
(2000) 07 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16489 of 1999

A.P. Private Engineering College Management Association

APPELLANT

Vs

Govt. of A.P. and another

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

University Grants Commission Act, 1956 — Section 20(1)

Citation : (2000) 5 ALD 205

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. B. Adinarayana Rao, for the Appellant; Government Pleader for Higher Education, for the Respondent

Judgement

1. Andhra Pradesh Private Engineering Colleges Association represented by its Secretary filed this writ petition questioning the action of the State Government in not implementing the policy decision taken by All India Council of Technical Education (hereinafter referred as "AICTE") with regard to the development fee to be collected from the students admitted to the Professional courses in Private Engineering Colleges under different categories i.e., merit, payment and Non-Resident Indian seats etc. and sought for a direction to the respondents to permit the Managements to collect such fee while granting admission to the students for the academic year 1999-2000 and to pass such other appropriate orders in the interest of justice.

2. In view of the importance of the issue raised in the writ petition, I started hearing of this case from 12-8-1999 and during the course of one year it has taken several twists. I need not refer to the entire gamut of the controversy raised by the Government Pleader in view of the Resolution adopted by the Ministry of Human Resources Development dated 18th March, 1997 which was issued after obtaining approval of the President on the policy enunciated by the Department in consultation with the experts as well as the State Governments and the Managements of the Private Educational Institutions. The issue

ultimately boils down to a narrow compass i.e., whether the AICTE can insist the State Government to collect the development fee fixed by it without obtaining the view of the Government and without giving notice to it to put forth its case.

3. For appreciating the various contentions raised by the learned Government Pleader in support of his plea, I have to refer to the factual background that led the AICTE to take a decision in this regard.

4. A Constitution Bench of the Hon'ble Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., having taken the view that the Right to Education is a Fundamental Right formulated a scheme in the nature of guidelines for admission into Private Professional Colleges and the fee structure thereon. In Para 6(a) of the Scheme Their Lordships of the Supreme Court categorically observed that the arrangement made by the Supreme Court being ad hoc one, the concerned State Governments were directed to constitute Committees to fix ceilings on the fee chargeable by the Professional College or class of Professional Colleges as the case may be forthwith by suggesting enacting the constitution of the Committee also in that paragraph. As other issues are not germane to the issue, I am not referring the same in this judgment. But the Central and State Governments failed to constitute committees for fixation of the fees to be collected from the students admitted in Private Professional Colleges and went on filing applications seeking extension of the scheme year after year. Ultimately the Supreme Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, , came down heavily on the authorities concerned in not constituting committees as suggested in U/mi Krishnan's case (supra) and approaching the Court seeking extension of the scheme in the following words:

"We must express our distress at the inaction of the authorities pursuant to para 6 of the Scheme aforementioned. Though a period of more than three years have passed by since the decision in Unni Krishnan's case (supra), the authorities mentioned in the said paragraph have not come forward with a workable, realistic and just fee structure, with the result that year after year, this Court is practically being forced to fix the fee on a tentative basis, fixing the fees is not the function of this Court. It is the function of the Government, the affiliating universities and the statutory professional bodies like, University Grants Commission, Indian Medical Council and All India Council for Technical Education. Atleast now, we expect the authorities concerned to move in the matter with promptitude and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the Orders made by this Court, from time to time relating to fee structure. It shall be open to them to evolve such fee structure as they think appropriate, in such terms, and subject to such conditions as they feel are in the interest of the student community, the private professional colleges as also in public and national interest. We hope and trust that the fee structure to be evolved by them would take into consideration the ground realities and would be realistic and practical from the point of view of all

concerned. In particular, we request the Central Government, including the Ministry of Education (Ministry of Human Resource Development), to take immediate steps to convene a meeting of all the authorities concerned as contemplated by Para 6 of the Scheme and ensure that a proper fee structure is evolved for the medical, dental and engineering colleges throughout the country. It shall be open to the authorities to fix separate fee structure for each of the States, if such a course is warranted. It may also be open to the authorities to fix different fee structure having regard to the location of the colleges, to wit, a college in the city of Bombay may be allowed a different level of fees than a similar college (with similar facilities) situated in a rural area. To reiterate, the Central Government and the authorities concerned shall be free to evolve the fee structure in such appropriate manner as they think just and equitable to all concerned. We hope and trust that this would be done within a period of three months from today and the matter brought to the notice of this Court forthwith. We wish to make it clear that with effect from the Academic Year 1997-98, it shall be the responsibility of the authorities aforesaid to prescribe the fee payable in these colleges".

