HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION Nos.17697, 17757, 17706, 17758, 17761, 17764, 17768, 17772, 17774, 17777, 17783, 17796, 18311, 19692, 18623, 18624, 18648, 18646, 18864, 19190, 19628, 18310, 18654, 18819, 20185, 21171, 23634, 24345, 24739, 23701 and 23885 of 2023

COMMON ORDER:

All these petitions are filed claiming same relief by different petitioners, but the issue involved in these petitions is one and the same. Therefore, I am of the view that it is appropriate to decide all the petitions by common order taking Writ Petition No.17697 of 2023 as leading petition.

W.P. No.17697 of 2023 came to be filed under Article 226 of the Constitution of India seeking the following relief:-

> "….to issue an appropriate writ more in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing GO Ms.No.24, Higher Education (R.M) Department, Dated 14.07.2023 as per the recommendations of the 4th Respondent Regulatory Commission in not determining the fee structure for the block period 2023-24 to 2025-26 for the various degree courses being offered by the Petitioner-Institutions on the ground that the Petitioners made less than 25% admissions than the sanctioned intake, and the consequential action of the Respondents 2 and 3 in not allowing the Petitioner-Institutions to take part in the online counselling scheduled to start from 20.07.2023 (tentatively) as being arbitrary, illegal and violative of Articles 14 and 19 of the Constitution of India and violative of A.P.Educational Institutions (Regulations of Admissions and Prohibition of

> Capitation Fee) Act 1983 and the Andhra Pradesh Higher Education Monitoring and Regulatory Commission Act and Rules, Regulations framed therein and consequently set aside the G.O.Ms.No.24 Higher Education (R.M) Department dated 14.07.2023 and issue...."

The brief facts of the case are that the petitioners are the Degree Colleges offering various courses for the past more than 10 years and have been maintaining good standard of education by engaging qualified faculty. Insofar as the admission process for undergraduate courses in the State for the block period 2023-24 to 2025-26 are concerned, the decision of the Government basing on the recommendations of respondent No.4 – Andhra Pradesh Higher Education Regulatory and Monitoring Commission (for short "APHERMC") is quite contrary to the Rules in vogue. While the issue with regard to the discretionary powers being used by respondent No.4 – APHERMC with regard to determining the fee structure of the Private Unaided Degree College is pending before this Court, the respondents are trying to issue another G.O. merely basing on the recommendations of respondent No.4, ignoring the several private unaided degree colleges where the fee structure has to be determined. It is not known as to what criteria has been adopted by respondent No.4 to determine the fee structure that too for the selected degree colleges. In the year 2006, the AFRC was constituted in order to determine the fee structure in respect of professional colleges only, leaving it open to the University concerned to determine the fee structure for the nonprofessional colleges i.e. degree colleges. However, by virtue of amendment to Act 20/2019, respondent No.4 APHERMC was empowered to determine the fee structures even for the Degree Colleges in the State. Consequent to such amendment, respondent No.4 issued the notification dated 30.06.2022 calling upon the private unaided degree colleges to furnish the data. In pursuance of such notification, the data has been submitted by the institutions together with the processing fee demanded and as well as the requisite penalty paid by the Institutions.

It is further stated that after the data was furnished by the colleges together with the requisite processing fee/penalty, respondent No.4 called for personal hearing on 28.04.2023. Although, there are 1,188 unaided degree colleges in the State, respondent No.4 called only 965 colleges for hearing. Though 965 colleges attended the hearing, the fee was determined in respect of 830 colleges only. On the basis of the recommendations of respondent No.4, the Government issued G.O.Ms.No.22 dated 12.07.2023, wherein the fee was notified for only 830 colleges and also issued G.O.Ms.No.24 dated 14.07.2023 notifying the list of colleges for whom respondent No.4 has not recommended the fee and thereby disabled the petitioner institutions to participate in the online counselling.

It is further stated that the personal hearing called by respondent No.4 is only for the submission of additional documents and their scrutiny, but not for giving opportunity of hearing, and at the time of personal hearing, respondent No.4 did not give any intimation of non-recommendation of the petitioner institutions for notifying the fee. As directed by respondent No.4, the data was furnished along with requisite processing fee. While the petitioners were waiting for communication, G.O.Ms.No.22 dated 12.07.2023 was issued, whereby the petitioner institutions were not notified. Subsequent to that, respondent No.1 issued G.O.Ms.No.24 dated 14.07.2023, wherein the names of the petitioner institutions have not been recommended for the reason that the petitioner institutions has less than 25% admissions against the sanctioned intake.

