobind Singh Indraprastha University which is the affiliating University of the Petitioner No.2 College. The Respondent No.2 i.e., the Directorate of Higher Education (hereinafter referred to as the “DHE”), Govt. of NCT of Delhi is the concerned authority for issuance of No Objection Certificate

(hereinafter referred to as the “NOC”) to the colleges affiliated to the Respondent University.

(iii) It is the petitioners’ case that since the academic session 2014-15, the respondent No. 2 has issued NOC for 110 seats for the said course to petitioner No. 2 and the seat intake for by the petitioner No. 2 Institute has been 110. This seat intake has been reduced to 85 seats by Respondent No. 1 for the academic session 2018-19, 2019-20, 2020-21, 2021-22 and the same has been done for the current academic session 2022-23.

(iv) Aggrieved by these changes the petitioners had approached this Hon'ble Court by way of Writ petitions being WPC 7329/2018 {for academic session 2018-2019}, WPC 8175/2019 {for academic session 2019-2020}, WPC 8817/2020 {for academic session 2020-2021} and WPC 8862/2021 {for academic session 2021-2022} and this Court has granted interim relief in the four Writ petitions to the petitioners thereby allowing the petitioners with a seat intake of 110 as opposed to 85 seats as allocated by the Respondent no. 2

(v) It is the contention of the petitioner that the respondents have reduced their number of seats with the explanation that the Joint Assessment Committee (hereinafter referred to as the “JAC”) in its report has recommended intake of 85 students in the BA LLB course.

(vi) The JAC in its report on 28.05.2019 for the academic session 2019-20 recommended 85 seats. In the JAC report, the total built up space available for conducting the concerned programme was stated to be 3267.45 square metres excluding basement. As per Unified Building Bye Laws 2016 (hereinafter referred to as the “UBBL-2016”) the petitioner no. 2 is entitled to have its basement area counted in the built up space to be considered in the JAC report.

(vii) On 11.09.2019 this Court directed the Delhi Fire Services to conduct the inspection of the entire building, in particular the concerned basement, and thereupon report to the court as to whether it meets the fire safety requirements. The status report filed by the Delhi fire department stated that the building was found to be fire compliant and the fire safety Certificate has been issued.

(viii) It is submitted that the Petitioner No. 1 on 06.11.2019 in Writ Petition No. 8175/2019 undertook to get the revised building plan sanctioned for getting additional Floor Area Ratio (hereinafter referred to as “FAR”) as per the provisions of UBBL-2016. As per this undertaking the petitioner institute has already submitted its revised plan before the concerned authority. However on account of COVID-19 pandemic, the process at the govt. Authority is moving at a very slow pace and the institute has been

informed that the revised sanction plan is still under consideration.

(ix) For the Academic year 2020-21, on 13.07.2020, the Govt. Of Delhi has exempted JAC inspection for 2020-21 on account of COVID-19. Approval was granted for considering the same NOC for academic session 2020-21 as issued for academic channel 2019-20. Respondent university accordingly granted an intake of 85 seats. Aggrieved by which writ petition no. 8817/2020 and the subsequent interim order was passed.

(x) On 18.01.2022, the petitioner institute filed an affidavit stating that revision of the sanctioned plan has been already submitted via online mode. As per the procedure, the approval of revised sanctioned plan is pending before Delhi Urban Art Commission (hereinafter referred to as the "DUAC").

(xi) On 11.08.2021, another Representation was made by the petitioner institute for grant of 110 seats instead of 85 as akin to the previous years to the respondent.

(xii) Upon failing to receive any relief from the university, and aggrieved by the same, the WP(C) 10630/2022 was filed before the Hon'ble Court.

SUBMISSIONS

Submissions by Petitioners

3. Mr. H S Phoolka, learned senior advocate appearing on behalf of the petitioners prayed that the Petitioner No. 2 College be granted an intake of 110 seats for its BA LLB Five Years' Integrated Course for the academic sessions 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. In support of his prayer, learned senior advocate made the following submissions:

(i) The petitioner institute had commenced the BA LLB course from 2006-07 and the approved intake was 50 seats. Thereafter the strength was increased to 80 seats in the academic session 2007-08. The Board of Affiliation of respondent University in its 63rd meeting held on 24.07.2014 accepted the request of the petitioner institute for interchange and in lieu thereof the seats for existing BA LLB course were increased from 80 to 120 by the respondent University for academic session 2014-15. However, the respondent No.2 DHE which is the final body for adjudication of the seat intake had granted its NOC for 110 seats only. The petitioner for its 100 seats of B.Ed. had to satisfy itself with the 30 seats of BA LLB.

(ii) For similar grievances, the petitioners have been constrained to approach this Hon'ble Court by way of four separate writ petitions pertaining to previous four academic

sessions i.e. WP (C) 7329/2018 (AS 2018-19), WP (C) 8175/2019 (AS 2019-20), WP C 8817/2020 (AS 2020-21), WP C 8862/2021 (AS 2021-22). This Hon'ble Court vide interim reliefs passed in the previous writ petitions had allowed the petitioner institute to have an intake of 110 students for the said course.

(iii) The JAC physically visited and verified the available space/area/infrastructure available at the institute. The JAC for its visit for the academic session 2015-16, 2016-17, 2017-18 and after being fully satisfied with the available space/area/infrastructure and other facilities available with the petitioner institute, it had recommended 110 seats for the said course with the Petitioner College.

(iv) For the academic session 2018-19 also, JAC had recommended 110 seats for the said course. However, the Respondent University intended to reduce the seats from 110 to 85. At the first instance, the DHE had not issued any NOC for the same. The Petitioner Institute followed up with the respondents and made a detailed representation-cum-appeal to both the respondents vide its communication dated 15.06.2018. Thereafter, the DHE had issued NOC for continuing the BA LLB course with 110 seats.