5. From the above, it is seen that the Supreme Court directed the State Government to complete the exercise within three months from the date of the order by making it clear that no further extension of the scheme will be given for the academic year 1997-98 and further directed the State Government to prescribe the fee payable in these colleges. After such indictment also, the Government failed to comply with the directions and it seems once again they approached the Court seeking extension of the time and it was ultimately extended upto 28-2-1997. Thereafter, the Ministry of Human Resource Development (Department of Education) issued a Resolution adopted by the department on 18th March, 1997 on the fixation of Tuition Fee as well as the Development Fee to be collected from the students by Private Educational Institutions. This Resolution was preceded by the recommendations of various committees constituted by the Central Government department wise and ultimately on the basis of a Meeting convened by the Minister for Human Resource Development with the Education Ministers of all the State Higher and Technical Education, it was decided that a self-contained policy direction could be issued to the applicable sectors of education, falling within the purview of the Ministry of Human Resource Development, viz., Higher and Technical Education. The meeting noted that while the AICTE had notified its regulations and the UGC was in the process of doing so, uniform policy, directions were still needed to be laid down by the Government to cover all aspects of relevance in determining the rates of fee. It was felt that further changes and details can be incorporated in the Regulations/ draft regulations in the light of the policy declaration. In this meeting the representatives of the State of A.P. also have taken part. Ultimately after approval of the policy by the President, this Resolution was issued and the same was published for its implementation. I need not refer to the entire scheme, as it not necessary to decide the controversy in issue.

6. As per clause 6.6 of the scheme, fee is having two components; one is Tuition fee and another is Development Fee. Tuition Fee seeks to recover the actual cost of imparting education, whereas the development fee takes care of the capital cost recovery to the management and to serve as a resource for upkeep and replacement. In other words, it takes care of infrastructure to be provided by the management to maintain excellent standards of education. Clause 6.6 (e), (f) and (g) being the important clauses, I would like to extract the same:

"(e) Development fee may be at flat rates to be determined every three years by the AICTE and UGC as the case may be. Different rate may be prescribed for "Payment", "Free/Merit", and "Foreign/ NRI" seat holders. These bodies could also classify institutions in different categories for the purpose of prescribing different slabs provided such categorisation is based on intelligible and objective criteria.

(f) In the first ten years, it would be open to the managements to appropriate upto half of the proceeds of the development fee or the actual capital cost, whichever be lower. The remaining half will have to be utilised for up-gradation and replacements in the first ten years and thereafter the entire proceeds will have to be so utilised.

(g) As the fee chargeable will be notified by the relevant Committees, it will be the duty of the statutory body concerned to communicate the rate of Development Fee to such bodies well in advance to enable the appropriate Committees to suitably incorporate such rates in their Notification. The UGC/ AICTE will take into account the views and suggestions of the private institutions, the State Governments and interested members of public while determining these rates".

7. From this it is seen that the Apex bodies which are kept in charge of overseeing imparting of the education to maintain uniform standards throughout the country and also excellent standards in Education were given the power to determine the development fee to be collected from the students by the petitioners being Engineering Colleges which are under control of the AICTE. Clause 6.6(f) deals with the maintenance of the record with regard to spending of the development fee towards actual capital cost and also for upgradation and replacement in first ten years and thereafter the entire proceeds should be utilised thereafter. Under clause 6.6 (g) the AICTE is expected to communicate the rate of Development Fee to all the concerned and on the basis of the representations made by them. It has to determine the development fee suitably after taking views of the managements, State Governments and interested members of the public. Under clause 6.8 once fee is fixed will be valid for a period of three years and the committee is expected to pass a resolution to notify the fee both tuition fee as well as development fee in the month of December every year and the fee to be collected from the next academic year and for general information wide publicity should have to be given for that. This exercise has to be carried out annually notwithstanding the fact that the rates

