VASAVI COLLEGE OF ENGINEERING
(Private Un-aided Non-minority Autonomous Institution)
(Sponsored by Vasavi Academy of Education)
(Affiliated to Osmania University and approved by AICTE)
9-5-81, Ibrahimbagh, Hyderabad 500 031, India, Ph. 040-23146004,
Website : www.vce.ac.in

Notification

No. VCE/T.F/2018-19/ Dated : 15.09.2018

Sub : Judgment dated 24-08-2018 in W.A. No. 798 of 2017 of the Hon'ble High Court at Hyderabad regarding tuition fee for B.E. course at Vasavi College of Engineering for the block period 2016-17 to 2018-19-Reg.

Ref : 1) Judgment dated 01-06-2017 in W.P. No. 7596 of 2017.
2) Judgment dated 24-08-2018 in W.A.No.798 of 2017 of the Hon'ble Division Bench

It is informed that the Hon'ble Division Bench comprising of Hon'ble Sri Justice Thottathil B. Radhakrishnan, Chief Justice and Justice Sri Ramesh Ranganathan, after hearing the arguments of the Counsels for the State of Telangana, TAFRC and the Implead Petitioners, dismissed the Writ Appeal W.A.No.798 of 2017 on 24-08-2018 and the orders of the Learned Single Judge in W.P.No.7596 of 2017 were affirmed.

As such as per the Judgment dated 01-06-2017 in WP No. 7596 of 2017, the tuition fee payable is Rs.1,60,000/- p.a. for those students who had taken admission in B.E. Course in this institution in the academic years 2016-17, 2017-18 and 2018-19 (other than all those admitted under NRI Category and also only those admitted under lateral entry in the year 2016-17).

A copy of the above judgment dated 24.08.2018 of the Hon'ble Division Bench is displayed on the college website.

Principal

15/9

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*****

WRIT APPEAL NOs.798 and 801 of 2017

WRIT APPEAL NO.798 OF 2017:

Between:

State of Telangana, Rep. by its Prl. Secretary, Education Department (Higher Education), Secretariat, Hyderabad and another.

...... Appellants/(Respondents 1 and 2)

And

M/s. Vasavi Academy of Education, (Society Registered under the AP (Telangana Area) Public Societies Act 1350 F, 9-5-81, Ibrahimbagh, Hyderabad – 500031 (Rep., by it's Secretary V.M. Parthasarathi, S/o V. Balaguruvappa and others.

... Respondents (Respondents 3 and 4) (Respondents Nos.4 and 5 are not necessary parties to this WA)

DATE OF JUDGMENT PRONOUNCED: 24.08.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN AND THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

*** THE HON'BLE THE CHIEF JUSTICE**
<u>SRI THOTTATHIL B. RADHAKRISHNAN</u>
<u>AND</u>
*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ <u>WRIT APPEAL NOs.798 and 801 of 2017</u>

% Dated 24-08-2018

<u>WA. No.798 of 2017</u>

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State of Telangana, Rep. by its Prl. Secretary, Education Department (Higher Education), Secretariat, Hyderabad and another.

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.... Respondent

! Counsel for the Appellants: Additional Advocate General (Telangana)

^ Counsel for respondents: Sri M. Ravindranath Reddy; Sri B. Sree Rama Krishna; Sri Chetluru Srinivas

<GIST:

> HEAD NOTE:

? Citations:

1) (2005) 6 SCC 537
2) 2012 (3) ALT 686 (D.B)
3) (2003) 6 SCC 697
4) AIR 1951 SC 230
5) (1972) 3 SCC 383
6) (1997) 6 SCC 339 : 1997 SCC (L&S) 1486
7) (2014) 8 SCC 804
8) (2016) 2 SCC 653
9) (1997) 7 SCC 622
10) (2011) 3 SCC 573 : (2011) 2 SCC (Civ) 29
11) (1984) 2 SCC 488
12) (2000) 8 SCC 395
13) 1899 (1) QB 571
14) 1957 (1) QB 350
15) 1968 AC 997
16) 1954 (1) WLR 1325
17) (1986) 2 SCC 679
18) (1996) 3 SCC 52 = 1996 (2) ALD (SCSN) 37
19) 2009 (6) ALT 295 (DB)
20) 1984 (2) ALT 207 (DB)
21) (2002) 8 SCC 481
22) (2008) 8 SCC 82
23) 2007(1) KLT 409
24) 2007 (4) KLT 530
25) AIR 1966 SC 81
26) (2011) 10 SCC 592

THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL Nos.798 and 801 of 2017

COMMON JUDGMENT: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

These two appeals are preferred by the State of Telangana, under Clause 15 of the Letters Patent, aggrieved by the order passed by the Learned Single Judge in W.P.Nos.7744 of 2017 and 7596 of 2017 dated 01.06.2017.

W.P. No.7744 of 2017 was filed by respondents 1 to 3 in W.A. No.801 of 2017 seeking a mandamus to declare the action of the Telangana Admissions and Fee Regulatory Committee (hereinafter called the "TAFRC"), in recommending Rs.97,000/- per annum as the tuition fee, for the B.Tech course offered in the 2nd respondent-Institution, for the block period 2016-17 to 2018-19, in its meeting held on 06.01.2017; and the consequential G.O.Ms.No.3 Higher Education dated 04.02.2017 notifying the fees as Rs.97,000/- per annum instead of Rs.1,54,000/- as claimed by respondents 1 to 3, as without jurisdiction, violative of principles of natural justice, arbitrary and illegal. A consequential direction was sought to declare that the 2nd respondent-Institution was entitled to charge and collect Rs.1,54,000/- per annum as fees from its students.

Respondents 1 to 3 in W.A.No.798 of 2017 had filed W.P.No.7596 of 2017 seeking a mandamus to declare the action of the TAFRC, in recommending Rs.97,000/- per annum as the tuition fee for the B.Tech course in the 2nd respondent-Institution

for the block period 2016-17 to 2018-19, in its meeting held on 06.01.2017; and the consequential G.O.Ms.No.3 Higher Education (TE/A2) Department dated 04.02.2017 notifying the fees as Rs.97,000/- per annum instead of Rs.1,60,000/- as claimed by the respondent-writ petitioners, as without jurisdiction, violative of principles of natural justice, arbitrary and illegal. A consequential direction was sought to declare that the respondent-College is entitled to charge and collect Rs.1,60,000/- per annum as fees from its students.

The TAFRC had initially fixed Rs.91,000/- as the tuition fee, for the block period 2016-17 to 2018-19, which was notified by the State Government in G.O.Ms.No.21 Higher Education Department, dated 04.07.2016, as against Rs.1,54,000/- per annum which the respondent-College, in W.A. No.801 of 2017, had sought to be determined as the tuition fees. On the jurisdiction of this Court being invoked by respondents 1 to 3 in W.A.No.801 of 2017, the Learned Single Judge, in his order in W.P.No.22186 of 2016 dated 14.11.2016, observed that, as held in **P.A. Inamdar v. State of Maharashtra**[1], the decision of the TAFRC was a quasi-judicial decision amenable to judicial review; and the TAFRC had exceeded its powers by unduly interfering in the administrative and financial matters of un-aided private professional institutions. The order of the Learned Single Judge in W.P.No.22186 of 2016 was subjected to challenge by the TAFRC in W.A.No.224 of 2017. Though they sought interim suspension of the order of the Learned Single Judge in W.A.M.P.No.478 of 2017 in W.A.No.224 of 2017, a Division Bench of this Court, while admitting W.A.No.224 of 2017,

[1] (2005) 6 SCC 537

dismissed WAMP No.478 of 2017, observing that compliance with the order in the Writ Petition by the TAFRC would be subject to the result of the Writ Appeal.

Likewise, respondents 1 to 3 in W.A.No.978 of 2017 filed W.P.No.22037 of 2016 aggrieved by the recommendation of the TAFRC dated 14.11.2016 fixing the tuition fee, for the block period 2016-17 to 2018-19, as Rs.86,000/- per annum which was notified by the Government of Telangana, in G.O.Ms.No.21 Higher Education (TE/A2) Department dated 04.07.2016, instead of the fee of Rs.1,60,000/- per annum as sought by the respondent-writ petitioners. In his order, in W.P.No.22037 of 2016 dated 14.11.2016, the Learned Single Judge considered the correctness of the reasons furnished by the TAFRC for fixing Rs.86,000/- as the tuition fee, and came to a similar conclusion as in W.P.No.22186 of 2016 dated 14.11.2016. Similar directions were issued by the Learned Single Judge, in his order in W.P.No.22037 of 2016, as was passed in W.P.No.22186 of 2016. Aggrieved by the order passed in W.P.No.22037 of 2016 dated 14.11.2016, the TAFRC filed W.A.No.225 of 2017 and, in WAMP No.479 of 2017, they sought suspension of the order of the Learned Single Judge. While admitting W.A.No.225 of 2017, the Division Bench dismissed WAMP. No.479 of 2017, and held that compliance, with the order in the Writ Petition by the TAFRC, would be subject to the result of W.A.No.225 of 2017.

Thereafter the TAFRC, in its meeting held on 06.01.2017, enhanced the fee structure of the 2nd respondent-institutions, both in W.A.Nos.798 and 801 of 2017, to Rs.97,000/- per annum, and the Government of Telangana issued G.O.Ms.No.3 dated

04.02.2017. The consultant of the TAFRC, thereafter, addressed letter dated 17.01.2017 to the 2nd respondent-institutions furnishing reasons for the recommendations of the TAFRC.

