

**THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**

**W.P NOs.32909, 32967, 35109 OF 2022**

**AND**

**W.P.Nos.20878, 22945 OF 2023**

**COMMON ORDER:-**

1. All these writ petitions are filed under Article 226 of the Constitution of India by different petitioners, claiming identical relief, as such, I find it expedient to decide all the writ petitions by common order, since the issue involved in all the writ petitions is one and the same.

2. The petitioners are the Private, Unaided, Engineering Colleges situated in the State of Andhra Pradesh. The main grievance in all the writ petitions is about reducing the quantum of tuition fee, contrary to the provisions of the Andhra Pradesh Higher Education Regulatory and Monitoring Commission Act,2019 (for short 'Act.No.20 of 2019'), the Rules and Regulations framed under the said Act, i.e. by imposing slabs on expenditure and not considering the depreciation of Hostel Buildings. Challenging the same, the present writ petitions are filed.

3. During hearing, learned counsel for the petitioners would submit that, the Commission initially fixed the fee for the block period 2019-20 by imposing slabs (maximum limits) on expenditure like Gardening, Workshops and Fests and by not considering depreciation on Hostel

buildings in 2019-20. The Commission drastically reduced the quantum of Fee for the block period 2019.20 when compared with fee for the block period 2016-19. For the block period 2020-23 the Commission notified the same fee for the previous block period as the tuition fee as recommended by the Commission was returned in original by the State Government citing Covid -19 conditions on 12.11.2020. So, the Commission notified the same fee as determined for 2019-20, even for the block period 2020-23 also. As such, for the previous three academic years the managements are facing severe hardship because of the drastic reduction of the Tuition Fee. The notification seeking data from the Engineering Colleges in the State is issued by the 2<sup>nd</sup> Respondent Commission on 30.06.2022. The said notification does not specify that the Commission will put a slab on expenditure like Gardening, Workshops and Fests. Putting such slab came into light only by the Counter filed by the Commission. He submits that, imposing such a slab does not support by any Law or Statute. Section 9 of APHERMC Act empowers Commission determine the fee as per the Rules and Regulations. Rule 8 of APHERMC Rules 2019 vide GO Ms No. 49, Dated: 11-10-2019 postulates that the Commission should receive whatever the data relating to the expenditure incurred by the Management and basing on such expenditure Commission should determine the Tuition fee. But Commission cannot put slab in any expenditure incurred by the management. Even in Regulations vide GO Ms No.12, dated: 04-3-2020

there is no provision which empowers the Commission to put slab on any expenditure incurred by the management. Hence, imposing putting such a slab on any expenditure is contrary to the APHERMC Act, Rules and Regulations.

4. One of the contention raised by the learned counsel for the petitioners is that, the Commission is not taking into account the depreciation in respect of Hostel buildings while taking College buildings alone. Such action, taking the depreciation into account in respect to only College buildings leaving the Hostel buildings doesn't support by any Law or any Statute. The Regulation No. 38 (b)(iii) incorporated in GO Ms No. 12, dated 04-03-2020 prescribes the formula of taking depreciation, wherein it is stated that depreciation for buildings will be taken at the rate of 10%. The above said regulation does not discriminate the nature of buildings such as hostel and college buildings and both are part of academics and meant for student community and thereby, liable to take into account the depreciation for both hostel and college buildings.

5. Learned counsel for the petitioners would submit that, the Commission also failed to consider the quality parameters of the institutions as per Schedule 16 of the notification issued by the Commission, wherein, the quality parameters of every institution play key role in determining the fee of the institution and quality parameters vary

from each institution, as such, the Commission should consider such parameters of every institution as per the data submitted by the institutions.

6. Learned counsel for the petitioners would submit that the power to regulate the fee of the institutions by a regulatory authority is limited to the extent of satisfying itself that the institution is not indulging in commercial activity by collecting the capitation fee and making huge income, but it has no power to fix the mode and method of fixation of fee by specifying the heads of income, expenditure. In support of their contentions, learned counsel placed reliance on the judgments of the Honourable Apex Court in **P.A. Inamdar & Ors vs State Of Maharashtra<sup>1</sup>, Islamic Academy of Education vs. State of Karnataka<sup>2</sup>, Vasavi Engineering College Parents Association vs. State of Telangana<sup>3</sup> and Cochin University of Science & Technology vs. Thomas P. John<sup>4</sup>** and on the strength of the principle laid down in the above judgments, learned counsel would contend that the fee structure must be determined separately basing on several factors.

7. Counter affidavit is filed on behalf of Respondent No.1 in W.P.No.32909 of 2022. On the basis of the counter affidavit, learned Government Pleader for Higher Education would contend that, the 2<sup>nd</sup>

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1 AIR 2005 SC 3226

2 (2003) 6 SCC 697

<sup>3</sup> SLP 30090, 32626 & 31983 of 2018

4 (2008) 8 SCC 82

Respondent Commission has fixed the fee, based on the data uploaded by the members of the petitioner Association, to various courses (viz., B.Tech., B.Arch.. and M.Tech., Programmes etc.,) offered by them for the block period 2023-26, without insisting schedules like Statement of Legal Expenditure. Statement of Gardening, Expenditure, Statement of Expenditure on Seminars. Workshops, Student Related Expenditure, Fests, Statement of Institutional and Quality Parameters, Independent Balance Sheet of the Society/Trust, and the details of Tax Deductions at Sources as per I.T Act and sent to the 1<sup>st</sup> respondent.