(v) In the WP (C) 7329/2018, the DHE had filed its short affidavit, wherein, it had clearly stated the undisputed position that the jurisdictional authority for grant of renewal

for intake of students vests with the DHE. The DHE had also relied upon its policy guidelines issued on 12.01.2016 which were amended in the year 2017. The relevant portion of the policy guidelines reads as:- *"For existing institutions, the built up area as assessed/certified by JAC for academic session 2016-17 shall be considered as final for allocation of seats."* The petitioner falls under the category "existing institute". Therefore, the affidavit filed by respondent DHE in WP (C) 7329/2018, as a matter of fact, supports the petitioner for being granted 110 seats.

(vi) Clause 25.1 of the Delhi Building Bye-laws of 1983 reads as under:

"25.1. No basement or cellar room shall be designed, constructed, altered, converted or used for the purpose of study or instruction."

(vii) The Master Plan of Delhi (hereinafter referred to as the "MPD") which came in effect from 07.02.2007 also provided for the use of the basement at clause 8(5) of Chapter 17 of MPD 2021.

(viii) The aforesaid position came to be changed by virtue of Unified Building Bye-laws for Delhi 2016 issued by the DDA on 22.03.2016 in the exercised of powers conferred under section 57(1) of Delhi Development Act 1957. Section 57(1) of DDA Act provides that the authority may notify such regulations which may provide for the

terms and conditions subject to which user of lands and buildings in contraventions of plan may be continued {57(I)F}. Clause 7.23.2 thereof reads as:

*"Educational buildings (school colleges)-
a. Basement or cellar room may be designed, constructed, altered, converted or used for the purpose of study or instruction provided it meets fire safety requirements."*

(ix) The aforesaid notification under the statutory powers provided under Section 57 of the DDA Act 1957 superseded the provisions of Delhi Building Bye-laws 1983 as well as that of MPD which came into effect on 07.02.2007. The gazette notification of UBBL-2016 is not only under the statutory powers of the authority but also is subsequent in the point of time.

(x) Accordingly, post 22.03.2016, the petitioner institute was entitled to have its area of the basement counted in the built-up space to be considered by the respondents for the grant of allocation of seats. The space norms of 4.5 square metres all-inclusive are easily available with the petitioner institute if the basement area is included in the built-up area for the calculation of seat intake and more particular 110 seats. The built-up area available with the petitioner institute is 3809.84 square metres including basement area. Thus, the petitioner has adequate space for 110 seats for BA LLB course.

(xi) It is clarified that the basement area is being utilized for multi activity hall, conference room and Director's office and no classes are held in the basement. The petitioner institute otherwise has been awarded category-A by JAC for last several years. The classes of BA LLB are held in 10 classrooms each having seating capacity of 60 students, spread over Ground, First and Second Floor.

(xii) As per clause 7.23.2, the use of basement for study purpose is subject to fire safety norms. The petitioner institute has already been issued NOC by Fire Department.

(xiii) It is submitted that pursuant to the directions of this Hon'ble Court passed in WP (C) 8175/2019, an inspection of the entire premises including basement was undertaken by the Fire Department. Pursuant to the said directions, a status report dated 21.02.2020 was filed by Delhi Fire Service before this Hon'ble Court wherein, it was clearly mentioned that the building was found to be fire-compliant and accordingly on 11.02.2020, a fire safety certificate was issued to the petitioner institute. The petitioner has thus complied with the clause of fire safety norms as per clause 7.23.2 of UBBL-2016.

(xiv) In the additional affidavit, reliance has been placed upon the affidavit-cum-undertaking of 18.06.2015 of the petitioner institute, however this was not the stand of the respondent DHE in the previous four writ petitions. It is

submitted that in view of the changed scenario, post 22.03.2016, there was no need for the petitioner institute for compliance of the said affidavit in as much as the UBBL-2016 permitted the use of basement for the purposes of study.

(xv) As mentioned in the order dated 06.11.2019 passed in WP (C) 8175/2019 by this Hon'ble Court, the petitioner institute had already submitted its revised plan before the concerned authority. The revised plan was firstly submitted to the East Delhi Municipal Corporation on 21.01.2020 and the same has been forwarded to the DUAC. It would be relevant to submit here that the petitioner has been following up with the concerned authorities for the approval of the plans. However, on account of COVID-19 pandemic, the process at the Govt. Authority is moving at a very slow pace and the petitioner has been informed that the revised sanction plan is still under consideration.

(xvi) The petitioner institute has been granted approval of affiliation by the Bar Council of India (hereinafter referred as "BCI") for 120 seats since academic session 2014-15. For the academic session 2022-23 also, the petitioner institute has been granted approval by the BCI for 120 seats vide its approval dated 15.07.2022. In particular, no space norms have been prescribed by the BCI. According to the BCI, an academic building of a Centre of Legal

Education should have separate classrooms of 60 students for each section, rooms for tutorial work, moot court room, common room for male and female students and adequate library/ reading space.

(xvii) *In arguendo*, it is respectfully submitted that even taking the stand of the respondents that the petitioner is not entitled to the strength of 110 students on account of basement, the space available with the petitioner is sufficient for 100 students and also considering the fact that the entire strength (100%) of seats get filled and which is very unlikely and even in the previous years, the strength was never up to the maximum. Even after having strictest of approach, the space available with the petitioner (excluding basement) is much more than the 85 seats as being granted by the respondents. Therefore, the denial of commensurate seats by the respondents is absolutely illegal, arbitrary and whimsical.