once fixed will be in force for three years. While fixing the development fee once in three years, the Committee has to take into account the unspent balance, if any in the maintenance and development accounts while fixing the fee for the next three years. Under clause 6.8. (8) it was resolved to incorporate this policy in the Regulations of the concerned Apex bodies at the Central Level. Under clause (8) for the purposes of Section 20(1) of the University Grants Commission Act, 1956 and Section 20(1) of the AICTE Act, this Resolution shall be deemed to be instructions" issued by the Central Government" to the concerned Apex body. In other words, these guidelines are given statutory force by the Resolution. Pursuant to this resolution, it is not in dispute that the AICTE in its proceedings F.No.NW/Fee-Com/5 dated 24th June, 1998 fixed the development fee to be collected from the students to be admitted under various categories i.e., Free Seats. Payment Seats and NRI Seats. It is not in dispute that the 2nd respondent received this communication but it did not choose to give necessary instructions permitting the managements to collect the development fee as prescribed by the AICTE. In those circumstances, the present writ petition is filed.

8. The relief sought for in this writ petition was opposed by the respondents by contending thus:

1. The action of the AICTE in fixing the development fee without service of notice to the State Government runs counter to clause 6.6 (g) of the Scheme which contemplates a notice to all the concerned about the intention of the decision making authority in fixing the development fee and after receiving the objections only final decision has to be taken by the Committee.

2. It is also the case of the respondents that the development fee fixed by the Secretary of the AICTE was not approved by the Executive Committee in its meeting held on 30-10-1998.

3. As far as the State of A.P. is concerned, the Government issued G.O. Ms. No.169 Education (EC.II) Department dated 30-6-1997 wherein the State Government fixed tuition fee including the development fees to be collected from the students to be admitted in Government/University Engineering Colleges and also in Private Colleges upto the period of 2000 and the same will be in force till academic year 1999-2000. Hence as the State Government has already incorporated the development fee component in the tuition fee to be collected from the students, the same cannot be now altered till the period for which the tuition fee was fixed. They have also taken a stand that the development fee fixed is on the high side and it will be unjust to ask the students to pay any additional fee.

4. Under clause 6(4) of the Scheme the decision of the AICTE cannot be implemented without placing the same before the State Level Committee for consideration and issuance of a notification to that effect.

Issue No. 1 :

Firstly from the factual grounds referred supra, whatever decisions that were taken by any State Government prior to this policy decision dated 18-3-1997 are only ad hoc in nature and they are bound to be revived in the light of the Resolution of the Human Resources Department, which was issued in consultation with the representatives of the State Governments including the Minister for Higher Education and Technical Education of Andhra Pradesh. From the policy enunciated by the Human Resources Department it is seen that the fee to be collected is in two components i.e., tuition fee and development fee. The State Government is empowered to fix the tuition fee in consultation with the Committee specified in the resolution itself. The fixation of the development fee is squarely in the realm of the Apex body in this regard and the State Governments cannot refuse to implement the orders of the AICTE. It is not the case of the State Government that it did not receive communication from the AICTE after issuance of circular in April, 1998 itself. But the Government did not raise its little finger against the proposed move. It is only after the managements of the Private Colleges approached this Court, i.e., after one year all these objections were raised. It is also to be kept in mind that the decision of the AICTE was implemented throughout the country except in the State of A.P. To put a quietus to the issue as the Government is seriously contesting the relief sought for in this writ petition on the ground that the development fee is included in the tuition fee fixed in the year 1996, and the AICTE cannot insist for collection of the development fee fixed by it, This Court by an order dated 4-4-2000 directed the Secretary, AICTE to convene a meeting of the Executive Committee under intimation to the State Government and afford an opportunity to the representatives of the State Government to submit their representations against the proposed move. Pursuant to the orders of this Court, the Government filed its objections on 6-5-2000 and the Executive Committee of the AICTE in its meeting held on 9-6-2000 under item No.37.04.11 passed the following resolution :

"The Committee then deliberated upon various aspects of the issue and decided that the present system regarding Development Fee structure would remain applicable till new guidelines are issued by AICTE. It was also suggested that the AICTE should obtain the views and suggestions of the State Governments and interested members of public and private institutions for future considerations."

