HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR
(Judgment reserved on 20.04.2009)
(Judgment delivered on 12.05.2009)
Civil Misc. Writ Petition No. 69561 of 2006
Smt. Shakuntala Educational & Welfare Society & Ors. Vs. State of U.P.& Ors.
And
Civil Misc. Writ Petition No. 46183 of 2007
Smt. Shakuntala Educational & Welfare Society & Ors. Vs. State of U.P.& Ors.

Hon'ble S.U. Khan, J.
In these writ petitions decision of a Committee constituted under orders of the Supreme Court in respect of fee fixation of private professional colleges has been challenged. The writ petitions have been filed by Smt Shakuntala Eduational and Welfare Society and two others i.e. Galgotias College of Engineering Noida and GIMT Institute of Management and Technology Noida. Both these institutions are run by petitioner no.1, Society. Main prayer in the first writ petition is for quashing report/decision of the fee committee communicated through letter dated 25.11.2005 and order of the committee dated 24.06.2006 communicated through letter dated 02.09.2006. Similarly in the second writ petition the main prayer is for quashing the order dated 30.04.2007 passed by the fee committee.
Back ground:-
The first leading judgment of the Supreme Court in respect of the question involved in these petitions is of Unnikrishanan Vs. State of A.P. and Ors 1993(1) SCC 645(Constitution Bench of 5 Hon. Judges). The other main decision is of "T.M.A. Pai Foundation v. State of Karnataka" 2002(8) SCC 481 (by 11 Hon. Judges) = AIR 2003 Supreme Court 355. The next one is reported in "Islamic Academy of Education v. State of Karnataka" 2992(6) SCC 697 =AIR 2003 Supreme Court 3724. This decision is mainly confined to the interpretation of 11 Judges judgment of T.M.A. Pai Foundation as Union of India, various State Governments and Educational Institutions understood the majority judgment in T.M.A. Pai Foundation case in different perspective. Thereafter the matter was again considered in "Modern School v. Union of India" 2004(5) SACC 583 =AIR 2004 Supreme Court 2236 and in "P. A. Inamdar v. State of Maharashtra" 2005 (6) SCC 537 (Seven Judges) = AIR 2005 Supreme Court 3226.
T.M.A. Pai Foundation to a great extent over ruled Unnikrishanan case holding that the scheme formulated in the said case for fee structure was unreasonable restriction and it resulted in revenue short fall (However the dictum of Unni Krishnan that primary Education is fundamental right was approved). The essence of T.M.A. Pai Foundation and Islamic Academy was summarised in paras 15 and 16 of Modern School authority which are quoted below:
15. As far back as 1957, it has been held by this Court in the case of State of Bombay v. R. M. D. Chamarbaugwala, reported in (AIR 1957 SC 699) that education is per se an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of Unni Krishnan, J.P. v. State of A.P. (supra), looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including Medcial Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said Scheme. In the case of TMA Pai Foundation v. State of Karnataka,

reported in ((2002) 8 SCC 481), the said scheme formulated by this Court in the case of Unni Krishnan (supra) was held to be an unreasonable restriction within the meaning of Art. 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in Unni Krishnan's case (supra) were held to be unconstitutional. This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body, right to appoint staff and right to take disciplinary action. TMA Pai Foundation's case for the first time brought into existence the concept of education as an "occupation," a term used in Art. 19(1)(g) of the Constitution. It was held by majority that Arts. 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Art. 30(1) gives the right to religious and linguistic minorities to establish and administer educational AIR 1998 SC 2178 institution of their choice. However, right to establish an institution under Art. 19(1)(g) is subject to reasonable restriction in terms of Cl. (6) thereof. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educational institution of their own choice under Art. 30(1) is held to be subject to reasonable regulations which inter alia may be framed having regard to public interest and national interest. In the said judgment, it was observed vide para 56 that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make a reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering was held to be forbidden. Subject to the above two prohibitory parameters, this Court in TMA Pai Foundation's case held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in TMA Pai Foundation's case.