(xviii) Since the petitioner since 2014-15 was granted 110 seats for its BA LLB course and which strength was permitted by this Hon'ble Court till the academic session of 2021-22 and considering the same available space built up area infrastructure, etc. there is no occasion for the respondents now to deny the grant of 110 seats or the reliefs claimed in the writ petition.

4. In view of the aforesaid, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly allow the present writ petition and grant the relief claimed therein, in the interest of justice.

Submissions by Respondent No. 1/University

5. Learned counsel appearing for the Respondent No.1 vehemently opposed the submissions made by learned senior counsel for the petitioners and made the following submissions:

(i) The affiliation is granted to the institute(s) as per ordinance 1 read with statute 24 of the University, along with policy guidelines of the Respondent No. 2/DHE. A perusal of the University rules in this regard i.e., Ordinance 1 read with Statute 24 show that the procedure laid for affiliation apply *mutatis mutandis* for new academic year. Therefore, an institute must apply afresh for renewal of affiliation *inter alia* for increase in the intake, every year/new academic year.

(ii) In the present case, the institute doesn't have adequate space to accommodate 110 students, as per the approved/sanctioned building plan of the premises as sanctioned by the DDA, the institute can have the highest intake of 85 seats. The institute proposes to use the area of basement to meet the deficit which is not permissible under the existing rules and guidelines.

(iii) Clause 8(5)(d) of Chapter 17 of MPD 2021 stipulated that the basement if used in conformity with the used premises i.e., the present case for Educational/ Academic purposes, the same is required to be counted in FAR subject to clearance from Fire Authorities and other statutory bodies.

(iv) In the present case, the basement is neither counted in FAR nor there is approval from the Fire Authorities and other Statutory bodies for use of basement in conformity with the use premises i.e., Education/ Academic purposes.

(v) It is pertinent to mention here that this Hon'ble Court vide its order dated 11.09.2019 in W.P (C) No. 8175 of 2019 directed the Delhi Fire Services to conduct the inspection of the entire building, in particular the concerned basement, and thereupon report to the court as to whether it meets the fire safety requirements. Thereafter, on the next date of hearing i.e., on 06.11.2019, a copy of the communication dated 04.11.2019 issued by the Deputy Chief Fire Officer, GNCTD was handed over to the Court, wherein, it was recorded that there is change in the usage of the basement. The said copy was also handed over to the petitioner's institute, who stated that the petitioner will submit a revised building plan to the concerned authority in line with the provisions of UBBL-2016 and that after having

the same sanctioned, the revised plans will be placed before the Fire Safety Department, for its approval.

(vi) On the next date of hearing i.e., 12.02.2020, the learned counsel for the Respondent No. 2 stated that the department will inspect the premises of the Institute in terms of the orders and thereafter file the report within next three weeks.

(vii) Thereafter, the Respondent No. 2 filed a status report dated 21.02.2020, stating that the premises of the Institute was inspected on 30.01.2020 and accordingly a fire safety certificate dated 11.02.2020 was issued in favour of the Institute.

(viii) The Petitioner Institute failed to show that the institute has necessary clearance from the statutory bodies, which in the present case is DDA and MCD as per Clause 8(5)(d) of Annexure VI of UBBL-2016 as stated above.

(ix) As per the petitioner institute, the institute submitted the revised plan for taking necessary sanction only in the month of January, 2020. Therefore, as per present sanctioned plan submitted by the Institute, the basement is shown for the usage of “car parking” and fire safety certificate is also issued by the department for said usage.

6. In light of the aforementioned, it is evident that the Petitioner Institute does not have the adequate space to accommodate 110 students, as per the approved/sanctioned building plan of the premises as sanctioned by the DDA, rather the institute can have the highest intake of 85 seats for the said course. Accordingly, the permission cannot be granted to the institute for intake on the additional seats.

Respondent No.2/DHE's Submissions

7. Learned Counsel for the Respondent No. 2/DHE submitted that the present petition has been filed *inter alia* seeking directions to Respondent University to continue/undertake counselling in respect of the Petitioner No. 2 college with an intake of 110 seats for B.A. LL.B course, is not maintainable and liable to be dismissed. In furtherance thereof, learned counsel made the following submissions:

(i) The number of seats in the Petitioner No.2 college for BA LLB course has been decided on the basis of the report of JAC dated 05.03.2022.

(ii) The said report has been filed by the Petitioner wherein, the JAC has recommended intake of 85 students in BA LLB course. The same has been done as per the available FAR in the institute. The report of JAC is factual in nature and the Petitioner has miserably failed to make out any case of "malice of fact" on the part of JAC.

(iii) The Respondent No.2 is bound by its Policy dated 03.01.2017, according to which, the Respondent No.2 is bound by the report of JAC and the report of JAC in respect of calculation of the FAR shall be considered to be final.

(iv) Vide Letter dated 08.07.2014, the Respondent No.2 called for the comments from the University on the issue that the Petitioner Institute has 2100 square metres of land for all the combined courses i.e., BBA, LLB, B.Ed. etc and as per NCTE norms for B.Ed and D.Ed, 3000 square metres of constructed area is required. The University was requested to look into how the courses were adjusted.

(v) Vide Letter dated 16.07.2014, the University intimated the Petitioner Institute about the observations of JAC for 2014-2015. That vide the said letter, the Petitioner Institute was directed to appear before the Sub-Committee on 18.07.2014 to explain its view on the scarcity of the space.

(vi) Vide Letter 04.08.2014, the Petitioner Institute informed the Respondent No.2 that the Institute currently has achieved FAR 150 with total built up area of 3809 square metres. The Institute further informed that it has withdrawn the B.Ed course for academic year 2014-15 in lieu of approval of increase of 40 additional seats in BA LLB Course. The Institute represented that it shall make the arrangements to achieve FAR 225 in coming 4 (four) years.