The validity of the recommendations of the TAFRC, fixing the fees of the 2nd respondent-institutions in W.A.Nos.798 and 801 of 2017 as Rs.97,000/-, and the consequential G.O.Ms.No.3 dated 04.02.2017 issued by the Government of Telangana, was subjected to challenge in W.P. Nos.7596 and 7744 of 2017. Since the questions which arise for consideration in both these Appeals are more or less identical, it would suffice if the contentions put forth by the Learned Counsel, and the findings recorded by the Learned Single Judge in Writ Petition No.7744 of 2017 dated 01.06.2017, (which is the subject matter of challenge in Writ Appeal No.801 of 2017), are alone noted instead of burdening this judgment with a repetition of the similar findings recorded in both Writ Petition Nos.7744 and 7596 of 2017.

In his order, in W.P. No.22186 of 2016 and W.P. No.22037 of 2016 dated 14.11.2016, the Learned Single Judge observed that it was not in dispute that the 2nd respondent college had been in existence since atleast twenty years; the AICTE (Grant of Approval for starting new Technical Institutions, Introduction of Courses or Programmes and approval of intake Capacity of Seats for the Courses or Programmes) Regulations, 1994 were in vogue; Regulation 5(2)(a) of the Regulations provided that the application, for starting a Technical Institution, should be in Form I; Form I stated that the requisite area of land must be in the possession of the proposed institution either by a clear title or registered sale deed, as per the Rules of the State authorities, in the name of the

society; even the TAFRC regulations, notified for the block period 2016-17 to 2018-19, stipulated that either rent or depreciation would be allowed on the buildings; in respect of rent, the institution should obtain a rent fixation certificate from the Executive Engineer of the R&B Department, and a registered rental agreement should also be provided; in the face of the TAFRC regulations, and the AICTE hand book Appendix 17, the stand of the TAFRC, that it would not allow the claim of Rs.4.8 crores, towards rent, could not be accepted; this was contrary to law; when the registered rental document was produced before it, and payment of the rent was established by documentary evidence, it was not open to the TAFRC to refuse to look into the same or to give any weight to it; the mere fact that the rented premises was in the name of the wife of the Member-Secretary was of no avail; in India, women have a right to own property, to manage the same, and deal with it in the same manner like men with all attendant benefits; the ownership of the property by a woman could not be ignored, and it could not be presumed that her husband was the actual owner; there was no prohibition in law for the wife of the Member-Secretary to hold property or to lease it out to the institution for running the college; it was not communicated on what principle of law the TAFRC had opined that, if the premises leased by the institution belonged to the wife of the Member-Secretary, the lease could not be accepted as a genuine one; such a view was contrary to law and unacceptable; and there was no valid reason to reject the claim for expenditure of Rs.4.8 crores incurred, by the 2nd respondent college, towards rent.

The Learned Single Judge remanded the matter to the TAFRC for its consideration afresh regarding the following aspects. (i) Legal Expenses of Rs.20,21,000/-; (ii) training and placement expenditure of Rs.14,42,103/- of which only 60% had been allowed by the TAFRC; (iii) advertisement expenditure of Rs.90,43,467/- of which only 60% was allowed by the TAFRC; and other heads of expenditure such as (a) graduation expenses of Rs.5,31,446/- claimed by the college of which only Rs.3.50 lakhs was allowed and the remaining was disallowed; (b) traveling expenses of Rs.66,08,039/- of which only 60% was allowed; (c) repairs to the building of Rs.1,99,35,765/- of which Rs.1,50,00,000/- was allowed, and the balance was disallowed as capital expenditure; and (d) repairs to electrical equipments of Rs.31,07,607/- of which 75% was allowed.

The Learned Single Judge had, thereafter, observed that since the TAFRC was obligated, in terms of the judgment of the Division bench of this Court in **Consortium of Engineering Colleges Managements Association (CECMA) v. Govt. of A.P.**[2], to seek information from the 2nd respondent college, if it entertained any doubt in that regard; and if the petitioners produced the said material in support of the expenditure under this head, the TAFRC had no choice but to allow it. The matter was remanded to the TAFRC to reconsider the claim made by the petitioner towards the aforesaid expenditure, as well as their claim to take into account the aspect of inflation of 10% per annum for 2017-18 and 2018-19, after giving them a personal hearing; and to make recommendations to the State Government regarding the fee

[2] 2012 (3) ALT 686 (D.B)

structure for B.E/B.Tech courses for the 2nd respondent college for the block period 2016-17 to 2018-2019.

Thereafter the Learned Single Judge set aside the decision of the TAFRC in fixing the fee structure for the respondent-colleges, and issued the following directions:

> "a) The petitioners shall furnish supporting material in respect of items mentioned in paras-78-82 of this order and also in regard to any other aspect they feel is necessary to the TAFRC within one week from the date of receipt of copy of this order;
>
> b) The 2nd respondent TAFRC shall reconsider the claims for expenditure made by the petitioners discussed in paras-78-82 of this order and also their claim for taking into account the aspect of inflation at 10% per annum for 2017-18, 2018-19, after giving a personal hearing to the petitioners through their counsel, within four (04) weeks from the date of receipt of this order and make a recommendation to the 1st respondent of the fee structure for B.E/B.Tech courses in the 2nd petitioner college for the block period 2016-17 to 2018-19 with reasons for such recommendation and also communicate the same to the 2nd petitioner;
>
> c) Within two weeks of receipt of the recommendation from the TAFRC, the 1st respondent shall notify the same in accordance with sub-Rule (v) of Rule 4 of the A.P. Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 adopted by the 1st respondent vide G.O.Ms.No.26 Higher Education (TE/A2) Department dated 22-07-2015."

The order of the Learned Single Judge, in W.P.Nos.22186 and 22037 of 2016 dated 14.11.2016, has attained finality as the appeals preferred thereagainst in W.A. Nos.224 and 225 of 2017 were dismissed by us in our order dated 18.07.2018. Consequently the issues covered under the aforesaid order, other than those remanded to the TAFRC for its consideration afresh, do not necessitate examination in the present proceedings.

Learned Special Government Pleader, appearing on behalf of the Additional Advocate-General for the State of Telangana, would fairly state that, since W.A.No.224 of 2017 preferred against the order of the Learned Single Judge in W.P. No.22186 of 2016, and W.A. No.225 of 2017 preferred against the order passed in W.P. No.22037 of 2016, have been dismissed by this Court by its order dated 18.07.2018, his submissions, in challenge to the validity of

the order of the Learned Single Judge in W.P.Nos.7744 and 7594 of 2017 dated 01.06.2017, are confined only to issues other than those decided in the order in W.P.Nos.22186 and 22037 of 2016 dated 14.11.2016.

Before considering the scope of enquiry by the TAFRC, in determining the fee structure of educational institutions offering technical courses in the State of Telangana, it is necessary to note the relevant statutory provisions, albeit in brief. Section 7 of the Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (the "1983 Act" for short) relates to regulation of fees and, under sub-section (1) thereof, it shall be competent for the Government, by notification, to regulate the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students. Section 7(2) stipulates that no educational institution shall collect any fees, in excess of the fee notified under sub-section (1). Section 7(3) requires every educational institution to issue an official receipt for the fee collected by it.

Section 7 of the 1983 Act confers power, coupled with a corresponding obligation, on the State to issue and execute appropriate Regulations to ensure oversight and excision of profiteering or collection of capitation fee by every private unaided educational institution. (**Consortium of Engineering Colleges Managements Association (CECMA)**[2]. Section 7, (in so far as Regulations issued thereunder pertain to private unaided educational institutions -whether minority or non-minority), enables issue of Regulations, (in relation to the fee structure proposed by an educational institution and in so far as

modification or alteration of the proposed fee structure is concerned), in order to ensure that the institution does not indulge in profiteering or collection of capitation fee. Section 7 does not enable the State itself to fix and notify a fee structure as that would, impermissibly, trench upon the operational autonomy of self-financing educational institution/s. (**Consortium of Engineering Colleges Managements Association (CECMA)**[2]).

Section 15 of the 1983 Act relates to the power to make rules and, under sub-section (1) thereof, the Government may, by notification, make rules for carrying out all or any of the purposes of the 1983 Act. In the exercise of the powers conferred by Section 15, read with Sections 3 and 7 of the 1983 Act, the Telangana Admission and Fee Regulatory Committees (for professional courses offered in private Un-Aided Professional Institutions) Rules, 2006 (hereinafter called 'the 2006 Rules) were made and notified in G.O.Ms. No.8 dated 08.01.2007. Rule 1(ii) of the 2006 Rules stipulates that these rules shall apply to all private un-aided professional institutions offering professional courses in the State. Rule 2(b) defines the "Admission and Fee Regulatory Committee (AFRC)" to mean the committee constituted by the Government for regulating admissions, and for fixation of fees to be charged from candidates seeking admission into private un-aided minority and non-minority professional institutions. Rule 2(h) defines "fees" to mean all fees including tuition fee and development charges. Rule 2(2) stipulates that words and expressions used, but not defined in these Rules, shall have the same meaning assigned to them in the 1983 Act.

In compliance with the directions of the Supreme Court, in **Islamic Academy of Education v. State of Karnataka**[3], that the State Government/concerned authority should set up in each State a fee regulating committee, Rule 3 of the 2006 Rules provides for the constitution, composition, disqualification and functions of the Admission and Fee Regulatory Committee, and Rule 3(i) requires the Government, by notification, to constitute an AFRC for regulating the admission and fixation of the fees to be charged from the candidates seeking admissions to all private un-aided professional institutions. Rule 3(ii) stipulates that the AFRC shall consist of a retired Judge of the High Court as the Chairman, and other members as specified in clauses (a) to (g) therein. Rule 3(iii) of the 2006 Rules stipulates that, subject to the pleasure of the Government, the term of the AFRC shall be three years from the date of its constitution; and, in case of any vacancy arising earlier for any reason, the Government shall fill such vacancy for the remainder of the term. Rule 3(iv) stipulates that no act or proceedings of the AFRC shall be deemed to be invalid by reason merely of any vacancy in, or any defect in, the constitution of the Committee. Rule 3(vii) enables the AFRC to frame its own procedure in accordance with the Regulations notified by the Government in this regard. The 2006 Rules were modified by the 2015 Rules, notified in G.O.Ms. No.26 dated 22.07.2015, and, under Rule 3(2) thereof, the AFRC is now to consist of 11 members, with a retired High Court Judge as its Chairman. The present body of the TAFRC has been constituted vide G.O.Rt No.307 dated 28.11.2015.