It is further stated that due to the online process of admissions into undergraduate courses, the students will have limited choice and in such an event, there is every likelihood of migrating lakhs of students to the neighbouring State. Thus, the action of the respondents in fixing the online schedule merely basing on the recommendations of respondent No.4 APHERMC that too in respect of the selected institutions is illegal. Hence, the writ petition.

When the matter came up for admission on 19.07.2023, this Court granted interim suspension of the impugned G.O., the operative portion of the same is as follows:

> *"................In view of the above discussion, there is a prima facie case in favour of the petitioners. Accordingly, there shall be interim suspension of G.O.Ms.No.24 Higher Education (R.M) Department, dated 14.07.2023, issued by the 1st respondent. Further, the respondent Nos.1 to 4 are hereby directed to enlist/include the petitioners-colleges in the list of colleges for counselling for the academic year 2023-2024 on par with colleges mentioned in G.O.Ms.No.22, which is schedule to be commenced from 20.07.2023 (tentatively), pending further orders."*

Respondent No.4 APHERMC filed counter denying all the material allegations and contending that respondent No.4 APHERMC issued Lr.No.2260/APHERMC/ADMN/2023 dated 06.06.2023 to the Government, recommending fee to be notified for the block period 2023-24 to 2025-26. Accordingly, the Government has issued G.Os. In so far as the colleges who did not submit any data before respondent No.4, no fee was recommended and accordingly G.O.Ms.No.25 dated 14.07.2023 was issued by the Government. Similarly, with regard to the colleges who did not have admissions for consecutive three years cumulatively less than 25% were not recommended any fee for the said block period thereby expressing an opinion that they are not viable colleges to maintain minimum standards of education and accordingly the Government issued G.O.Ms.No.24 dated 14.07.2023 which is impugned herein. The crucial paras of the minutes of the Respondent APHERMC with regard to fee determined/recommended for each of the petitioner colleges is extracted hereunder.

> ***"….***
>
> ***11. Data processing:***
>
> *Out of one thousand and ten (1,010) Private Un-Aided and Aided (offering Un-aided Programmes) Higher Education Institutions offering UG (B.A., B.Com., B.Sc., etc.) Degree Programmes, some colleges have submitted required qualitative or quantitative data meeting all parameters and whereas others have furnished data which however, is not in accordance with the notification referred in para 10 above, Regulations and Guidelines followed by the Commission. These institutions are also considered for evaluation in order to see that their claims are not rejected for their default and in order to give them a fair opportunity to correct themselves in due course.*
>
> *In case of a new college/ course, the fee structure shall be the least of the fee regulated for the institutions in the same programme or course for the ensuing block period 2023 to 2026. The same measure is adopted for those institutions whose quantitative data lead to meager fee structure, that may not permit them to have effective and qualitative performance in imparting education.*
>
> *Thirty (30) Colleges have not furnished any data either for the purpose of qualitative or quantitative parameters without proposing any fee structure. Therefore, in view of Regulations 5(A)(v) read with 5(B)(viii), these thirty (30) Colleges are not considered for recommendation of fee structure for the ensuing block period (Annexure-VII).*
>
> *Similarly, in respect of one hundred and fifty (150) colleges whose intake of students against the sanctioned strength during the previous block period is less than*

> *25% on average, are not considered for the recommendation of fee structure for the ensuing block period (Annexure-VIII) for the reason that such meager or less number of admissions cannot make these institutions financially viable to maintain the required standards of instruction and impart quality education.*
>
> *Andhra Women's Sanskrit College, Rajahmundry is offering B.A.O.L. Programme (5-Year integrated course), particularly teaching Sanskrit language. Considering the nature of this institution being old and a 'heritage institution', serving the community and its commitment towards the protection of the Sanskrit language as well as ancient culture, the Commission has given due weightage, though data furnished by it is insufficient. This institution is treated as a class by itself and therefore exceptional attention is given in considering the fee structure.*
>
> **..."**

It is further contended that the petitioner colleges herein above questioned G.O.Ms.No.24 dated 14.07.2023 and the same has been suspended by this Court directing the respondents to include the petitioner colleges in the ongoing OAMDC counselling with least fee recommended for a course as notified in G.O.Ms.No.22 dated 14.07.2023. Accordingly, the said orders passed by this Court have been implemented by the Respondent Authorities and students have joined in the petitioner colleges as on today.