(vii) Based on the said representation vide Letter dated 29.07.2014, the Answering Respondent approved 110 seats for the academic year 2014- 2015. Out of 110 seats, 80 seats were on revalidation and 30 seats were interchanged with other courses.

(viii) For the academic year 2015-2016, the JAC vide its report dated 27.05.2015 recommended 110 seats for BA LLB Course but made a note in the report that the built-up area is much less and therefore there cannot be any addition of students or new courses.

(ix) After the abovesaid report the Institute made an earnest request to the University to not to reduce its seats and it undertook to increase its FAR or to get its basement included in the FAR.

(x) Based on the said affidavit and representation, the Respondent No.2 permitted the Petitioner Institute to have 110 seats in BA LLB Course for the initial 3 (three) years subject to the condition that continuation of this programme shall be to the availability of the space/ infrastructure as will be assessed by JAC subsequently. On the basis of the above permission, the Petitioner Institute was permitted to have 110 seats in BA LLB Course for the succeeding 3 (three) academic years. Till date, neither the FAR of 225 has been achieved by the Petitioner Institute nor the basement has been included in the FAR.

(xi) That it is also necessary to submit that the Petitioner on 06.11.2019 in Writ Petition No 8175 of 2019 undertook to get the plans sanctioned for the additional FAR. The relevant part of the said order is reproduced hereunder:

“1. Pursuant to the last order dated 11.09.2019, Mr. Anuj Aggarwal, who appears for respondent No.2 has returned with instructions. He has placed before me a copy of the communication dated 04.11.2019 issued by the Deputy Chief Fire Officer, GNCTD to the Principal, New Millennium Education Society i.e. in effect petitioner No. 1. Copy of this communication has also been furnished to Mr. Phoolka, learned senior counsel, who appears for the petitioners.

2. Mr. Phoolka says that in consonance with what is stated in the said communication, the petitioners will submit a revised building plan to the concerned authority in line with the provisions of UBBL-2016 and that after having the same sanctioned, the revised Plans will be placed before the Fire Safety Department for its approval.

3. Furthermore, learned senior counsel says that once this exercise is completed, the necessary approvals obtained will be placed before the Court, supported by an affidavit.”

(xii) That it is an admitted position that till date the Institute has not got its sanctioned plans approved by the concerned authorities and it is for this reason JAC has not recommended 110 seats for BA LLB course.

(xiii) That the petitioner institute has heavily relied on the fact that it has a basement in the building and basement can be used for conducting classes and the area of the basement can be considered towards the FAR. The Institute in its sanctioned plans, however, has shown the basement as parking space. That it is submitted that the above said argument is not correct, since the UBBL-2016, does not include the area of the basement in FAR if it is sanctioned as a parking space. Therefore, the basement cannot be included in FAR. Even otherwise the basement cannot be used for conducting classes as it is not appropriate for the same.

(xiv) It is stated that the total built up space available (excluding the basement) with the petitioner institute is 3267.45 square metres and as per the JAC report and the applicable guidelines, the total space required is 3251.25 square metres for all the courses being run by the institute including BA LLB. It is submitted that in case 25 additional seats are allowed, 3813.75 square metres space will be required by the institute. Therefore, on the basis of the space available and the sanctioned building plan issued by the

DDA whereby the usage of the basement for academic purposes is not permissible, and accordingly, the NOC for 85 students for BA LLB course had been granted by the answering Respondent.

8. In view of the above submissions, it is submitted that the instant petition is devoid of merits and this Court may be pleased to dismiss the present petition.

9. Heard learned counsels appearing on behalf of parties at length and perused the record.

QUESTION FOR ADJUDICATION

10. From a bare perusal of the record, it is evident that the Respondent No. 2, DHE has given the NOC for intake of only 85 students in the said course based on the recommendation of JAC report which stipulated that the total covered area for FAR available to the petitioner college for conducting their proposed programmes in 3267.45 square metres (excluding the area of Basement), and lacks the requisite space mandatory for enrolling additional 25 students.

11. Thus the only question for consideration before this Court is limited to the extent of adjudicating whether the area of basement can be used for educational purposes and hence, be included in the total FAR.

ANALYSIS

Relevant Provisions

12. Clause 7.23.2 of the UBBL-2016 dated 22.03.2016 reads as under:

“7.23.2 Educational Buildings (School/ Colleges)

a. Basement or cellar room may be designed, constructed, altered, converted or used for the purpose of study or instruction provided it meets fire safety requirements.

b. The minimum size of a cellar room, study room or room used for purposes of instruction shall be 5.5 m x 4.5 m and no part of such room shall be distant more than 7.5 m from an external wall abutting on the requisite open space. Every such room shall have minimum ventilation to the extent of 1/5th of its floor area.

c. A minimum of 1.0 sq. mtrs. of net floor space per student shall be provided. A central hall will not be counted in the accommodation, nor will a class room for cookery, laundry, manual instruction, drawing or science. The number of students in such building shall be calculated on this basis for the purpose of this clause.

d. Every assembly room, Fitness Centre/Multi-Gym shall have a clear height of 3.6 m except under a girder which may project 0.6 m below the required ceiling height. A clear internal height under balcony or a girder shall not be less than 3.0 m. A minimum room height for classroom in all schools and other institutions shall not be less than 3.6 m. The minimum head room under beams shall be 3 m.

e. Exit requirements shall conform to as mentioned in this chapter. No door shall be less than 1.2 m in width and 2.20 m in height. For Assembly room/ Auditorium no door shall be less than 2m in width and 2.2m in height.

f. Requirement of water supply, drainage and sanitary installation shall conform to table 9.1 to 9.6.

g. Playground shall be provided as per MPD norms/ lease conditions/ layout.”