9. The learned Government Pleader contended that the Resolution of the Executive Committee of the AICTE is not in accordance with the orders passed by this Court wherein this Court directed the Executive Committee to pass a detailed order on each and every objection raised by the State Government. In that context I have seen the objections filed by the State Government before the Executive Committee of the AICTE. Except stating that the decision taken by the AICTE is in contravention of clause 6.6(g) of the scheme, no valid and tenable ground was raised against the fees fixed by the AICTE. Hence, I do not think that the objections raised by the learned Government Pleader can be sustained. In fact the objections raised in the counter filed by the respondents were not even

raised before the AICTE. Hence, I cannot expect a more detailed resolution more so from a body comprising of several members. Further, the policy did not envisage that every individual or State Government concerned has to be heard by the AICTE before determining the development fee and keeping in view the fact that all other State Governments issued orders for collection of the development fee from the students, of course, in some States under the orders of the High Court, I do not think that by hearing the representatives of the State Government there would have been any change in the decision. Anyhow that opportunity was afforded by this Court and the AICTE stuck to its earlier decision. Hence I hold that the resolution of the AICTE dated 9-6-2000 neither runs counter to the orders of this Court dated 4-4-2000 nor suffer from any infirmity. Accordingly the first contention is rejected.

Issue No.2 :

The learned Government Pleader submits that in the counter filed by the AICTE it is stated that the proceedings of the Secretary, ATCTE dated 24-6-1998 were approved by the Executive Committee in its meeting held on 30-10-1998. Hence the very proceeding itself was vitiated as the same was issued without obtaining approval of the Executive Committee. I do not find sufficient force in this contention also for the single reason that decision taken by any authority incharge of the affairs of an organisation can always be ratified by the policy decision making authority. In this case the Executive Committee, in fact, ratified the action of the Secretary in determining the development fee. Even assuming for a moment that the objection raised by the learned Government Pleader is valid one, in the light of the opportunity given by the Court to the State Government to put forth its case and the resolution adopted by the Executive Committee, after considering the objections raised by the Government, this objection is also fall to the ground.

Issue No. 3 :

The third contention raised by the learned Government Pleader is that the fee fixed as per the G.O. Ms. No.169, Education (EC.2) Department, dated 30-6-1997 shall be valid for a period of three years i.e., till the end of academic year 1999-2000. I have already observed that even if the Government decision says that it is valid for three years, but in the light of the decision of the Supreme Court in T.M.A. Pal Foundation's case (supra) the authorities concerned are bound to review their orders to refix the fees to be collected from the students as the private institutions run by the managements happened to be self-financing institutions. The argument of the State Government it has fixed the tuition fee taking all the relevant factors into consideration cannot be correct for the simple reason that clause 6.6(b) of the resolution says that the tuition fee is intended to recover the actual cost of imparting education which includes salary and allowances and pensionary benefits to be made available to the teaching and non-teaching staff apart from various oilier aspects to be taken into consideration in fixing the Tuition Fee. From the fee structure fixed by the State Government