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[3] (2003) 6 SCC 697

Rule 4 of the 2006 Rules relates to fee fixation, and prescribes a detailed procedure for the AFRC to call for information and to fix the fees. While freedom is given to the AFRC to determine the fee structure, Rule 4(ii) requires the AFRC to decide whether the fees proposed by the institution is justified, and does not amount to profiteering or charging capitation fee. Rule 4(iv) requires the TAFRC to take into consideration the following factors for prescribing the fees i.e (a) the location of the professional institution; (b) the nature of the professional course; (c) the cost of available infrastructure; (d) the expenditure on administration and maintenance; (e) a reasonable surplus required for the growth and development of the professional institution; (f) the revenue foregone on account of waiver of fee, if any, in respect of students belonging to the schedule castes, schedule tribes and whenever applicable to the socially and educationally backward classes and other economically weaker sections of society, to such extent as shall be notified by the Government from the time to time; and (g) any other relevant factor. Under the proviso to Rule 4(iv), no such fees, as may be fixed by the TAFRC, shall amount to profiteering or commercialization of education. It is evident from Rule 4(iv)(e) of the 2006 Rules that a reasonable surplus, for the growth and development of the professional institution, is also required to be taken into consideration, by the TAFRC, in prescribing the fees structure. Rule 4(vi) stipulates that the fees or scale of fees determined by the AFRC shall be valid for a period of three years.

The TAFRC is required to issue notification(s) calling for fee proposals well-in-advance of the commencement of the academic year (whether for fixing a block fee structure, applicable for three

academic years or revising the fee structure already notified for any particular academic year), by the first week of December preceding the relevant academic year, for which the fee structure notification or revision is to be issued by the State Government. (**Consortium of Engineering Colleges Managements Association (CECMA)**[2]). Thereafter, the TAFRC is required to recommend, and the State Government is required to notify, an institution-specific fee structure. (**Consortium of Engineering Colleges Managements Association (CECMA)**[2]).

While the fees fixed earlier, for the respondent-institutions, was Rs.91,000/- and Rs.86,000/-, subsequently the TAFRC, in its meeting held on 06.01.2017, revised the fees and fixed it at Rs.97,000/- for both the Institutions. On the decision of the TAFRC being subjected to challenge, the Learned Single Judge, in his order in W.P.No.7744 and 7596 of 2017 dated 01.06.2017, took upon himself the task of determining the fee-structure for the respondent-institutions, and fixed the annual fees of students seeking admission into the respondent-colleges, during the block period 2016-17 to 2018-19, as Rs.1,60,000/- and Rs.1,37,000/- respectively. The order of the Learned Single Judge has been subjected to challenge in these appeals by the State of Telangana on various grounds which shall be examined hereinafter.

Elaborate submissions were put forth by the Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, Sri A. Abhisekh Reddy, Learned Standing Counsel for the Telangana State Council for Higher Education ("TSCHE" for short), Sri M.Ravindranath Reddy, Learned Counsel appearing on behalf of the respondent-

Colleges, and Sri Chetluru Srinivas, Learned Counsel appearing on behalf of the Parents Association. It is convenient to examine the rival contentions, urged by Learned Counsel on either side, under different heads.

I. IS THE DECISION TO ENHANCE THE FEE STRUCTURE TAKEN ONLY BY SOME MEMBERS, AND NOT THE ENTIRE BODY OF THE TAFRC, FATAL?

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that the Learned Single Judge was not justified in passing adverse comments, regarding the manner of functioning of the TAFRC; the decision taken on 06.01.2017 was by a majority of members of the TAFRC; as no quorum was prescribed, most hearings were conducted by the Chairman, and mostly in the presence of the Accounts member; sometimes the other members were present; the final decision, with regards fee fixation, was taken on 06.01.2017 by a majority of the members of the TAFRC; and the conclusion of the Learned Single Judge, that all the members of the TAFRC should together hear the representative of each of the colleges, and fix the fee structure in a meeting in which all the members participate, would paralyze the very functioning of the TAFRC.

On the other hand Sri M. Ravindranath Reddy, Learned Counsel for the respondent-institutions, would submit that the TAFRC is a multi-member body presently consisting of nine members; in the absence of any quorum being prescribed in the Rules, it was obligatory for the entire body to sit, and determine the fee structure; and more often than not it was the Chairman of

the TAFRC who alone heard the representative of the colleges regarding fee fixation.

Placing reliance on the judgment of the Supreme Court, in **United Commercial Bank Ltd. v. Their Workmen**[4], the Learned Single Judge has, in the order under appeal, held that unless all the ten members of the TAFRC hear and decide the claims of the institution, its decision is without jurisdiction, null and void; absence of prescription of a quorum in the Rules, make it clear that the entire 10 member committee should decide, and not just a few of them; non-participation of four members of the TAFRC, in the final meeting held on 06.01.2017, and admitted non-participation of several members in the other meetings, when the institution presented its case, was a fatal infirmity rendering the recommendations of the TAFRC, for tuition fee fixation, as without jurisdiction, null and void.

In **United Commercial Bank Ltd.**[4], on which reliance was placed by the Learned Single Judge, the question which fell for consideration before the Supreme Court was whether the Industrial Tribunal, constituted under Section 7(1) of the Industrial Disputes Act, 1947, could adjudicate an industrial dispute referred to it, in the absence of one of its members. The Supreme Court held that proceeding with the adjudication, in the absence of one member, undermined the basic principle of the joint work and responsibility of the Tribunal, and of all its members, to make the award.

While the Fee Regulatory Committee, no doubt, discharges quasi-judicial functions in determining the fee structure, its

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[4] AIR 1951 SC 230

enquiry is limited only to ascertain whether the educational institution has indulged in profiteering or has charged capitation fees. The Fee Regulatory Authority cannot, therefore, be equated to an Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, which, under Section 7(1) read with Section 15(1) of the said Act, is required to adjudicate industrial disputes in accordance with the provisions of the Act, and submit its award to the appropriate Government. Where there is no rule or regulation, or any other provision, fixing the quorum, the presence of a majority of the members would constitute a valid meeting, and the matters considered in such a meeting cannot be held to be invalid. (**Ishwar Chandra v. Satyanarain Sinha**[5]; **Halsbury's Laws of England, Third Edition (Vol. IX, p. 48, para 95)**; **High Court of Judicature of Bombay v. Shirishkumar Rangrao Patil**[6]).

As noted hereinabove, in the meeting of the TAFRC held on 06.1.2017, out of the total nine members, six were present. As this six constituted a majority, their decision cannot be faulted on the ground that all the members of the TAFRC did not participate. Disputes, as in the present case, can be easily avoided if the TAFRC exercises its powers, under Rule 3(7) of the 2006 Rules, to frame its own procedure in accordance with the regulations notified by the Government in this regard. Prescription of a rational and transparent procedure for conducting hearings, and for the TAFRC to take a decision thereafter, would not only enable it to discharge its functions effectively, but would also result in a drastic reduction in the number of complaints regarding fee fixation. While the State Government, or the TAFRC, would have been well advised to

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[5] (1972) 3 SCC 383

[6] (1997) 6 SCC 339 : 1997 SCC (L&S) 1486

prescribe a "quorum" in the Regulations, we are satisfied that the decision taken by the TAFRC, in its meeting held on 06.01.2017, cannot be set at naught on this ground.

II. INDIRECT ADVICE OF CONSULTANT TO STUDENTS NOT TO COMPLY WITH THE EARLIER ORDER OF THE LEARNED SINGLE JUDGE:

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that the very purpose for which the TAFRC has been constituted is to ensure that the respondent-institution does not indulge in profiteering, and does not collect capitation fee from its students under the guise of seeking an enhanced fee structure; and, in the interest of students, it is open to the State Government to prefer an appeal against the order of the Learned Single Judge fixing the fees on the higher side.

In the order under appeal, the Learned Single Judge observed that the conduct of the Consultant and the TAFRC, in advising students not to comply with the order of the Court, on the ground that they were going to file an appeal against the said order, was not bonafide, and indicated that the TAFRC was acting as an adversary to the respondent-writ petitioners, instead of acting as an impartial quasi-judicial body.

As this Court had, in its order in W.A.Nos.224 and 225 of 2017 dated 18.07.2018, held that the TAFRC could not question the order of the Learned Single Judge, and it is only the State Government which was entitled to do so, it is wholly unnecessary for us to examine whether or not the TAFRC was justified in informing the students that the TAFRC intended to prefer an appeal against the order of the Learned Single Judge, and they

should await the decision of the Division Bench before payment of fees to the respondent-Colleges. Suffice it to observe that, while orders of the High Court necessitate compliance, any person aggrieved, by any such order, can always invoke the jurisdiction of the Division Bench within the limited parameters of Clause 15 of the Letters Patent.