13. Clause 8(5) of Annexure VI of UBBL-2016 by Delhi Development Authority dated 22.03.2016 reads as under:

“8(5) Basements:

a. Basement(s) up to setback line maximum equivalent to parking and services requirement, such as Air Conditioning Plant and equipment, water storage, Boiler, Electric Sub-station HT and LT Panel rooms, Transformer Compartment, Control Room, Pump House, Generator Room and other mechanical services and installation of electrical and firefighting equipment's, and other services required for the maintenance of the building with prior approval of the concerned agencies, could be permitted and not to be counted in FAR. However, the area provided for services should not exceed 30% of the basement area. In case of Hotels Laundry, Cold Room for storing Food articles, Linen store, Garbage room, Housekeeping store and cold storage may be allowed.

b. The basement(s) beyond building line shall be kept flushed with the ground and shall be ventilated with mechanical means of ventilation; and

c. Basement(s) shall be designed to take full load of the fire tender, wherever required and subject to adequate safety measures.

d. In case the basement is used for activity in conformity with the use premises, wherever permitted, the same shall be counted

in FAR subject to clearance from the Fire Authorities and other statutory bodies.

e. Parking area, if misused, is liable to be municipalized / taken over by the Local Body/Authority.

f. The ESS, fire fighting installations and underground water tank shall neither be counted in ground coverage nor in FAR.”

14. Clause 3 of the Ordinance 1 Statute 24 of the Respondent University reads as under:

“3. Essential conditions of affiliation of colleges and institutions.

(i) The Board of Affiliation may, on an application made to the Registrar in the form and in the manner laid down in the ordinances, affiliate a college or an institution.

(ii) No college or institution shall be admitted to the privileges of the university unless-

(a) it is run by the Government, the Central Government, a state government, a competent local authority, a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force.

(b) it has been granted a no-objection certificate by the concerned state government and recognised by the appropriate statutory authority, wherever applicable, for the subjects and courses of study for which affiliation is being sought;

(c) it is managed by a governing body constituted in accordance with the scheme of management as specified separately for government funded and self-financing institutions in the regulations:

(d) it undertakes to adhere to the provisions of the Act, the statutes, the ordinances and the regulations of the University and to comply with the standing orders, directions and instructions of the University;

(e) it actually has suitable and adequate physical facilities in terms of space, accommodation, sanitation, laboratories and workshops, equipment, library and reading room, furniture and other infrastructural facilities as specified by the University from time to time for maintenance requisite standards;

(f) it has teachers and other employees who have the laid down qualifications and fulfil the other eligibility criteria and who are in the number required as per the norms laid down by the University from time to time;

(g) it provides for teaching of subjects and courses of study as approved by the University;

(h) it undertakes not to admit students in excess of the number pe the University;

(i) it has adequate financial resources as laid down in the regulations to ensure its financial stability, continued maintenance and functioning;

(j) appointment of the teaching and non-teaching staff of the college or the institution is made on the recommendations of a staff selection committee or a departmental promotion committee, as may be necessary, to be constituted as specified separately for government funded and self-financing institutions and colleges in the regulations:

(k) the emoluments of the teaching and non-teaching staff of the college or the institution are in accordance with those laid down for the corresponding posts in the University;

(l) it has made arrangements for the residence, wherever needed, discipline and supervision of students and for promoting their health, general development and welfare to the University; and

(m) The Board of Affiliation has considered the report of the panel appointed for inspection of the college or the institution, as the case may be.

(iii) It shall be open to the University to reject a request for affiliation or grant it in whole or in part mentioning the subjects, courses of study and the number of students to be admitted and also impose such other conditions, if any, as it may deem fit.

(iv) An affiliated college or institution shall report all changes in the teaching staff and all other changes that may affect the fulfilment of the conditions of affiliation to the University within a week of the change coming into effect.

(v) An affiliated college or an institution shall execute a bond as laid down in the regulations guaranteeing that it shall follow the provisions of the Act, the statutes, the ordinances, the regulations and the orders, directions and instructions of the University.

(vi) An affiliated college or an institution shall not, without the previous permission of the University, suspend instruction in a subject or a course of study, which it is authorised to teach & actually teaches.”

15. Government of NCT of Delhi, vide its letter dated 12.01.2016 set out the Policy Guidelines for issuance/grant of NOC to new/existing institutions, *inter alia*, for increase in the intake of students for programmes run by an institute. These guidelines were amended vide its letter dated 03.02.2017. Clause 1.1 (iii)(h) of the amended policy reads as:

“The covered areas for FAR as assessed and verified by JAC during their visit to an institute in conforming area and mentioned in their report be considered for granting the course(s)/ intake to the institute. The covered area as certified by the local body/ architect may be taken as final. For implementation of this clause, all new institutes will be allotted seats on the basis of covered area for FAR. For existing institutes, the built-up area as assessed/ certified by JAC for Academic Session 2016-17 shall be considered as final for allocation of seats. Any addition in the area will be considered in terms of covered area for FAR only for allocation of seats. “

16. Clause 2 of Policy Guidelines of Govt. of NCT of Delhi dated 12.1.2016 reads as follows:

“2. Use of Basement

2.1 Extent and purpose of use of basement shall be determined on the basis of sanctioned building plan of the concerned Institute by the competent local body for the approved purposes and as per the usage allowed under MPD-2021. The use of basement will be specific for the purpose as mentioned in the sanctioned building plan and institute are to obtain such usage permission from the competent local body with clear mention of the usage of basement allowed to the institute.