16. The judgment in TMA Pai Foundation's case was delivered on 31-10-2002. The Union of India, State Government and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in several Courts. Under the circumstances, a Bench of five-Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka, reported in ((2003) 6 SCC 697) so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of Union of India, State Governments and some of the students, it was submitted, that the right to set up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in TMA Pai Foundation's case. In view of rival submissions, four questions were formulated. We are concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up Committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

In the case of P. A. Inamdar regulation of fee was formulated as question no.3 and it was reiterated that "Every Institution is free to devise its own fees structure subject to the limitation that there can be no profiteering and no capitation fees can be charged directly or indirectly or in any form". Question no.4 in the said authority related to committees constituted pursuant to Islamic Academy.
In the judgment of Islamic Academy it was directed that two committees must be formed one for admission and another for fee structure. In para 146 of the said authority of P. A. Inamdar it was categorically held that "non minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community"
Learned counsel for the petitioners has placed great reliance on para 146 and 147 of Inamdar authority which are quoted below:
146. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their job and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution. 2003 AIR SCW 4240 : AIR 2003 SC 3724

147. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.

In paragraphs 69-70 of T.M.A. Pai Foundation it was observed as follows:
"69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.
70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational institution has to get"

In the judgment of Islamic Academy in para 2 it is mentioned as follows:
"most of the petitioners/applicants before us are unaided professional educational Institutions (both minority and non minority)"

In the said judgment four questions were framed. The first was "Whether the educational institutions

are entitled to fix their own fee structure? This was discussed and answered through the majority judgment in paras 7 and 8 which are quoted below:
"7. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

8.The next question for consideration is whether minority and non minority educational institutions stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows: T.M.A. Pai v. State, AIR 2003 SC 355 : 2002 AIR SCW 4957

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such right. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality". In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do".
"139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."
Undoubtedly at first blush it does appear that these paragraphs equate both types of educational institutions. However on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide the nationalise education. In that case it may be enacted that private educational institutions will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under

Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

It was for the first time through this judgment that formation of a committee headed by retired High Court Judge was directed.
Petitioners' arguments:-

The arguments of Sri Sunil Gupta, learned Senior Counsel for the petitioners assisted by Sri A.K.Goel, learned counsel are summarised below:

A. Petitioners being wholly unaided institutions should have been provided maximum liberty to fix the fee subject to only two restrictions i.e. no capitation fees and no profiteering.
B. Petitioner no.1 in the first two petitions being charitable society and registered as such with the Income Tax department neither can charge nor is infact charging and profit otherwise Income Tax Department would have cancelled its registration as charitable institution.
C. The committee had got a Chartered Accountant as one of its member as required by the Supreme Court still the committee directed the petitioner to get its accounts verified by another Chartered Accountant and virtually (with slight modification) the committee approved the decision taken by independent chartered accountant (terming it as quite reasonable) who was complete outsider for the committee. This course was not permissible. It amounts to unauthorised delegation by the committee to unconcerned agency.
D. Committee as a whole was required to hear the petitioners but in the first instance absolutely no hearing was provided and in the second instance on the insistence of the petitioners a truncated hearing was provided in as much as only two members of the committee heard the petitioners and the said hearing was held to be hearing by the whole committee which was wholly illegal and against the directions of the Supreme Court. In any case the hearing was not in the nature of post decisional hearing (which partakes the nature of original haring) but was considered to be review.
E. The committee initially formed under the judgment of the Supreme Court in Unni Krishnan case permitted higher fees to be charged by the petitioners from each student while the fee which has now been permitted to be charged by the Committee constituted under the judgment of the Supreme Court in Islamic Academy is less than that while the guidelines issued to the Committee in Unni Krishnan case were over ruled in TMA Pai Foundation's case holding that said guidelines were too restricted and against spirit of liberalisation injected in Indian Economic system since 1992-93.
F. The Supreme Court in the case of Islamic Academy directed that some additional amount over and above actual expenses should be permitted to be charged as reserve for future development and expansion. It was also indicated that it must be between 6 to 15 %. The committee wrongly allowed 10% against the said head to the institutions which were permitted to charge more than Rs.30,000/- per year fee per student like the petitioners and 15% to those institutions which were permitted to charge less then Rs. 30,000/- per year per student. Petitioner should have been permitted to charge 15% per year per student as surplus.
G. Institution is suffering due to inadequate revenue as it is unable to engage good teachers and provide sufficient infrastructure.
H. By virtue of aforesaid judgements of the Supreme Court it was essential for the committee to determine the fee quite in advance and much before the start of the academic session so that the institution could advertise and students could make proper selection depending upon their paying capacity. However the committee gave its decision extremely late and much after the start of the session.
I. The outsider Chartered Accountant who examined the accounts of the petitioners under the direction of the committee wholly disallowed/curtailed several expenses:-
J. Depreciation in accordance with the formula provided under the Income Tax Act should have been allowed. Chartered Accountant wrongly determined the depreciation in accordance with the formula provided under companies Act i.e. straight line depreciation.
In this regard it has also been pointed out that at one stage the institution had submitted the expected amount to be spent on the salary of the teachers for 10 months only (from April to January) However,