III. IS THE CHANGE IN THE METHODOLOGY, ADOPTED BY TAFRC AFTER THE EARLIER ORDER OF REMAND, VALID?

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that, since the Learned Single Judge had, while remanding the matter, observed that the question of extending 10% inflation for the second and third year of the block period should be examined by the TAFRC, this exercise was undertaken by them; the issue of "furtherance" (reasonable surplus) is integrally connected with inflation; and having permitted them to undertake the examination of fee fixation afresh, the Learned Single Judge was not justified in faulting them for doing so, or to stipulate the mode and manner in which they should undertake such an exercise of fixation of the fee-structure of the respondent-colleges.

In the order under appeal, the Learned Single Judge observed that, according to the respondent-institutions, the TAFRC had calculated inflation at 10% and furtherance at 15% only on a part of the expenditure to be incurred by the respondent-institution, and not on the total expenditure; the TAFRC had reduced 56% of the total expenditure to ensure that the average expenditure per student was kept at a very low figure of Rs.70,993/-; this contention of the respondent-institution was

justified, since the expenditure of Rs.144.86 crores was deliberately reduced to Rs.63.89 crores by setting it off as against the income of Rs.80.97 crores to arrive at the average expenditure per student and, consequently, the tuition fee; if the TAFRC intended to change the methodology, it was incumbent on it to put the respondent-institution on notice of its intention, and furnish reasons why it wanted to change the methodology; the methodology was changed by the TAFRC only to reduce the tuition fee payable to the bare minimum, as the old methodology would otherwise benefit the respondent-institution; and the TAFRC had violated the order passed in W.P.No.22186 of 2016.

Scrutiny by the TAFRC, of the books of accounts, the income and expenditure, and the balance-sheet of an educational institution, is confined only to ascertain whether or not the respondent-Institution is indulging in profiteering and is charging capitation fee. The power conferred on the TAFRC does not extend to keeping the fee structure of any educational institution at an artificially low level. Ordinarily, the methodology adopted by the college, in arriving at its fee structure, should be accepted save in cases where it is evident that the methodology was adopted only to indulge in profiteering or is a disguised attempt at charging capitation fee. Even if the TAFRC is of the view that the methodology adopted by the institution is illegal, and a different methodology should be adopted, it should assign reasons therefor, as also the reasons for prescribing a different methodology, and how it would prevent any attempt at profiteering or charging a capitation fee.

In the present case, the TAFRC had, in the earlier years, calculated inflation at 10% and furtherance (reasonable surplus) at 15% on the total expenditure incurred by the College. A similar procedure is said to have been adopted for other Colleges also. While the TAFRC would have the power, for just and valid reasons, to change the methodology, the reasons which weighed with the TAFRC in doing so must be evident from the order passed by it. In the case on hand, the TAFRC has not assigned any reasons for the change in the methodology. While we may not be understood to have expressed our agreement with the conclusion of the Learned Single Judge that the change in the methodology lacked bonafides, we are in agreement with his opinion that the change in the methodology, for extending the benefit of 10% inflation and furtherance at 15%, must be based on valid reasons, and cannot be resorted to as a matter of course.

IV. NON-FURNISHING OF THE CALCULATION SHEET ALONG WITH THE PROCEEDINGS OF THE CONSULTANT DATED 06.01.2017: ITS EFFECT:

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that failure to furnish the calculation sheet, along with the proceedings of the Consultant dated 17.01.2017, is not fatal as it only reflects the basis for the reasoned order dated 17.01.2017 which was communicated to the respondent-institutions.

On the other hand Sri M.Ravindranath Reddy, Learned Counsel for the respondent-writ petitioners, would submit that there is complete lack of transparency in the manner in which the TAFRC functions; and the TAFRC is not entitled to act like an

income- tax officer, and scrutinise the accounts of the college with a microscope, or to nit-pick on the permissible expenditure.

In the order under appeal, the Learned Single Judge observed that, in the earlier round, there was a specific direction to the TAFRC to pass a reasoned order; it was obligatory on the part of the TAFRC to furnish the basis, i.e the calculation sheet for arriving at the figure of Rs.70,993/-; no reasons have been disclosed by the TAFRC for not supplying the calculation sheet to the respondent-writ petitioners, along with the proceeding annexed to the letter dated 17.01.2017 of the Consultant of the TAFRC; and as this was in violation of this Court's earlier order, the recommendation of the TAFRC was vitiated thereby.

As the 2006 Regulations do not provide for an appeal, against the decision of the TAFRC, the aggrieved institution has no other remedy except to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is only if the material, based on which the decision was taken by the TAFRC, is made available to the concerned educational institution would they, in turn, be able to place it before this Court for the decision of the TAFRC to be judicially reviewed. Furnishing of reasons by the TAFRC, in its proceedings dated 17.01.2017, would not suffice as it is only if the basis on which such a decision was taken is made known would this Court be able to consider whether the TAFRC had exercised its power, in determining the fee structure of the respondent-institution, within the permissible limits of ascertaining whether the College had indulged in profiteering or had charged capitation fee. While we are in agreement with the opinion of the Learned Single Judge that the

TAFRC ought to have furnished the working sheet, along with its reasoned order, we see no reason to delve any further on this issue as a copy of the working-sheet was made available later, it was placed before the Learned Single Judge, and was taken into consideration by him in passing the order under appeal.

V. WAS THE LEARNED SINGLE JUDGE JUSTIFIED IN DETERMINING THE FEES STRUCTURE HIMSELF, INSTEAD OF AGAIN REMANDING THE MATTER TO THE TAFRC FOR ITS RE-CONSIDERATION?

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that Courts lack expertise in matters such as fixation of the fee structure, as these matters fall within the domain of experts; it was wholly inappropriate for this Court, therefore, to take upon itself the task of determining the fee structure of the respondent-institution; and even if this Court is held to be justified in arriving at the satisfaction that the TAFRC has erred in fixing the fee structure, it should have only remanded the matter to the TAFRC for its consideration afresh in accordance with law.

On the other hand Sri M.Ravindranath Reddy, Learned Counsel for the respondent-institutions, would submit that, while this Court would not, ordinarily, sit in judgment over the decision of the TAFRC regarding fixation of the fee structure, the Learned Single Judge was justified in undertaking such an exercise in the present case; and reasons have been assigned, in the order under appeal, by the Learned Single Judge as to why he was constrained to do so.

Courts would, ordinarily, defer to the wisdom of experts in the field, and refrain from undertaking the task of determining the fee-structure for admission and prosecution of a technical course of study in colleges; there is a line, or the proverbial "laxman rekha", which is, normally, considered sacrosanct while examining an administrative decision of the State, or an authority, taken after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. (**Jal Mahal Resorts (P) Ltd. v. K.P. Sharma**[7]). Deference to the views of administrative experts, and the inherent limitations of a judge, and of all appellate courts, in such matters are factors which restrict the scope of judicial review. (**Jal Mahal Resorts (P) Ltd.**[7]). It is not the function of a judge to substitute his judgment for that of the administrator. The extent to which the discretion of the expert may be scrutinized, by the non-expert judge, is extremely limited. **(Jal Mahal Resorts (P) Ltd.**[7]).

In the present case, however, the earlier exercise of fixation of fees by the TAFRC was found by the Learned Single Judge to be arbitrary and illegal, and he has therefore chosen not to remand the matter again to the TAFRC for its consideration afresh; and, instead, fix the fee-structure, of the respondent-colleges, himself. In examining the question whether the Learned Single Judge could have undertaken such an exercise, it must be borne in mind that mandamus, a discretionary remedy under Article 226 of the Constitution, is issued, inter alia, to compel the performance of public duties which may be administrative, ministerial or statutory in nature. In the performance of this duty, if the authority, in

[7] (2014) 8 SCC 804

whom the discretion is vested under the Statute, acts arbitrarily, the Court would intervene, quash the order and issue a mandamus to that authority to exercise its discretion again, (**D.N. Jeevaraj v. State of Karnataka**[8]; **Mansukhlal Vithaldas Chauhan v. State of Gujarat**[9]), for the statutory authority must be permitted to exercise its discretion, and the Courts should, ordinarily, not take over the discretion conferred on the statutory authority and render a decision itself. (**D.N. Jeevaraj**[8]; **Mansukhlal Vithaldas Chauhan**[9]).

Just as judgments and orders of the Supreme Court should be faithfully obeyed and carried out throughout the territory of India, so should judgments and orders of the High Court be followed by all inferior courts and tribunals subject to the supervisory jurisdiction of the High Court, within the State, under Articles 226 and 227 of the Constitution. (**RBF Rig Corpn. v. Commr. of Customs (Imports)**[10]; **Bishnu Ram Borah v. Parag Saikia**[11]).

In the order under appeal the Learned Single Judge has opined that the TAFRC, a quasi-judicial tribunal, has failed to adhere to the directions issued by him earlier in W.P.Nos.22186 and 22037 of 2016 dated 14.11.2016. In examining the question as to what should the High Court do, when its directions are not adhered to, it must be borne in mind that the proper form of mandamus is, normally, to hear and determine according to law. By holding inadmissible the considerations on which the original decision was based, the Court may indirectly indicate the

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[8] (2016) 2 SCC 653
[9] (1997) 7 SCC 622
[10] (2011) 3 SCC 573 : (2011) 2 SCC (Civ) 29
[11] (1984) 2 SCC 488

particular manner in which the discretion should be exercised. (**De Smith : Administrative Law (5th Edn., para 6.089); Badrinath v. Govt. of T. N.,**[12]; **R. v. Manchester Justices**[13]; **R. v. Flintshire County Council Licensing (Stage Plays) Committee**[14]; **Padfield v. Minister of Agriculture Fisheries and Food**[15] and **R. v. City of London Licensing Justices ex p Stewart**[16]).

However, in a fit and proper case, the High Court can, in the exercise of its jurisdiction under Article 226 of the Constitution of India, issue a writ of mandamus or a writ in the nature of mandamus to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority; and in rare situations, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion. (**CAG v. K.S. Jagannathan**[17]; **Badrinath**[12]).