2.2 Any of the existing Institute whose use of basement is other than the approved purpose may be given one year time to relocate the activity which is presently going on. However, till then, no increase in seat, no new course and no second shift shall be allowed in these institutions.”

Status of Legal Education in India

17. The condition of legal education including the status of infrastructure is nothing but worrying. There are law colleges where you may not have sufficient faculty, no classrooms, no library, etc. It is unfortunate that this Court is being constrained to remark that there are law colleges where you have to just go and pay the fees, the rest is taken care off. It is surprising to state that how can a legal profession or how can we as stakeholders of legal education tolerate this kind of situation. It is a great responsibility cast upon the Bar Council of India to shut down such institutions.

18. During the course of hearing a matter relating to the affiliation of a law college with the BCI [*Bar Council of India vs. Bonnie FOI Law College & Ors.*; S.L.P. (C) No. 22337 of 2008], the Hon'ble Supreme Court addressed an issue of enormous contemporary importance, i.e. the inspection, recognition and accreditation of law colleges by the BCI. Vide order dated June 29, 2009, the Supreme Court noted with concern the diminishing standards of professional legal education provided at various Law Colleges across the country, and, in particular, identified the quality and standard of infrastructure in the law colleges. The Hon'ble Supreme Court noted:

"This petition filed by the Bar Council of India raises very serious questions regarding affiliation and recognition of Law Colleges by the Bar Council of India. It is a matter of common knowledge that before granting affiliation proper exercise is not carried out. No serious efforts have been made by the concerned authority to learn about the Infrastructure, Library, faculty before granting affiliation or recognition."

19. It is also evident that proper standards of education cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite caliber and a proper student-teacher ratio. Therefore, before increasing the strength of students in these institutes, it is essential that the existing infrastructure is upgraded.

20. The “Rules on Standards of Legal Education and Recognition of Degrees in Law for the purpose of enrolment as advocates and inspection of Universities for recognizing its degrees in law” (hereinafter referred to as “the 2008 Rules”) were approved and adopted by the BCI at its meeting held on September 14, 2008 vide resolution no. 110 of 2008.

21. Rule 11 of the 2008 Rules, importantly, addresses a key concern with respect to the infrastructural capabilities of law colleges. Rule 11 provides that any institution imparting legal education would have to comply with the minimum standards of infrastructure.

22. Although, Schedule III to the 2008 Rules provide for minimum infrastructural facilities required in a Centre of Legal Education for applying permission to run law courses with affiliation from an Indian University, it is apparent that the same are not being adhered to by the institutes in letter and in spirit.

23. The relevant portion thereof is reproduced hereunder:

"3. Freehold or Leasehold Property: Each Centre of Legal Education providing education in law either in the Department of law of a University or its constituent or affiliated college

must have either on freehold or on long leasehold land adequate to provide academic buildings, library, indoor and outdoor sports facilities, halls of residences for male and female students separately, as the case may be, in the name of the Centre of Legal Education or organization running the Centre of Legal Education. However, lease in the name of the Centre of Legal Education shall be for a period of not less than ten years. What is the adequate space for the said purpose shall be decided by the respective authority of the University under its affiliation regulation and as guided by the UGC.

Provided that sufficient land and adequate floor space area completely and exclusively devoted for a Centre of Legal Education, based on the size of its student population, faculty requirement infrastructure facilities, Library space requirement, indoor and outdoor games facilities and other requirements can be considered sufficient accommodation in compliance with this clause, for the purpose in a multi-faculty Institution on land possessed by the Management of a Society/ Trust/ Non Profit Company running multi-faculty institutions in a metropolitan or in a class I city.

4. Academic Building: There shall be the academic building to provide separate class rooms for general class for each section sufficient to accommodate sixty students as per the requirement of per student floor space as specified by the University Grants commission or such other standard setting body like AICTE and also such other rooms for tutorial work, moot court room exercises, common room for male and female students and adequate library space for keeping books, periodicals, and journals. The library shall also have adequate reading space for at least 25% of the enrolled students according to per capita reading space specified by any standard setting bodies like UGC.

5. General timing for conduction of courses in Academic Building: Classes may be conducted between 8 a.m. to 7 p.m. in an Institution, which is not fully residential. However the Library may remain open till 10 p.m.

5A. Size of a section: The Inspection Committee may approve for admission in each of the section of a class for not more than 60 students and may allow a minimum of two sections in each class but not more than five sections in one class (such as First Year or Second Year or Third Year, etc) as the case may be unless there is any exceptional reason for granting more sections in a Class, such a reason has to be specified by the inspection Committee.

6. Library Building: There shall be adequate space in the library for computer facility with access to internet and national and international library access and data bases.

7. Games Facilities: There shall be facilities for indoor and outdoor facilities for games and sports.

8. Halls of residence: There may be facility required for halls of residence separately for males and females students constructed on the direction and specification by UGC or any such other standard setting body for affiliating an Institution.

9. (a) Laboratories: Institutions running integrated law program shall have adequate laboratory facilities in various courses of studies, if offered in the curriculum for Science, Engineering and technology courses along with law courses. The standard of such laboratory, per capita space, equipments, supplies, and other facilities shall be as specified by the UGC or any such other standard setting and regulatory bodies for the purpose of affiliation of such an Institution.

(b) Computer Education to be made compulsory for all the students."

24. Further, the conditions precedent for a University to affiliate a Centre of Legal Education are provided for under Rule 16(1), and the relevant portion thereof reads as follows:

"(ii) the institution has in its name either in freehold or leasehold, adequate land and buildings, to provide for Centre of

Legal Education building, library, halls of residences separately for male and female and sports complex both indoor and outdoor, so that it can effectively run professional law courses provided that in case of leasehold the lease is not less than ten years,

Provided that sufficient and adequate floor space area specially and completely devoted for a Centre of Legal Education, based on the size of its student population, faculty requirement, adequate space required for infrastructure facilities can be considered sufficient accommodation for the purpose in a multi-faculty building on land possessed by the Management of a Society/ Trust running multi-faculty institutions."