after completion of the year exact expenses in this regard were submitted showing that salary paid to the teachers was less than initially shown. However chartered accountant approved that the earlier estimate and not the actual amount showing total lack of application of mind.
Respondents' arguments:-
Learned Additional Advocate General appearing on behalf of the respondents first criticised several items of the balance sheet/accounts of the petitioners. However on being asked by the Court as to whether he intended to argue that even those items in the account books/balance sheet which had been cleared by the outsider chartered accountant were not correctly shown, learned Additional Advocate General stated that he was not in a position to challenge the correctness of those items which had been found to be quite already by the outsider chartered accountant and approved by the committee.
Learned Additional Advocate General mainly argued that several expenses shown by the petitioners in their accounts had been curtailed by the chartered accountant on the ground that they also included hostel fees while the fee which was fixed by the fee committee was only for studies and it did not take into account the amount charged for hostel which was in fact being separately charged by the institution from each student over and above the amount permitted to be charged by the fee committee.
Learned Additional Advocate General also contended that checking voluminous records/account books was tedious job hence the committee rightly appointed an independent chartered accountant to analyse the accounts of the petitioners and other institutions.
Findings:-
Checking accounts and fixing fee is fairly a technical job. It will be too precarious for the Court to venture in this field. Technical matter may better be left to technical experts. However if there is some patent error detection of which does not require technical expertise then Court can not shut its eyes and keep its hands off. In such a situation the proper and better course is to remand the matter to the body/ committee concerned for reconsideration with as precise directions as possible. However, in the instant case even if it is held that the matter requires reconsideration by the committee, remand to the committee for reconsideration is not possible for the reason that the committee which decided the matter and which had been constituted under aforesaid judgments of the Supreme Court was later on dissolved by the U.P. Government and Legislature and new committee was formed which has been stayed through interim order passed in a in writ petition (details are provided below).
The Court agrees with the learned counsel for the petitioners that hearing should have been provided by the whole committee and not by its two members only. This method of hearing by some of the members of committee and treating that to be on behalf of the whole committee is utterly unjustified and not warranted by any provision of law or generally accepted practice.
As far as checking/analysis of the accounts by independent outsider chartered accountant is concerned, it could be done only to a limited extent. A committee is entitled to seek assistance for its inferior functions from outside agencies but it is required to give its independent opinion. The report of the independent outsider chartered accountant could be taken into consideration by the committee only as a material and not as its own decision or part of it. Just as opinion of Expert is relevant in a suit or criminal case under Section 45 of the Evidence Act similarly and only to that extent the report/opinion of independent Chartered Accountant could be relevant for the committee.
As far as deduction on the ground of inclusion of expenses incurred in respect of hostel facilities is concerned, I do not find any error therein. Learned counsel for the petitioners has not been able to show that either the relevant items did not include expenses in relation to the hostel or that separate amount was not being charged by the petitioner from the students for hostel facilities.
As far as argument of learned counsel for the petitioners that 15% surplus should have been permitted to the petitioners as was permitted to the institutions permitted to charge less than Rs.30,000/- per student per year fees is concerned I find this argument to be quite tenable. For bigger institutions more surplus is required for expansion etc. than for smaller and less prestigious institutions. Accordingly surplus must be determined in terms of percentage and not in terms of actual money.
Accordingly the view of the committee that petitioners should be permitted only 10% surplus is erroneous in law and is set aside. Petitioners are held to be entitled to 15% surplus.
Method of depreciation adopted by the independent outsider accountant is also faulted.
Even though in my opinion it was not appropriate for the committee to engage another chartered accountant and get the accounts of the institution audited and checked by it, however, in exercise of writ jurisdiction merely on this ground the decision of the committee can not be set aside. The committee is directed to avoid this practice in future.
As far as hearing by only two members of five members committee is concerned, it also can not be