The reasons assigned by the Learned Single Judge not to remand the matter to the statutory authority, for it to exercise its discretion afresh, can always be tested and, if the reasons are found to be inadequate, the decision of the Court to by-pass the statutory authority can always be set aside. If, however, the reasons are cogent, the action of the Court in taking a decision, without leaving it to the statutory authority to do so, (**D.N. Jeevaraj**[8]), would not necessitate interference.

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12 (2000) 8 SCC 395
13 1899 (1) QB 571
14 1957 (1) QB 350
15 1968 AC 997
16 1954 (1) WLR 1325
17 (1986) 2 SCC 679

It is only if the reasons assigned by the Learned Single Judge, in not remanding the matter to the TAFRC and in taking upon himself the task of determining the fee-structure of the respondent-colleges, suffers from a patent illegality would we be justified in exercising our jurisdiction, under clause 15 of the Letters Patent, to interfere. It is the internal working of the High Court which splits it into different 'benches', and yet the Court remains one. A letters patent appeal, as permitted under the letters patent, is normally an intra-Court appeal whereunder the Letters Patent bench, sitting as a Court of correction, corrects its own orders in the exercise of the same jurisdiction as was vested in the single bench. (**Baddula Lakshmaiah v. Sri Anjaneya Swami Temple**[18]; **SITCO (Swarnandhara JMII) Integrated Township Development Co. Pvt. Ltd. v. A.P. Housing Board**[19]). The judgment under appeal cannot be faulted on the ground that an alternative view, which might commend itself to the appellate Court, has not accepted by the Learned Single Judge. At least, such review is not open to an appellate Court hearing appeals against orders made under Article 226 of the Constitution which is a discretionary remedy. Interference can only be on an error of principle, and not on re-evaluation of evidence; nor on the basis of preferential choice of alternatives. (**Royal Laboratories v. Labour Court, Hyd.**[20]); **SITCO (Swarnandhara JMII) Integrated Township Development Co. Pvt. Ltd.**[19]).

In rare and exceptional circumstances, and for just and valid reasons, the Court may exercise the decision making power

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[18] **(1996) 3 SCC 52** = 1996 (2) ALD (SCSN) 37
[19] 2009 (6) ALT 295 (DB)
[20] 1984 (2) ALT 207 (DB)

conferred on a statutory authority, instead of remanding the matter for its re-consideration. In the order under appeal, the Learned Single Judge observed that the earlier challenges made, in relation to the block period 2006-07 to 2008-09 and 2009-10, were dismissed as infructuous as the matters had dragged on; the respondent-institution never got relief for those years; for the block period 2010-11 to 2012-13, while the respondent-institution had sought fixation of the tuition fee at Rs.1,08,700/-, the TAFRC had only notified Rs.73,600/-; this was questioned in W.P.No.16457 of 2010 and batch which was allowed on 29.10.2011; in the SLPs preferred there against, the Supreme Court had directed reconsideration only for one year i.e 2012-13; thereafter, only Rs.3,700/- was enhanced by the TAFRC which was challenged in W.P.No.27185 of 2012 and batch; all those Writ Petitions were pending; they were all practically infructuous, since the students of that batch had passed out, and no recovery was possible at this stage; for the three year block period from 2013-14 to 2015-16, while the respondent-institution had sought Rs.1,51,000/- as the tuition fee, the TAFRC had recommended only Rs.79,900/-; by virtue of the order passed in W.P.No.21246 of 2013 dated 26.04.2014, some disallowed claims were reconsidered and a meagre enhancement of Rs.11,100/- was given by the TAFRC by its proceedings dated 12.09.2014; a notification was not given, and this was being collected pursuant to the interim orders passed in W.P. No.41229 of 2014 dated 18.06.2015; and, though W.P.No.21246 of 2013 was allowed on 10.03.2016, it has not been implemented as yet by the TAFRC.

While holding that the Court would, ordinarily, not itself embark on the exercise to fix the tuition fee, the Learned Single Judge opined that it was compelled to do so for the following reasons:

> (i) One year of the block period was already over;
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> (ii) the TAFRC's earlier determination for this block period, vide order dt.22-10-2016 and G.O.Ms.No.21 dated 04.07.2016, were set aside by order dated 14.11.2016 in W.P.No.22186 of 2016; when the matter was directed to be reconsidered de novo, in the light of the directions contained in the said order, the TAFRC had not done so; and it has exhibited an adversarial, prejudiced, arbitrary and non-transparent attitude which cannot be adopted by a quasi judicial body;
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> (iii) the fate of the six earlier exercises, undertaken by the petitioners for tuition fee fixation for various block periods; and
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> (iv) a further remand was most likely to lead to another round of litigation before the Courts which could result in tuition fee recovery, for this period, to be lost.

In the present case, the Learned Single Judge has assigned reasons for not remanding the matter to the TAFRC for its re-consideration, and in undertaking the task of determining the fee-structure, of the respondent-Colleges, himself. As the aforesaid reasons, which weighed with the Learned Single Judge, are in our opinion just and valid, we see no reason to set aside the order under appeal on this ground.

VI. DISALLOWANCE OF SALARIES OF RS.1,39,20,000/- :

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that, since the AICTE had stipulated 356 teachers for the respondent-institution, it was wholly unnecessary for them to engage 58 additional teachers, and place the burden, of payment of their salaries on students who seek admission in the respondent-Colleges.

Sri M. Ravindranath Reddy, Learned Counsel for the respondent-writ petitioners, would submit that the enquiry by the TAFRC should have been confined only to ascertain whether the respondent-colleges were indulging in profiteering or charging capitation fees; the TAFRC had, with a view to fix the fee structure at an artificially low level, disallowed the expenditure which the respondent-colleges had actually incurred; and it is not as if the TAFRC, while disallowing the expenditure incurred towards the salaries paid by the respondent-colleges to its teachers, had held that the said expenditure was not actually incurred by them.

In the order under appeal, the Learned Single Judge observed that the norms prescribed by the AICTE did not prohibit employment of teaching staff more than the prescribed 358 teachers; in any event, it was a matter between the AICTE and the respondent-institution; the TAFRC could not go into the issue of engagement of a particular number of teaching staff by the college, as the rules do not confer power on it to do so; and the TAFRC had wrongly disallowed the claim for salaries of the 58 teaching staff, to the tune of Rs.1,39,20,000/-, without assigning valid reasons.

The reason which weighed with the TAFRC in disallowing the expenditure of Rs.1,39,20,200/-, paid as salaries to 58 teaching staff, is that, as per AICTE norms, the respondent-institution was entitled to appoint only 356 teaching staff and, instead, they had appointed 414 teachers. In examining whether, while determining the fee structure, the TAFRC can adjudicate on the respondent-institutions' entitlement to appoint teachers, in excess of the norms stipulated by the AICTE, it is necessary to take note of the object of constituting a fee regulatory authority, and the scope of

enquiry by it, in determining the fees to be charged by private unaided educational institutions.

Imparting of education is essentially charitable in nature. (**T.M.A. Pai Foundation v. State of Karnataka**[21]; **Islamic Academy of Education**[3]). Establishing and administering an educational institution is an occupation protected by Articles 19(1)(*g*) and 26(*a*), if there is no element of profit generation. It does not, however, cease to be a service to society, even though an occupation cannot be equated to a trade or a business. (**P.A. Inamdar**[1]). Since the object of setting up an educational institution is by definition "charitable", an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. The object of establishing an educational institution is not to make profits. (**T.M.A. Pai Foundation**[21]).

Educational institutions have an obligation and a duty to maintain the requisite standards of professional education by admitting students based on their merit, and making education equally accessible to eligible students based on a reasonable fee structure. (**P.A. Inamdar**[1]). Excellence in professional education can be ensured only if meritorious students are not unfairly treated on preference being given to less meritorious but more influential and wealthy applicants. (**T.M.A. Pai Foundation**[21]). Unless fee fixation is regulated and controlled at the initial stage, the unfair practice of granting admission, in the available seats, guided by the paying capacity of the candidates would be impossible to curb. (**P.A. Inamdar**[1]).

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[21] (2002) 8 SCC 481

Fixation of a reasonable fee structure is also a component of ***"the right to establish and administer an institution"*** within the meaning of Article 30(1) of the Constitution. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering, and no capitation fee can be charged directly or indirectly or in any form. (**P.A. Inamdar**[1]; **T.M.A. Pai Foundation**[21]). Better emoluments and working conditions attract better teachers which, in turn, would ensure that meritorious students seek admission in that institution. Providing proper amenities to students, including competent teaching faculty and adequate infrastructural facilites, costs money. An institution, which chooses not to seek aid from the Government, should be permitted to determine the fee structure it can charge from students. In the competitive world of today, where professional education is in great demand, economic forces play an important role. Determining the fees to be charged from students should, therefore, be left to the discretion of private educational institutions which do not seek, or are not dependent upon, financial assistance from the Government. (**T.M.A. Pai Foundation**[21]).

An educational institution chalks out its own programme year wise on the basis of the projected receipts and expenditure, and for the Court to interfere in this purely administrative matter would impinge excessively on this right. That does not mean that the educational institution has a carte blanche to fix any fee it likes, but it must be given substantial autonomy. (**Cochin University of Science & Technology v. Thomas P. John**[22]).