It is further contended that respondent No.4 - APHERMC has powers under Section 7 and 9(b) of the APHERMC Act, 2019, to monitor and regulate the fee for

Higher Educational Institutions in accordance with the Rules, Regulations, Guidelines and procedures, prescribed for the purpose of determining the fee. That apart under Rule 7 and 8 (4) (g) of APHERMC Rules, 2019, the respondent Commission is empowered to make regulations with regard to fee determination prescribed under Section 22 of the Act, in order to maintain minimum infrastructural facilities in HEI. Accordingly, Regulations were framed vide G.O.Ms.No.12, Higher Education (U.E) Department, Government of Andhra Pradesh, dated 04.03.2020, and requested to dispose of the writ petition.

Heard Sri Mathukumilli Srivijay, learned counsel for the petitioners, learned Government Pleader for Higher Education and learned standing counsel for respondent No.4.

Respondent No.1 issued G.O.Ms.No.24 Higher Education (R.M) Department, dated 14.07.2023, duly excluding petitioners-colleges from the list of colleges for fixing the fee structure for undergraduate degree programmes for the block period 2023-2024 to 2025-2026.

The exclusion of petitioner colleges is on the ground that Respondent No.4 - APHERMC has not considered 150 colleges including petitioners-colleges for fixing the fee structure for Under-Graduate degree programmes.

The impugned G.O.Ms.No.24 Higher Education (R.M) Department, dated 14.07.2023, was issued under the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983). Section 7 of the Act No.5 of 1983 contemplates as under:

> *"7. Regulation of fees:- (1) 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.*
>
> *(2) No educational institution shall collect any fees in excess of the fee notified under sub-section (1).*
>
> *(3) Every educational institution shall issue an official receipt for the fee collected by it."*

Therefore, the Section 7 does not empower the authorities concerned to keep away the petitioners-colleges from fixing fee structure on the ground of having less intake of students i.e. less than 25% on average against the sanctioned strength for academic year 2023-2024 to 2025-

2026. Less intake of students i.e., less than 25% on average against the sanctioned strength, cannot be a reason for not fixing the fee structure and for forwarding the same to the concerned authority for the academic years 2023-2024 to 2025-2026. In the absence of any provision, by way of executive instructions, they cannot act unilaterally in detrimental to the interest of petitioners-colleges. Therefore, the respondents are not empowered to issue the impugned G.O.Ms.No.24, dated 14.07.2023, for the reason that the intake is not at all a criteria for non-fixation of fee or for not allowing the petitioners-colleges for imparting education for which these institutions were established. However, in paragraph No.5 of the counter affidavit, respondent No.4 specifically stated as follows:

> "this Hon'ble Court may be pleased to dispose of the above WPs with a direction to the 1st Respondent Government to notify the least fee for each degree course for the above petitioner colleges for the block period 2023-26 as notified in G.O.Ms.No.22 dated 14.07.2023 by issuing afresh another G.O for the block period 2023-26. Accordingly, the Respondent Commission in the public interest of the student community may not have any objection for this block period to notify the least fee for a degree course as per G.O.Ms.No.22 dated 14.07.2023 1st Respondent

> Government for the said block period since the students have already been admitted based on the interim orders passed by this Hon'ble Court."

It is stated in the counter affidavit filed by respondent No.4 that in pursuance of the interim order passed by this Court on 19.07.2023, the G.O.Ms.No.24 dated 14.07.2023 has been suspended in respect of the petitioner colleges and students have joined in petitioner colleges as on today for the block period 2023-2026. It is also further stated in the counter that the respondent No.4 – APHERMC has no objection to notify the least fee for degree course as per G.O.Ms.No.22 dated 14.07.2023 by issuing fresh Government Order.

In view of the specific averments made in paragraph No.5 of the counter affidavit filed by respondent No.4 that the Government has no objection to issue fresh G.O., and as the students have joined in the petitioner colleges for the block period 2023-2026, this Court is of the opinion that the writ petition No.17697 of 2023 deserves to be allowed.

In view of the detailed order passed in W.P.No.17697 of 2023, the other writ petitions also deserve to be allowed.

Accordingly, the writ petitions are allowed setting aside the G.O.Ms.No.24 Higher Education (R.M.) Department dated 14.07.2023 only in respect of the petitioners herein. However, liberty is granted to the respondents to notify the least fee for each degree course and issue fresh G.O. notifying the petitioner colleges after conducting due inspection by giving prior notice to the concerned colleges. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Writ Petitions, shall stand closed.

JUSTICE V.SUJATHA

29.11.2023
SRT/Ksp