25. The Bar Council of India as the regulator of Legal Education in India has the power and duty to carry out inspection in law colleges across India. In ***Prasoon Shekhar v. CPIO, BCI 2022 SCC OnLine CIC 238***, the Central Information Commission directed the BCI to publish the inspection reports of colleges teaching law on its website. Doing so will help the aspirants who wish to pursue a degree in law to make an informed choice regarding their college, and would go a long way in ensuring that the status of Legal Education in India is upgraded.

26. It has time and again been observed by the Hon'ble Supreme Court that the BCI should monitor law colleges in a stringent manner to ensure that they are maintaining the parameters set by Council. It is high time that all the stakeholders led by the BCI, including Senior Advocates, Academicians and even former Judges of Supreme Court/High Courts may be requested to take upon themselves the task of reforming the status of Legal Education in India.

27. Accordingly, it is directed that the BCI should constitute special expert teams to conduct surprise visits of the colleges that lack minimum infrastructure and adequate facilities. The inspection reports of the colleges teaching law on its website shall be uploaded within one month of such inspection. If any colleges upon such inspection are found to be lacking minimum infrastructural facilities, then the BCI must take immediate steps to close such colleges. This is a much-needed therapy that ought to be introduced to cure the maladies that legal education is suffering from.

Commercialization of Education

28. Commercialization of Education is another bane that the sector in India is suffering from. One such manifestation of profiteering in this noble profession is in the form of enrolling additional students in each coming batch without upgrading the existing infrastructure.

29. In a plethora cases as detailed hereinbelow, the Hon'ble Supreme Court has passed Orders against commercialisation of education.

30. In the case of *Modern Dental College and Research Centre and Ors. vs. State of Madhya Pradesh and Ors.*, (2016) 7 SCC 353, the Hon'ble Supreme Court held as:

“65. In T.M.A. Pai Foundation, P.A. Inamdar and Unni Krishnan, profiteering and commercialization of education has been abhorred. The basic thread of reasoning in the above judgments is that educational activity is essentially charitable in nature and that commercialization or profiteering through it is impermissible. The said activity subserves the looming larger

public interest of ensuring that the nation develops and progresses on the strength of its highly educated citizenry. As such, this Court has been of the view that while balancing the fundamental rights of both minority and non-minority institutions, it is imperative that a high standard of education is available to all meritorious candidates. It has also been felt that the only way to achieve this goal, recognizing private participation in this welfare goal, is to ensure that there is no commercialization or profiteering by educational institutions.

73. In paragraph 129 of the judgment in P.A. Inamdar, this Court observed that the State Regulation should be minimal and only to maintain fairness in admission procedure and to check exploitation by charging exorbitant money or capitation fees. In paragraph 140, it has been held that the charge of capital fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. This Court went on to observe that it cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends.

82. Thus, it is felt that in any welfare economy, even for private industries, there is a need for a regulatory body and such a regulatory framework for the education sector becomes all the more necessary. It would be more so when, unlike other industries, commercialization of education is not permitted as mandated by the Constitution of India, backed by various judgments of this Court to the effect that profiteering in the education is to be avoided.”

31. In the case of **Aravinth R.A. vs. The Secretary to the Government of India Ministry of Health and Family Welfare and Ors.** [Civil Appeal No(s). 3585-3586 of 2022 @ S.L.P. (C) No(s). 5989-5990 of 2022], the Hon’ble Supreme Court held as:

“10. But we do not think that any of the above grounds of challenge are sustainable in law. The Regulations impugned by the Appellant may appear superficially to be rigorous or tough. But these Regulations are a product of, (i) past experience; and (ii) necessity of times. Experts in the field of education believe (and justifiably so) that over ambitious parents, hapless children, exploitative and unscrupulous (and sometimes unlettered) founders of infrastructure-deficient educational institutions, paralyzed regulatory bodies and courts with misplaced sympathy, have all contributed (not necessarily in the same order) to the commercialization of education and the decline of standards in the field of education, in general and medical education, in particular. We may be able to appreciate this, if we have a look at the history of evolution of statutory measures taken to regulate the recognition and registration of foreign medical degrees in India.”

32. In the case of ***Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.***, [1993] 1 SCR 594, the Hon’ble Supreme Court held as:

“152. Commercialization of education has always been looked upon with disfavor in this country. Far back as in 1956, Parliament expressed its intention by enacting the University Grant Commission Act which specified the prevention of commercialization of education as one of the duties of the University Grants Commission. The same intention has been expressed by several enactments made by the Parliament and State Legislatures since then.”

33. Therefore, any attempts at commercialisation of education especially that of legal education while imperilling the qualitative imparting of education must be derided and frowned upon.