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[22] (2008) 8 SCC 82

Fixation of fees is an integral part of the administration of an educational institution, and it would impose an unduly heavy onus on it to be called upon to justify the levy of fees with mathematical precision. (**Cochin University of Science & Technology**[22]). An educational institution must be left to its own devices in the matter of fixation of fees (**Cochin University of Science & Technology**[22]), though the fee structure can be regulated. (**P.A. Inamdar**[1]). However, profiteering or charging of capitation fee by unaided educational institutions, offering professional courses, is impermissible (**P.A. Inamdar**[1]), and appropriate machinery can be devised by the State or the University to ensure that the educational institutions do not resort to such illegal acts. (**T.M.A. Pai Foundation**[1]). Legal provisions made by the State Legislatures, or the scheme evolved by the Court, for fee fixation are reasonable restrictions in the interest of the general public under Article 19(6) of the Constitution. (**P.A. Inamdar**[1]).

While a rational fee structure should be adopted by private unaided educational institutions, a rigid fee structure should also not be fixed by the Government. While ensuring that they do not resort to profiteering and charging of capitation fees, each institution must be given the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution, and to provide the facilities necessary for the benefit of students. Each institution is entitled to have its own fee structure, and for it to be fixed keeping in mind the infrastructure and facilities available, the investment made, the salaries paid to teachers and staff, future plans for expansion and/or the

betterment of the institution etc. (**Islamic Academy of Education**[3]; **T.M.A. Pai Foundation**[21]).

Some amount, towards surplus funds, should be available to an institution (**Cochin University of Science & Technology**[22]), for its use only for the betterment or growth of that educational institution. Profits/surplus cannot be diverted for any other use or purpose, and cannot be used for personal gain or for any other business or enterprise. A reasonable surplus should, ordinarily, vary from 6% to 15% to be utilized for expansion of the system and development of education. (**T.M.A. Pai Foundation**[21]; **Islamic Academy of Education**[3]).

Fixation of the fee structure is the right of an unaided educational institution. The fees to be charged must be decided by the institutions themselves, and such a right of the institution cannot be arrogated to itself by the State. While the institutions cannot, in fixing the fee structure, indulge in profiteering or charge capitation fee, they can take into account the element of surplus income to cater to its future needs. The Committee can only regulate fixation of the fee structure to ensure that there is no profiteering, and capitation fee is not charged, and nothing beyond. (**Lisie Medical & Educational Institutions v. State of Kerala**[23]; **Malankara Orthodox S.C.M. College v. Fee Regulatory Committee**[24]).

The fee structure, in relation to each and every college, must be determined separately by the Committee, keeping in view relevant factors including plans for future development of the

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[23] 2007(1) KLT 409
[24] 2007 (4) KLT 530

institution and its expansion. An institution may want to invest in an expensive device or a powerful computer. These aspects should also be taken care of. (**Islamic Academy of Education**[3]). For the said purpose, the books of accounts maintained by the institution may have to be looked into. (**Islamic Academy of Education**[3]).

Each educational institution must place before this Committee, well in advance of the academic year, its proposed fee structure and produce all relevant documents, and books of accounts, for their scrutiny. The Committee shall then decide whether the fees proposed by that institution is justified, and there is no profiteering or charging of capitation fees. The Committee is at liberty to approve the fee structure, or to propose some other fee, which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which the institute would be at liberty to apply for revision. (**Islamic Academy of Education**[3]).

If the fee proposals of an institution, duly substantiated by relevant data, audited accounts and balance-sheet, do not incorporate elements of profiteering or capitation fee (on an analysis of the proposals within the contours of the guidelines in Rule-4), the TAFRC must accept the same, and cannot transgress the law declared in **TMA Pai Foundation**[21], and **P.A. Inamdar**[1] that every institution enjoys the operational autonomy to devise its own fee structure. (**Consortium of Engineering Colleges Managements Association (CECMA)**[2]). If the broad principles, with regard to fixation of fees, are adopted, an educational institution cannot be called upon to explain its receipt and

expenditure as before a Chartered Accountant. (**Cochin University of Science & Technology**[22]).

As long as they remain functional, the Fee Regulatory Committee must be sensitive and should act rationally and reasonably with due regard to reality. They should refrain from generalising the fee structure and, where needed, should examine the accounts, schemes, plans and budgets of an individual institution for the purpose of ascertaining an ideal and reasonable fee structure for that institution. (**P.A. Inamdar**[1]). If the Committee is found to have exceeded its powers, by unduly interfering in the financial matters of unaided private professional institutions, the decision of the Committee, which is quasi-judicial in nature, would be subject to judicial review. (**P.A. Inamdar**[1]).

As it is only in the specific area of profiteering and capitation fee, that the Committee has the power to interfere (**Malankara Orthodox S.C.M. College**[24]), it should, if there is any element of profiteering or charging of capitation fee in the fee fixed by the concerned educational institution, point it out in writing, so that the institution can either explain the same or rectify the anomaly, if any. Such a procedure, if followed, would narrow the area of disagreement, and disclose application of mind by the Committee as well as the institution. Thereby a reasonable fee structure can be arrived at, taking into consideration overall public interest. (**Malankara Orthodox S.C.M. College**[24]).

Once fees are fixed by the Committee, the institute cannot charge, either directly or indirectly, any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head, e.g. donations, it would amount to charging

of capitation fee. The Government/appropriate authorities should consider framing appropriate regulations whereunder, if it is found that an institution is charging capitation fees or is indulging in profiteering, that institution can be appropriately penalized, and also be made to face the prospect of losing its recognition/affiliation. (**Islamic Academy of Education**[3]).

Bearing these aspects in mind, let us now examine whether interference by the Learned Single Judge, with the disallowance of Rs.1,39,20,000/-, incurred towards salaries paid to 58 additional teaching staff, was justified. The norms fixed by the AICTE required the respondent-institution to have the prescribed number of teachers, for it to be entitled to offer technical courses. That does not mean that the respondent-institution cannot engage more teachers than the prescribed norm. The wisdom of the educational institutions, in reducing its teacher – student ratio below the norms fixed by the AICTE in order to ensure institutional excellence, are all matters beyond the scope of enquiry by the TAFRC in determining the fee structure. The function of the TAFRC is only to determine the fee-structure, and not to examine whether the respondent-institution is justified in engaging more teachers than what is stipulated by the AICTE. In any event, as has been rightly observed by the Learned Single Judge, these are matters for the AICTE to consider, and do not fall within the purview of the Fee Regulatory Authority.

In fixing the fee structure for the respondent-institutions, it was open to the TAFRC to examine whether or not the respondent-institutions had actually engaged 58 additional teaching staff, and whether or not they had actually incurred expenditure towards

their salaries and allowances, for it is only then would such expenditure form part of the total expenditure which, in turn, would form the basis for fixation of the fee structure of the respondent-institutions. It is not even the case of the TAFRC that the respondent-institution had claimed this amount, as permissible expenditure, without either incurring it or without engaging the additional 58 teachers. We are satisfied, therefore, that the Learned Single Judge has not committed any patent error in holding that the TAFRC was not justified in disallowing this expenditure.

VII. WAS THE TAFRC JUSTIFIED IN EXTENDING THE BENEFIT OF INFLATION AND FURTHERANCE ONLY FOR ONE YEAR OF THE THREE YEAR BLOCK PERIOD?

Learned Special Government Pleader, appearing on behalf of the Learned Additional Advocate-General for the State of Telangana, would submit that the respondent-colleges are not entitled to the benefit of inflation and furtherance of 10% and 15% for each of the three academic years, in the block period 2016-17 to 2018-19; their entitlement for inflation at 10% and furtherance at 15% was rightly restricted once for the entire block period of three years; even otherwise, the Learned Single Judge was not justified in directing payment of furtherance at 15% on the total expenditure, inclusive of the 10% inflation, instead of computing furtherance only on the total expenditure excluding inflation at 10%; and if furtherance is computed only on the expenditure, and not on the expenditure plus inflation at 10%, students would have benefited by reduction of fees by Rs.1,500/- per annum.

On the other hand Sri M.Ravindranath Reddy, Learned Counsel for the respondent-writ petitioners, would submit that the

contention now urged on behalf of the TAFRC, regarding inflation and furtherance benefits, is untenable; inflation at 10%, and furtherance at 15%, per annum has been provided by the TAFRC itself; the only difference is that the benefit of inflation and furtherance was not extended to the respondent-colleges on the total expenditure incurred by them, but was computed on the net expenditure i.e., the total expenditure minus income; this was faulted by the Learned Single Judge in the order under appeal; though the respondent-college in W.P. No.7744 of 2017 had claimed a fee structure of Rs.1,54,000/- per annum for the block period 2016-17 to 2018-19, the Learned Single Judge had granted only Rs.1,37,000/-; and it is only because the tuition fee, as computed in W.P. No.7596 of 2017, came to Rs.1,58,409/- per student, did the Learned Single Judge agree to the claim of the respondent-colleges that the fees should be fixed at Rs.1,60,000/- per annum for this three year block period.

In the order under appeal, the Learned Single Judge observed that the TAFRC had earlier calculated inflation and furtherance on the expenditure arrived at first, without deducting the tuition fee being collected from the old students; that it had done so previously was evident from the worksheet submitted, along with its counter-affidavit filed in July, 2016, in W.P. No.22186 of 2016; for the first time, it had deviated from this procedure in its recommendations on 06.01.2017, without assigning valid reasons and without putting the respondent-institutions on notice; this conduct of the TAFRC was clearly arbitrary; in the worksheet provided by the TAFRC, from the total expenditure claimed by the respondent-institutions, certain

expenditure was disallowed and was deducted to arrive at the net expenditure; then, for each of the 3 years in the block period, income in the nature of fees from old students was first deducted; only thereafter was furtherance and inflation calculated; the object of giving inflation and furtherance was defeated by this new method of calculation; and such action had resulted in grave prejudice to the respondent-institutions since it appeared to have been done only to arrive at a very low tuition fee.