8. The 2<sup>nd</sup> respondent has filed counter affidavit and stay vacation petition explaining why considering the parameters stayed by the Hon'ble High Court are essential for fixing the fee objectively, and as the stay vacation was not considered by the Hon'ble High Court the 2<sup>nd</sup> Respondent went ahead and fixed the fee, without considering number of parameters such as Statement of Legal Expenditure. Statement of Gardening Expenditure, Statement of Expenditure on Seminars, Workshops, Student Related Expenditure, Fests. Statement of Institutional and Quality Parameters. Independent Balance Sheet of the Society/Trust. and the details of Tax Deductions at Source as per 11 Act. Non-consideration of essential schedules, has resulted in number of anomalies in fee fixation, which are as under:

*1. Not Considering Quality Parameters is Causing Anomaly: Non-consideration of quality parameters such as NAAC, NHA etc has resulted in lesser fee compared to the previous block period for number of colleges, despite the colleges being well reputed with NAAC/NBA Accreditation for multiple cycles. Number of well reputed colleges with good accreditations also were fixed lesser fee.*

*II. Possible Anomaly because of Non-Consideration of Expenditure of Sponsoring Society/Trust individually: Without examining the expenditure and individual balance sheets of colleges and of Societies running multiple colleges in Andhra Pradesh and/or Telangana, ensuring fairness and accuracy in apportionment of expenditure as per norms is highly improbable to prevent any potential manipulation of accounts by misrepresentation or suppression of facts.*

9. It is submitted that, the 1<sup>st</sup> respondent is not in favour of notifying the fee as recommended by the 2<sup>nd</sup> respondent without considering the data with reference to 31 Schedules such as quality parameters, individual balance sheets of Society/Trust etc. This is in larger public interest including the well performing colleges, students and their families in view of number of anomalies some of which were stated above and also in view of the possibility of profiteering and commercialization of education by some colleges in view of non-consideration of schedules by the Commission. Hence the 1<sup>st</sup> respondent as per Section 20 of the AP Higher Education Regulatory and Monitoring Commission Act, has requested the

2nd respondent Commission to review their fee recommendations for 2023-26 block period after getting clearance from the Hon'ble High Court.

10. It is submitted that, the schedule for admissions into B.Tech., B.Arch., and M.Tech., Programmes etc., for the current Academic Year (2023-24) has already been announced. In view of the announcement of schedule the fee for B.Tech., B.Arch., and M. Tech., Programmes etc, has to be fixed immediately, as the students need to exercise their options. If the fee recommended now is not reviewed, the fee fixed for the colleges would be in variation, as colleges which are having good quality parameters will be fixed with low fee and vice versa. Even if the Hon'ble High Court allows stay vacation petition and permits the respondents to review and revise the fee already recommended, it will take considerable time for reworking of the entire fee structure. Therefore, keeping in view of the practical problems involved in the process and also the future of the students. The Hon'ble Court may permit the 1<sup>st</sup> respondent to take up the admissions for the current Academic Year (2023-24) for Engineering i.e., B.Tech., B.Arch.. and M.Tech., Programmes etc., with the enhancement of 10% of the same fee fixed for the previous block period of 2020-23 for one more year as an interim measure. If this Hon'ble Court does not permit to go ahead with admission process as per the aforesaid schedule, and with the fee fixed earlier block period 2020- 2023, the academic year would commence late

and it would be impossible for the colleges to complete the syllabus, which will not be in the interest of Students and the Colleges.

11. It is also submitted that the contentions raised by the Petitioner Association against the schedules and guidelines provided by the 2nd Respondent Commission lack merit. The schedules are necessary for determining a fair and reasonable fee structure, preventing profiteering, and ensuring quality education. The Petitioner Association's objections to specific schedules are unwarranted, and their request to disable certain schedules should not be granted and finally requested to dismiss the writ petitions.

12. A reply affidavit has been filed by the petitioner in W.P.No.32909 of 2022, denying the allegations made by the respondents.

13. Heard Sri Vijay Mathukumalli, Sri K. Raghuv eer, learned counsel for the petitioners and learned Government Pleader for Higher Education, Sri C. Sudesh Anand and Sri Penjuri Venugopal for the respondents.

14. The case of the petitioners essentially is that the directions of the Hon'ble Supreme Court in **T.M.A. Pai Foundation vs. State of Karnataka, Islamic Academy of Education vs. State of Karnataka and P.A. Inamdar vs. State of Maharashtra** (referred supra), require the AFRC to go through the individual cases of the private un-aided institutions and to fix and

recommend the fee for each of the graduate/post graduate professional courses being conducted by these institutions. Upon such recommendations being made, the Government is required to notify the same.