Analysis of the Instant Issue

34. Coming to the issue at hand, the present set of petitions have been filed by the petitioners for seeking directions against the Respondent University to allocate 110 seats (25 seats in addition to 85 seats) with respect to BA LLB Five Years' Integrated Course, for various academic sessions as furnished below:

Writ Petition	Academic Session	Prayer	Status
WP C 7329/2018	2018-19	Allocation of 110 Seats (25 Seats in addition to 85 Seats already allotted) in BA LLB Course	18.7.2018 – Interim Relief granted to admit 110 students
WP C 8175/2019	2019-20		1.8.2019 – Interim Relief granted to admit 110 students
WP C 8817/2020	2020-21		11.11.2020 – Interim Relief granted to admit 110 students
WP C 8862/2021	2021-22		24.8.2021 – Interim Relief granted to admit 110 students
WP C 10630/2022	2022-23		N/A

35. Upon the conjoint reading of the clause 8(5)(d) of UBBL-2016, Clause 7.23.2(a) and Clause 2.1 of "Use of Basement" Policy Guidelines of Government of NCT of Delhi DDA notification dated 12.01.2016, it is clear that the area of basement can be included in the FAR only when the same is used for the activity for which the necessary sanctions and clearances have been taken from the concerned authorities. The concerned authorities in the instant matter are - Delhi Fire Service, Delhi Municipal Corporation, Directorate of Higher Education, and Respondent University.

36. It is evident that as per the policy guidelines of the Govt. of NCT of Delhi i.e., "Use of Basement", the extent, and purpose of use of basement shall be determined on the basis of sanctioned building plan of the concerned institute by the competent local body for the approved purposes and as per the usage allowed under MPD 2021. It further states that, the use of basement will be specific for the purpose as mentioned in the sanctioned building plan and institutes are required to obtain such usage permission from the competent local body with mention of the usage of basement allowed to the institute.

37. Additionally, the petitioner institute has failed to show that the institute has necessary clearance from the statutory bodies for the usage as being sought for, which in the present case is the DDA and MCD as per clause 8(5)(d) of annexure VI of UBBL-2016 as stated above.

38. It has been contended by the Petitioner Institute that the use of the premises in question i.e. the basement is for a multi activity hall,

conference room and Director's office. However, as per the present sanctioned plan submitted by the Institute, the basement is shown for the usage of "car parking".

39. The fact that the request of the Revised Building Plan is still pending with the concerned authority does not act to the advantage of the petitioner. Until and unless the sanction is granted for the desired purpose, the petitioner is not allowed to use the same for any other purpose except car parking.

40. Further, the petitioner institute has submitted that the fire safety certificate has been issued by the Fire Safety Service in pursuance to the Order dated 12.02.2020 of this Court. It is however, not established on the basis of record that the said certificate has been issued with regard to the desired usage.

41. Therefore, the petitioner college is eligible to use the basement only for the purpose of car parking until its proposed building plan is sanctioned and fire safety certificate which is a pre-requisite for having the basement included in the total covered area for FAR available with the institute by the JAC. Since, the petitioner institute lacks all the pre-conditions discussed hereinabove, the question of allowing the basement in the FAR does not arise.

42. The DHE is required to consider the JAC report for granting the course(s)/intake to the institute as per clause 1.1(iii)(h) of the Policy Guidelines issued by the Govt. of NCT of Delhi.

43. Respondent University as per Ordinance 1, Statute 24 (3)(ii)(b) is mandated to admit an institute in its university only to the extent to which the institute has been granted a no-objection certificate by the concerned state government i.e. Govt. of NCT of Delhi.

44. Additionally, the total built up space available (excluding the basement) with the petitioner institute is 3267.45 square metres and as per the JAC report dated 05.03.2022 and the applicable guidelines, the total space required is 3251.25 square metres for all the courses being run by the institute including the said course (allowing an intake of 85 students).

45. In case 25 additional seats are allowed, the additional space required shall be, as calculated below:

No. of Additional Students per batch = 25

*Total No. of Additional Students = 125 (25 students * 5 batches)*

Space Factor (per student) = 4.5 square metres

*Total Area required = 125*4.5 square metres = 562.5 square metres*

46. Therefore, on the basis of the said calculation, an additional space of 562.5 square metres shall be required for admitting 25 students in each batch of the said Course.

It is evident that in case 25 additional seats are allowed, a total area of 3813.75 square metres will be required by the institute, which is not being met by the Petitioner Institute at present. Therefore, on the basis of the space available and the sanctioned building plan issued by the DDA

whereby the usage of the basement for academic purposes is not permissible, the Petitioner Institute thus cannot be allowed the prayers made herein.

CONCLUSION

47. Hence, in light of the foregoing discussion and analysis, it is clear that the classes or any educational activity cannot be allowed to function in basement in the instant case. It can only be used for parking purposes. Consequently, as analysed above, the Petitioner Institute lacks the requisite FAR for an additional intake of 25 students in the said Course. DHE has rightly granted the NOC for admission of 85 students in the course of BA LLB to the petitioner institute based on the recommendation of the JAC reports dated 05.03.2022.

48. Therefore, there are no cogent reasons to entertain the instant set of petitions and allow the prayers sought therein. In the aforesaid terms, the instant sets of petitions stand dismissed.

49. However, it is made clear that this Court is conscious of the fact that vide the interim orders passed by this Court in the past, the students in addition to the sanctioned capacity were admitted in the previous academic sessions. Therefore, notwithstanding the question of legality of the additional seats as being claimed by the Petitioner Institute for previous academic sessions, this Court, in the best interest of the students already admitted and other stakeholders, does not intend to interfere with their admission.

50. Thus, any observations made herein shall have no detrimental effect whatsoever on the students already admitted in previous academic sessions. The said relief has been granted in the exceptional circumstances, in the interest of justice and shall not be treated as a precedent.

51. Accordingly, the Respondents are directed to maintain *status quo* regarding the already admitted students in previous academic session in compliance with the past Orders of this Court. No such benefit shall be allowed for the Academic Session 2022-23, and only admission to 85 Seats already allotted by the Respondent University shall be done by the petitioner institute in its BA LLB Course.

52. Pending applications, if any, also stand disposed of.

53. The Registrar General is directed to supply a copy of this judgement to the Bar Council of India.

54. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 16, 2022

Adj/@dityak.