Article 226 is, designedly, couched in wide language to enable the High Court "to reach injustice wherever it is found" and "*to mould the reliefs to meet peculiar and complicated requirements.*" (**Dwarkanath v. ITO**[25]; **CAG**[17]). The purpose of a mandamus is to remedy defects of justice; and accordingly it will issue to ensure that justice is done, in all cases where there is a specific legal right and there is no specific legal remedy for enforcing that right. (**Halsbury's Laws of England, 4th Edn., vol. I, para 89**; **CAG**[17]; **Padfield**[15]). While the question, whether any particular relief should be granted under Article 226 of the Constitution, would depend on the facts of each case, the guiding principle in all cases is promotion of justice and prevention of injustice. (**RBF Rig Corpn.**[10]). A mandamus would issue if, as a result of arbitrary fixation of fees by the TAFRC, injustice has been caused to the respondent-institutions. The reasons assigned by the Learned Single Judge do show that the respondent-colleges have suffered injustice in the fixation of their fee-structure.

While the respondent-institutions had claimed inflation at 10% p.a. and furtherance at 15% p.a. on the total expenditure, the

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[25] AIR 1966 SC 81

TAFRC had allowed them the benefit of inflation and furtherance only on the net expenditure (i.e the total expenditure minus the fees received from old students). In the order under appeal, the Learned Single Judge has observed that, by adopting this method, the TAFRC had deliberately reduced the actual expenditure of Rs.144.86 Crores to Rs.63.89 Crores by setting it off against the income of Rs.80.97 Crores received as fees from old students.

Annual inflation is computed on the expenditure incurred, in order to estimate the likely increase in expenditure in the 2nd and 3rd years of the three year block period. Even otherwise, as has been observed by the Learned Single Judge in the order under appeal, the TAFRC had itself, in the earlier years, calculated inflation and furtherance on the total expenditure, (incurred not only by the respondent-institution but by a few other colleges also), without deducting the tuition fees collected from old students; and this is evident from the work sheet submitted by them along with the counter-affidavit in W.P.No.22186 of 2016 filed in July, 2016. The Learned Single Judge observed that no reasons have been assigned by the TAFRC for a change in its procedure. In the absence of just and valid reasons being assigned by the TAFRC for a change in the methodology, this mode adopted only for the respondent-colleges, that too only for the block period 2016-17 to 2018-19, does lend credence to the submission of Sri M.Ravindranath Reddy, Learned Counsel, that this procedure was adopted only to artificially lower the fee-structure of the respondent-colleges.

In the work sheet, filed by it in W.P.Nos.7744 and 7596 of 2017, the TAFRC has itself computed inflation at 10% p.a. and

furtherance at 15% p.a. As the TAFRC had itself adopted a similar procedure for the previous years, the Learned Single Judge was justified in directing that inflation at 10% p.a, and furtherance at 15% p.a, be computed on the total expenditure incurred by the respondent-institution, and not on the net expenditure (i.e the total expenditure minus income representing the fees received from old students). Prescription of 10% inflation even according to the TAFRC, as is evident from their work-sheet and their letter dated 17.01.2017, is for each year, and not merely once for the entire block period of three years.

The respondent-institution was informed, by letter dated 17.01.2017, that the TAFRC had, in its meeting held on 06.01.2017, fixed Rs.97,000/- per annum as the fees payable by students seeking admission in the respondent-colleges; and the material relating to the calculations, for fixing the fees, was enclosed. "***Inflation***" is dealt with at Point No.8 of the said enclosure. It is evident therefrom that the TAFRC had computed inflation at 10% p.a. in the light of the order passed by the Learned Single Judge in W.P.No.22186 of 2016 and 22037 of 2016 which, as noted hereinabove, has attained finality since W.A.Nos.224 and 225 of 2017, preferred there against, were dismissed by order dated 18.07.2018. It is not open to the appellants, therefore, to now contend that inflation at 10% p.a. should not be provided; and, instead, 10% inflation should be computed only once for the entire three year block period.

Para 10, of the enclosure to the letter of the TAFRC dated 17.01.2017, relates to "***furtherance***", and discloses that furtherance at 15% p.a. was allowed to be collected each year. The TAFRC,

having itself permitted inflation at 10% and furtherance at 15% to be charged per annum in determining the fee structure for the block period 2016-17 to 2018-19 (vide enclosure to their letter dated 17.01.2017), cannot now turn around and contend that the respondent-institutions are not entitled to claim inflation and furtherance each year, and they are only entitled to make such a claim once for the entire three year block period.

The submission, urged on behalf of the TAFRC, that furtherance at 15% p.a. should have been calculated only on the expenditure, and not on the expenditure plus inflation, cannot be said to be without merit. The fact, however, remains that, even according to the Learned Standing Counsel for the TSCHE, this would only result in a reduction of Rs.1,500/- per annum as fees per student. As noted hereinabove, fixation of fees by the TAFRC is only to ensure that the respondent-Colleges do not indulge in profiteering or charge capitation fee. It is difficult to hold that, this difference of Rs.1,500/- per annum per student, would amount to charging of capitation fee, or indulging in profiteering, necessitating interference, in proceedings under Clause 15 of the Letters Patent, with the order of the Learned Single Judge.

VIII. EFFECT OF THE UNDERTAKING, FURNISHED BY THE PARENTS OF STUDENTS, TO ABIDE BY THE FEE STRUCTURE:

Sri Chetluru Srinivas, Learned Counsel appearing on behalf of the parents association, would submit that the letter of undertaking furnished by the parents was only to abide by the fee fixed by the TAFRC, in its meeting held on 06.01.2017, which was Rs.97,000/- per annum; the fee, fixed by the respondent-colleges, is far higher than what is stipulated even by Chaitanya Bharathi

Institute of Technology (a College of repute) of Rs.1,13,500/- per annum; if the students had been made aware that the fee structure of the respondent-colleges was far higher than CBIT itself, these students would not have sought admission in the respondent-colleges; for no fault of theirs, the students are being mulcted with a fee structure which they were not even made aware of during the counseling process; and neither the students nor their parents had bargained for the high fees determined, by the Learned Single Judge, in the order under appeal.

Sri M. Ravindranath Reddy, Learned Counsel for the respondent-writ petitioners, would submit that the claim of the parents of students, and of the students studying in the respondent- colleges, that, while they may have agreed to abide by the result of W.P. Nos.22186 and 22037 of 2016, they are not bound by the fee fixed by the Learned Single Judge in W.P. Nos.7596 and 7744 of 2017, is not tenable; the parents of these students have given letters of undertaking agreeing to abide by the decision of the Court with regards the enhanced fee structure; having submitted letters of undertaking, it is not now open to the parents of the students, and the students themselves, to contend that their obligation is only to pay Rs.97,000/- as fixed by the TAFRC, and as notified by the Government of Telangana; accepting their contention, that the difference in expenditure should be recovered from the next batch of students, would only result in those students being mulcted with a liability far in excess of the expenditure being incurred on them; and since the parents/students were well aware of the pendency of litigation, and have chosen not to implead themselves in the Writ Petition, or at

any time before these appeals have been taken up for hearing, there is no justification in their stand that they should be permitted to pay only Rs.97,000/- per annum as fees.

After the fee structure fixed by the TAFRC, for the respondent-colleges, was set aside, the Learned Single Judge, in his earlier order in W.P.Nos.22186 and 22037 of 2016 dated 14.11.2016, had issued, among others, the following directions:-

> "(d) The petitioners shall inform the students admitted to the 2nd petitioner college in the academic year 2016-17 for the B.E/B.Tech courses that they shall obtain a Demand Draft/Bankers cheque for a sum of Rs.63,000/- (representing the difference between Rs.1,54,000/- claimed by the petitioners and Rs.91,000/- for the B.E./B.Tech course recommended by the TAFRC which was notified by the 1st respondent vide G.O.Ms.No.21 dt.04-07-2016) in the name of "the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh" and handover the same under proper acknowledgment to the Principal of the 2nd petitioner college within two (02) weeks from the date of receipt of a copy of this order;
>
> e) within one week of the receipt by him of Demand Drafts/Bankers cheques, the Principal of the 2nd petitioner college shall hand them over to the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh along with a list of students, their addresses and in which course of which year they are studying;
>
> f) the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh shall open a Savings Bank account in the State Bank of Hyderabad, High Court Branch, Hyderabad and deposit the Demand Drafts/Bankers cheques handed over to him by the Principal of the 2nd petitioner college or his representative to the credit of the said account and intimate the same to the 2nd petitioner college;
>
> g) after making such deposit, he shall invest the same in an interest bearing Fixed Deposit/ Term deposit for at least one year;
>
> h) and after the TAFRC had re-determined the fee structure for the B.E/B.Tech courses for the Block period 2016-17 to 2018-19 in respect of the 2nd petitioner college and it is notified by the 1st respondent , the amount representing the fee refixed in excess the sum of Rs.91,000/- already paid by the students, shall be transferred by the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to the 2nd petitioner college along with the interest accrued thereon;
>
> i) the balance, if any, left after such transfer together with interest shall be handed over to the Principal of the 2nd petitioner college or his representative, who shall refund the same proportionately to each of the students who had made the payment of the sum of Rs.63,000/- referred to above with accrued interest within four (04) weeks of receipt by the 2nd petitioner college of the amount from the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh."

On appeals being preferred against the aforesaid order, by the TAFRC in W.A.Nos.224 and 225 of 2017, along with an application to condone the delay, a Division Bench of this Court,

by its order in W.A.M.P.Nos.3098 and 3099 of 2016 in W.A.Nos.224 and 225 of 2017 respectively, condoned the delay. As no interim order was passed in the Writ Appeals, and the order of the Learned Single Judge continued to remain in force, the respondent-institutions filed C.C. No.437 of 2017 alleging violation of the order passed in W.P. No.22186 of 2016 dated 14.11.2016, and C.C. No.436 of 2017 alleging violation of the order passed in W.P. No.22037 of 2016 dated 14.11.2016.