can it be said that the managements can afford to pay the UGC Scales, to the teaching and non-teaching staff leave apart other things, which both the Apex bodies and the State Governments are insisting. In fact, the learned Counsel for the managements placed reliance upon G.O. Ms. No.208, Higher Education (UE.IL.I) Department dated 29-6-1999, which directed all the Affiliated Degree and Post Graduate Colleges to revise the salaries of the staff as per UGC Scales of Pay of 1996. Had the respondents not taken a biased view and if they were impartial, nothing would have prevented the Government in allowing the managements to collect the difference in developmental fee fixed by the AICTE over and above the development fee i.e., Rs.2,000/- fixed in by the State Government in 1996. But even that was also not done. With the result, the managements were not able to realise the development fee fixed for meeting the infrastructural needs of the institution to maintain excellence in the standards of education and in fulfilling the onerous conditions prescribed by the AICTE under threat of derecognition. Be that as it may, it is not in dispute that the three years slot, on which the learned Government Pleader placed much reliance, expired by the end of academic year 1999-2000. The Government Pleader has also fairly conceded before this Court, of course pursuant to the orders of this Court, that they have not taken the development fee into consideration while considering the revision in the fee structure and this submission was strenuously denied by the learned Counsel for the petitioners by contending that the State Government has taken a decision not to revise the fee structure for the students receiving education in private educational institutions. Of course, such a decision not only runs counter to the policy enunciated by the Ministry of Human Affairs which is in control of the things after the subject "education" was transferred to Concurrent List and the State Governments were expected to follow the guidelines given by the Central Government without raising any objection. Anyhow, it is for the managements to work out their remedies if they are so interested. At any rate, as the fee structure fixed by the State Government in 1996 cannot be in force for more than three years i.e., till the end of academic year 1999-2000, the State Government is directed to permit the private educational institutions to collect the development fee as fixed by the AICTE in its letter dated 24-6-1998 and as confirmed by the Resolution of the Executive Committee of the AICTE dated 9th June, 2000. As the three years slot fixed in the resolution is going to expire with the end of this academic year i.e., 1999-2000, the AICTE is expected to take up revision in determining the development fee and publish the same before the end of December, 2000 as contemplated in the resolution. To avoid unnecessary complications on the issue, a direction is given to the AICTE to issue notice to all the concerned including the State Governments by Registered Post Acknowledgment due. After receipt of the objections, if any, the ATCTE shall pass a speaking order on each and every objection raised by the concerned before taking a decision to revise the development fee for the next academic year 2001-2002.

Issue No. 4 :

The next contention is that as per clause 6(4) of the resolution any fee chargeable by the institutions shall be determined by the Committee prescribed in that clause viz., the State Level Committees and any development fee determined by the Apex body, has to be approved by the State Level Committee. Hence unless and until a notification is issued by the State Government after a pragmatic view of the State Level Committee, it cannot be given effect to also cannot be given any credence. It is true that clause 6(4) of the Resolution says that the fee has to be fixed by the State Level Committee. But I cannot read this clause in isolation without reference to the other clauses. The development fee was exclusively determinate by the AICTE and as and when the AICTE communicates its decision, the Government cannot refuse to implement it, as it is not within its realm. The fee is divided into two groups viz., tuition fee and the development fee and the determination of the development fee is under the realm of the AICTE but not within the realm of the State Level Committee. Hence, the function of the State Level Committee is like that of a Post Office and it has to simply notify the development fee as determined by the AICTE and it is not within their power to tinker or modify the same. Likewise the State Level Committee cannot even refuse to give effect to the decision of the Apex Body. In the result I do not find merit in any of the contentions raised by the Government in refusing to give effect to the decision of AICTE dated 24-6-1998 fixing the development fee to be collected from various categories of students admitted to Technical Courses.

10. Accordingly a direction is given to the respondents to notify the development fee as fixed by the AICTE in its letter No.F.No.N\\V/Fee-Com/5 dated 24-6-1998, to be collected from the students who are seeking admission into technical courses from the academic year 2000-2001.

11. At this stage, the learned Counsel for the petitioners brought to my notice the order passed by this Court on 9-9-1999 that the Convenor shall notify the fee to be collected from the students subject to further orders in the WP No.16489 of 1999 for the year 1999-2000.

12. As the academic year 1999-2000 is already over, I am not inclined to give relief to the managements for that year.

13. In the light of the aforementioned discussion, the writ petition is allowed to the extent indicated above. No order as to costs.