appreciated. However, here again merely on this ground decision of the committee can not be set aside. The committee is hereby directed to avoid this practice in future and hearing must be provided by entire committee. About a decade before denial of opportunity of hearing by itself was sufficient to annual the decision. However, now the position is some what different. According to the recent view of the Supreme Court if a person challenges the decision on the ground of denial of opportunity of hearing then he or it must show that in case opportunity of hearing had been provided then what cause he would have shown vide AMU Aligarh Vs. M.A. Khan AIR 2000 Supreme Court 2783 and Ashok Kumar Sonekar Vs. Union of India 2007(4) SCC 54.

All pervasive governmental control may be denoted by the name of communism. No Governmental control over financial affairs may be denoted by the name of capitalism. Both these systems have been experimented in different countries of the world. In its absolute forum, neither of the two has been found suitable. Communism virtually became extinct two decades before market force is an important phenomena and has got great capability of keeping the matters in balance. However, unscrupulous powerful persons or groups can divert the direction of market force to their undue advantage. False/fake scarcity and demand may be created. This was experienced in India on smaller scale during mid nineties when manipulation by Harshad Mehta created havoc with stock exchange. At the world level this phenomena is unfolding itself for about last six months, the period which started with the failure and bankruptcy or Lehman Brothers Bank. Before that the economists of advanced western countries were criticising capitalism of developing countries as crony capitalism and their argument was that in developing countries capitalism is not delivering the goods because it is not pure capitalism but defiled by corrupt heads of Governments, ministers and top bureaucrats and their illegal support to few capitalists by granting licences and quotas. However, today the entire concept of capitalism is in the dock in the entire world. Unless there is a balance between control and liberty, economy of a country can not prosper. However to know the exact balance is not easy. It depends upon certain general principles and existing conditions of a particular country and its people. Just as liberty can be misused by the players, similarly control may also be misused by the regulators. Under the prevalent conditions of the present day Indian society and Government the formula evolved by the Supreme Court for determining the fee structure can be described to be most appropriate if not ideal.

Recently Indian Institutes of Management have hiked their fees. The Times of India in its Educational Times Supplement, Varanasi Edition of 4.5.2009 has published a write up under the heading of "Fair Fees' ?! In the said write up it is mentioned that

"probably the most rational argument that justifies the hike is that no matter how much the IIMs have raised their fees the cost of education at these institutes is still much cheaper compared to that at institutes at abroad."

The hike has been shown to vary from Rs. 11.5 lakh to 12.5 lakh for Ahmedabad IIM and from 5 lakh to 9 lakh for IIM Indore. The hike has been compared with the recent recession also and the proposal of implementation of Sixth Pay commission recommendation has also been taken into consideration.

U.P. Government had constituted the committee on 20.02.2004 and Hon. Mr Justice P.K.Sareen a retired judge of the High Court was appointed as Chairman of the Committee on 13.05.2004. Through G.O. dated 9.7.04 colleges were permitted to charge the fees in 2004-2005 as per previous year until the matter was decided by the fee committee. In the end of July 2004 committee asked the colleges to submit some additional information on prescribed forms with 2 C.D.s. It has also been stated in the writ petitions that the independent chartered accountant engaged by the Committee submitted his report to the committee in June 2005 but the petitioners were not provided the copy. In the end of September 2005 committee decided that two of its members should hear the institutions. Thereafter, in November 2005 report of the independent chartered accountant engaged by the committee was sent to the institutions. Thereafter petitioner submitted their representations to the committee in January 2006. Thereafter, in March 2006 two members of the committee heard the institutions. By that time complete audited accounts for the year 2004-05 were available with the institutes, hence they submitted the same before two members.