While matters stood thus, the TAFRC re-determined the fee structure, of the respondent-colleges, in its meeting held on 06.01.2017, and the said fee structure was notified by the State Government in G.O.Ms.No.3 dated 04.02.2017. Both the decision of the TAFRC, and the notification issued by the State Government, were subjected to challenge in W.P. Nos.7596 and 7744 of 2017 which were directed to be posted, along with the Contempt Cases, before the Learned Single Judge. Thereafter, both these Writ Petitions were heard and disposed of, by order dated 01.06.2017, questioning which the State Government has preferred the appeals in W.A.Nos.798 and 801 of 2017.

It is evident, therefore, that the dispute regarding the fee-structure determined by the TAFRC earlier by its proceedings dated 04.07.2016, and re-determined by the TAFRC in its meeting held on 06.01.2017, is still in issue. A Division Bench of this Court passed interim orders, in WAMP. Nos.1554 & 1562 of 2017 in W.A. Nos.798 and 801 of 2017 respectively dated 27.06.2017, the relevant portion of which reads as under:

"….The dispute, primarily, appears to revolve around the enhancement of fees which the respondent-colleges are entitled to collect from the students admitted to their institutions. While the TAFRC appears to have deducted the

income received by the college from the expenditure incurred by them, and to have thereafter computed the annual inflation figure at 10% of the net amount, the submission of Sri M.Ravindranath Reddy, learned counsel, is that 10% enhancement towards inflation should be added to the expenditure incurred by the college; and from the total expenditure including the enhanced amount, the income received by the college should be deducted. These, among other questions, necessitate examination at the stage of final hearing of this appeal.

Earlier a learned Single Judge of this Court had, by his order in WP.No.21229 of 2013 dated 18.06.2015, accepted the expenditure incurred by the petitioner, and had directed the TAFRC to fix the fee structure accordingly. This, according to the learned counsel for the respondent-writ petitioner, would result in their being entitled to collect fees of Rs.1,40,000/-. This order of the learned Single Judge continues to remain in force, as no appeal has been preferred thereagainst till date. As the learned Single Judge has, in the order under appeal, prescribed the annual fees at Rs.1,60,000/-, the difference per student would, approximately, be Rs.20,000/- per annum.

We consider it appropriate, therefore, pending disposal of the Writ Appeal, to permit the respondents-writ petitioners to collect the fees of Rs.1,60,000/- from each student on condition that, within ten days of receipt of the fees from each of the students concerned, they shall furnish bank guarantees in favour of the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh, for the differential amount of Rs.20,000/- per student. The bank guarantees shall be kept alive during the pendency of this appeal. The respondents-writ petitioners shall also furnish a detailed statement of the fees received by them, and the bank guarantees furnished by them, to the appellants within ten days of the bank guarantees being furnished to the Registrar (Judicial) of this Court. Failure on the part of the respondent-writ petitioners to do so would enable the appellants to take action against them in accordance with law. In all the other aspects, there shall be interim suspension of the order under appeal……"

We, therefore, find no merit in the submission of Sri Chetluru Srinivas, Learned Counsel appearing on behalf of the Parents Association, that the undertaking furnished by the parents of students, admitted in the respondent-colleges in the academic year 2016-17, was only to abide by the fees fixed by the TAFRC in its meeting held on 06.01.2017 i.e., Rs.97,000/- per annum.

As illustrative, of the undertakings furnished by the parents, it would suffice if the contents of one of the letters of undertaking, furnished to Vasavi Engineering College, is noted. The undertaking furnished by the parent, at the time of admission of the student in the said College, is that they understood that the State Government had notified a tuition fee of Rs.86,000/- as against Rs.1,60,000/- per annum proposed by the college; as per the order dated 08.07.2016 in WPMP. No. 27092 of 2016 in the Writ Petition,

and as per the endorsement in the admission allotment letter, the institution was entitled to obtain an undertaking from each of the students, as regards their impending liability to pay the differential amount depending on the result of the Writ Petition; and they undertook that they would pay to the college the differential tuition fee depending on the result of the Writ Petition.

A similar undertaking was furnished by each of the parents at the time of admission of the student in the respondent-colleges in the first of the three year block period i.e 2016-17. The submission of Sri Chetluru Srinivas, Learned Counsel, that the undertaking is only with respect to W.P. Nos.22186 and 22037 of 2016, and not W.P. Nos.7744 and 7596 of 2017, is not tenable, for the subsequent W.P.Nos.7744 and 7596 of 2017 relate to the very same dispute regarding fixation of fees for the block period 2016-17 to 2018-19, which was the subject matter of W.P. Nos. 22186 and 22037 of 2016.

Reliance placed by Sri Chetluru Srinivas, Learned Counsel, on the judgment of the Supreme Court, in **Fee Regulatory Committee v. Kalol Institute of Management**[26], is misplaced. Section 10(3) of the Gujarat Professional Technical Educational Colleges or Institutions (Regulation of Admission and fixation of fees) Act, 2007 (for short the "2007 Act"), which is similar to Rule 4(vi) of the 2006 Rules, read as follows:

> "The fee structure so determined by the Fee Regulatory Committee shall be binding to the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution."

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[26] (2011) 10 SCC 592

In **Kalol Institute of Management**[26] the Supreme Court held that the Fee Regulatory Committee could not overlook Section 10(3) of the 2007 Act; the High Court could not have directed revision of the fees already fixed by the Fee Regulatory Committee for the academic years 2008-2009, 2009-2010 and 2010-2011, contrary to the aforesaid statutory provisions; nonetheless, the unaided private professional and technical colleges or institutions were entitled to recover the extra cost on account of payment of revised pay and allowances to the teaching and non-teaching staff, through the fees collected from the students; this could be done only by enhancing the fees payable by the students for the academic years 2011-2012, 2012-2013 and 2013-2014, and for a period of three years thereafter; and exactly how much of this cost would be recovered through the fees collected from the students during the first period of the three years, and how much of this cost would be recovered through fees collected from the students during the second period of three years, could only be appropriately worked out by the Fee Regulatory Committee keeping in mind both the interest of the colleges/institutions and the students.

In **Kalol Institute of Management**[26], the fee structure was sought to be changed in the middle of the three year block period, (after the fee structure for the three year block period had already been fixed by the fee regulatory authority), on account of a revision in the pay and allowances of teaching staff. This was faulted by the Supreme Court holding that, since the provisions of the Act stipulate that a fee structure is to be fixed for a three year block period, and the fee so fixed would be applicable to a student

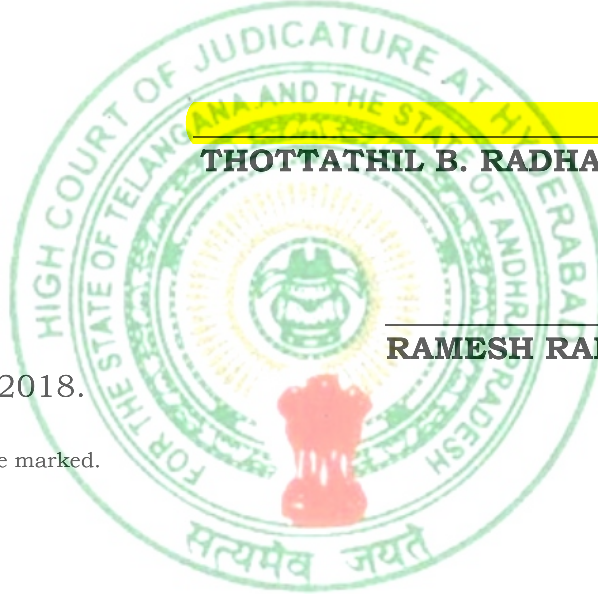
admitted to the professional educational college in those academic years, till he completed his professional course, the fee structure could not be changed mid-way during the block period after the Fee Regulatory Committee had fixed the fee structure for the three year block period. Unlike in **Kalol Institute of Management**[26], the dispute, in the present case, relates to the fixation of fees by the TAFRC for the entire block period 2016-17 to 2018-19, and not for the second or third year of the block period of three years. The contention that the students cannot be asked to pay the fees, as determined by the Learned Single Judge in the order under appeal, does not therefore merit acceptance.

IX. CONCLUSION:

In its interim order dated 27.06.2017, a Division bench of this Court had permitted the respondents-writ petitioners to collect fees of Rs.1,37,000/- and Rs.1,60,000/- respectively pending disposal of W.A. Nos.798 and 801 of 2017 on condition that they furnished bank guarantees, in favour of the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, for a sum of Rs.20,000/- per student; the bank guarantees were kept alive during the pendency of the appeals; and the respondents-writ petitioners also furnish a detailed statement, of the fees received by them and the bank guarantees furnished by them, to the appellants within ten days of the bank guarantees being furnished by them to the Registrar (Judicial); and failure on the part of the respondent-writ petitioners to do so, would enable the appellants to take action against them in accordance with law.

Since both the appeals in W.A.Nos.798 and 801 of 2017, preferred against the orders passed by the Learned Single Judge in W.P. Nos.7744 and 7596 of 2017 dated 01.06.2017, are being dismissed, and the orders under appeal are affirmed by the order now passed by us, the Registrar (Judicial) shall return the bank guarantees, furnished by the respondent-writ-petitioners, to them under due acknowledgment.

Both the Writ Appeals are dismissed. The miscellaneous petitions pending, if any, shall stand closed. However, in the circumstances, without costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 24.08.2018.

Note: L.R. copy to be marked.
B/O
MRKR/CS