15. The petitioners are vested with the right to establish, manage and administer the professional college is inclusive of right to fix and collect tuition fees, while the educational institution retains its autonomy for fixing the fee structure, the regulatory power of the State or its instrumentalities only had a power of regulating to ensure that the institution is not indulged in commercialization of education by collecting the capitation fee.

16. The Commission traversed beyond its jurisdiction and not provided work sheets, as requested by the petitioners/students for their assessment and to submit data in proper way and to assist the Commission in effective manner. As such, the Commission has not discharged its statutory obligation on its part in furnishing the work sheets, which are the basis to fix the fees in respect of the petitioners institutions. Therefore, the Commission is directed to consider and provide work sheets to the petitioners on the basis of the demand made by the respective institutions.

17. Originally, the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983) was enacted 07.04.1983 to provide for regulation of admission into Educational Institutions and to prohibit the collection of Capitation Fee in the State of Andhra Pradesh. This Act was brought into force to curtail the undesirable practice of collecting capitation fee at the time of admitting students into educational institutions is on the increase in the State, since the said practice has been contributing to large scale commercialisation of education. Hence, it was considered necessary to effectively curb this evil practice in order to avoid frustration among the meritorious and indigent students and to maintain excellence in the standards of education.

18. The Andhra Pradesh Higher Education Regulatory and Monitory Commission Rules, 2019 were framed by the State Government vide G.O.Ms.No.49 Higher Education (U.E) Department dated 11.10.2019. According to Rule 2(b), "fee" means all fees including tuition fee and development charges.

19. Later, vide G.O.Ms.No.41 Higher Education (R.M) Department dated 06.08.2023, the State Government issued Notification, for fixation of fee structure for B.Tech, B.Arc., and Marine Engineering Programmes offered by Private Un-aided Professional Higher Education Institutions

(Engineering Colleges) in the State of Andhra Pradesh. As per the above Notification, the term 'fee' is defined as follows:

*“The fee is an all-inclusive annual fee, including like tuition fee, affiliation fee, cost of identity card, medical fee, inter college/inter university sports, games & cultural meet fee, computer/internet fee, College magazine and student activities, student health care scheme, student welfare fund, study tour, alumni fund, sports and games fee, examination fee including stationery, maintenance and amenities fee, extracurricular activities fee, development fee, Recognition fee, Common Services Fee and other recurring expenditure.”*

20. From the above, as per Rule 2(b) of the Andhra Pradesh Higher Education Regulatory and Monitory Commission Rules, 2019, “fee” means all fees including tuition fee and development charges. But, as per the Notification issued under G.O.Ms.No.41 Higher Education (R.M) Department dated 06.08.2023, 'fee' is defined as inclusive of annual fee which included various heads. Thus, the Commission traversed beyond the Rules, as such the action of the 2nd respondent is nothing but illegal and arbitrary.

21. The argument presented by the learned Standing Counsel on behalf of the 2nd respondent – Commission asserts that the imposed fee encompasses multiple components such as affiliation fee, tuition fee, medical fee, and others. He further contends that, the petitioner and

associated institutions, however, allegedly exert pressure on students by collecting fees under various categories, adversely affecting the predominantly economically disadvantaged rural students. In an effort to curb such exploitation in fee collection and safeguard the student community, the Commission has not only recommended a fixed fee consisting of tuition and institutional development charges but has also included various other aspects. While the contention made by the learned counsel for the 2<sup>nd</sup> respondent – Commission may be justified from a student welfare standpoint, it is argued to exceed the authority vested in the Commission.

22. It is observed that the 2<sup>nd</sup> respondent – Commission fixed the fees either contrary to its own Act and Rules or fixing the slabs including number of heads under the fee component, as tuition fees appears to reduce the burden upon the respondent – Government, since the 1<sup>st</sup> respondent introduced the fees reimbursement scheme in favour of poor and rural students, but the said act of the Commission is hampering the efficiency and excellency in educational institutions.

23. In view of the reasons mentioned above, the writ petitions are disposed of, remanding to the Andhra Pradesh Higher Education Regulatory and Monitoring Commission with the following directions:

- a. The worksheets should be furnished to the institutions who requested for them and who provided relevant data for determining the fees during the slab period of 2023-2026
  - b. Slabs particular limit cannot be fixed for any expenditure category submitted by the institution; rather, they should be assessed based on solely on the relevant data as provided by the institution
  - c. Notifying the Tuition Fee, inclusive of numerous heads (in contradiction to the definition of 'Fee' in accordance with the Act and Rules), is deemed illegal and arbitrary. Additionally, the Fee must be formally notified in adherence to the Act and Rules.
  - d. While fixing the fee, the Commission should address the claims of the petitioners taking into consideration the rate of inflation, increased expenditure, actual average intake instead of sanctioned strength, accreditations, further improvements towards amenities and research oriented facilities, especially for professional institutions.
24. There shall be no order as to costs.
25. Consequently, miscellaneous applications pending if any, shall also stand closed.

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**JUSTICE VENKATESWARLU NIMMAGADDA**

Date:05.12.2023

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