During arguments a chart was supplied claiming that petitioner Shakuntala Educational & Welfare Society shall be permitted to charge Rs.92315 per year. It was also stated in para 94 of the second writ petition. In the first writ petition fee structure for the academic years 2004-2005, 2005-2006 and 2006-2007 (Rs.50100 for B.Tech Rs.51700 for MCA and Rs.50200 for M.B.A.) has been challenged. Through the second writ petition fee structure framed by the committee for 2007-08 and for two subsequent years (Rs.63400/-) has been challenged.

As far as constitution and existence of committee is concerned an ordinance was promulgated by the Governor of Uttar Pradesh by the name of U.P. Private Professional Educational Institutions (Regulation of Admission and Fixation of fee) Ordinance, 2006 (U.P. ordinance no. 1 of 2006)

published in the gazette on 10.07.2006. Later on it was converted into Act by the same name numbered as U.P. Act 24 of 2006. In the statement of objects and reasons reference has been made to 93rd Amendment of the Constitution. Committees for admission and fee regulation were constituted under Section 4 of the Act. It is to be presided over by a person who is or has been a Senior Administrative Officer of the State or Vice Chancellor of a Central or State University and it shall include two other members having experience in matter of finance or administration. The Chairman and two members are appointed by the State Government for three years. According to Section 12 of the Act, provisions of the Act would be effective notwithstanding any thing inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The said Act was challenged through writ petition no.301 (M/B)2007 Association of Self Finance of Agra Vs. State of U.P. at Lucknow Bench of this Court. Division Bench through interim order dated 29.01.2007 directed that the certain provisions of the Act should not be given effect to. Prior to that the Ordinance had been challenged through writ petition no.4408 (MB) of 2006 operation and implementation of Ordinance was stayed through interim order dated 26.07.2006 passed in the said writ petition. Through interim order dated 29.01.2007 operation of Section 6(1) and 10(1) of the Act have been stayed on the ground that they are beyond the legislative competence of the State and could not have been evacted in the teeth of the order passed by the Apex Court in the case of P.A. Inamdar. Section 6 deals with allocation of seats and Section 10 deals with fixation of fees.

Accordingly now the position is that no fees committee is either in existence or working.

If the accounts submitted by a private unaided professional college are accepted as presented then there will be no regulation of fees. In that eventuality it will be merely a question of calculation for which no committee is required.

5% addition for surplus in the first case comes to Rs.2300/- as mentioned in the writ petition and to Rs.3000/- as mentioned in the second writ petition.

Accordingly, petitioners in the first two petitions are permitted to charge the said amount from the students.

As I have held that the straight line formula of depreciation applied by the independent chartered accountant and accepted by the committee was wrong and written down value (WDV) method of depreciation should have been applied hence on this score the petitioners are permitted to charge additional amount of Rs.2,700/- from each students for the academic years 2004-05 to 2006-07 (subject matter of first writ petition) and amount of 4,000/- per student per year for the three academic years starting from 2007-08 (subject matter of second writ petition). The net result is that in respect of the period covered by the first writ petition petitioners are entitled to charge Rs.5000/- per students per year extra and for the period covered by the second writ petition an extra amount of Rs. 7000/- per student per year.

However, it is clarified that those students who have already completed the course and passed, their degrees should not be withheld for non payment of these amounts.

I fully agree with the findings of the committee (which in fact has approved the finding of independent chartered accountant in this regard) to the effect that expenses on hostel could not be added in the total expenses as hostel fees is separately charged from the students. Similarly examination expenses also could not be added as the same are separately provided and charged.

In respect of certain other deductions made by the independent chartered accountant and approved by the committee matter would have deserved remand as the Court is neither competent nor permitted to enter into intricacies and niceties of accounting. However, there being no committee this course can not be followed.

Accordingly, impugned orders passed by the committee are modified and writ petitions are disposed of as above.

Date:12.05.2009

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