(2002) 07 AHC CK 0022

In the Allahabad High Court

Case No : Writ Petition No. 3545 (MS) of 2001

Bhupesh Pandey and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

All India Council for Technical Education (Norms and Guidelines for fees and Guidelines for Admission in Professional Colleges) Regulations, 1994 — Regulation 7(1), 7(3), 7(4)

Citation : (2003) 2 UPLBEC 1644

Hon'ble Judges : Pradeep Kant, J

Bench : Single Bench

Advocate : Sudhir Pandey, for the Appellant; Rishi Raj Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—These bunch of writ petitions have been filed by the students of Babu Banarsi Das National Institute of Technology and Management challenging the fee structure applicable to them. All the students have deposited their fee for the first year of Bachelor of Engineering Course (in short B.E. Course) as per the Government Order dated 30.7.1998 and also for the second year in the like manner. The challenge has been made to the fee structure when the petitioners were pursuing the course in the third year.

2. The petitioners have disputed the authority of the State Government in issuing the Government Order dated 30.7.1998 enhancing the fee for the unaided Technical Education Institutions being run by the private sector and. in particular the fee which is being charged by the institution in question. The challenge has been made on the ground that the State was having no authority to enhance the fee, vide Government Order dated 30.7.1998 as against the fee prescribed by the earlier Government Order dated 11.11.1997 and that the fee structure framed by the State Government was not in consonance with the Resolution

dated 18th March, 1997 which propounded the policy on fee fixation for unaided Technical Institutions in private sector. It is also being asserted that the fee so prescribed is not in accordance with the Regulations known as All India Council for Technical Education (Opening of New Technical Institution, Courses or New Programmes and Recommendations of the Increase of Seats for Qualified Incumbents in the Courses and New Programme) Regulations, 1994, and in particular Regulation 7(3) of the aforesaid Regulations, 1994. The State Level Committee so constituted has not been constituted in accordance with the Resolution dated 18th March, 1997 that once the fee having been fixed by the State Government on 11th November, 1997, the said fee could not have been enhanced before lapse of a period of three years minimum. Further argument is that such an exorbitant fixation of fee within a period of 8 months from 1lth November, 1997 was wholly uncalled for and without any authority. An effort has been made to bring an element of arbitrariness in the action of the State Government in enhancing the fee by the Government Order dated 30.7.1998 on the aforesaid grounds.

3. On the principle laid down in the case of Miss. Mohini Jain Vs. State of Karnataka and others, and the dictum of the Supreme Court in the case of Unni Krishnan J.P. and another v. State of Andhra Pradesh and others (1993) 1 SCC 64 and in the case of T.M.A. Pai Foundation and others Vs. State of Karnataka and others, , it has been stressed that the fee fixation has not been done in accordance with the directives issued by the Apex Court.

4. The case of the opposite parties including the State as well as the institution is that the institution itself had come into existence after issuance of the Government Order dated 30.7.1998 and all the students had taken admission knowing full the fee structure and not only that they had also deposited the aforesaid fee at the time of admission for the first year B.E. Course and also for the second year B.E. Course but while studying in the third year of their Course, they had chosen to challenge the fee structure whereas once they have taken admission on the prescribed fee with full understanding and knowledge that they will have to pay the same fee till the completion of their Course, it is not open for them to raise any grievance against the fee structure at such a late stage.

5. It has been elaborated by the respondents that the institution was granted approval by All India Council for Technical Education (in short AICTE) to start the first batch of Bachelor of Engineering vide letter dated 16.6.1998 while the State of U.P. granted the No Objection Certificate to the institution by letter dated 23.2.1998 and affiliation to the institution with Dr. B.R. Ambedkar University, Agra was granted by letter dated 3.8.1998. It was after the approval granted by Dr. B.R. Ambedkar University, Agra, the State Government issued orders to the Combined Entrance Examination Committee, Moti Lal Nehru Regional Engineering College, Allahabad for allotment of seats to the respondent institution for admission in B.E. Course in the Academic Session 1998-99 vide letter dated 7.8.1998. At the time of admission of the students in the respondent institution,

the only Government Order which was in force and which laid down the fee structure was of 30.7.1998 and, therefore, the fee was being rightly charged from the petitioners accordingly.

6. Justifying the fee structure, the respondent institution submitted that the Government Order dated 30.7.1998 was issued in compliance of the Supreme Court in the case of T.M.A. Pai Foundation (supra). The Ministry of Human Resource Development, Government of India in compliance of the aforesaid order framed a policy of fee fixation for Unaided Technical Education Institutions in Private Sector imparting Technical and Higher Education and in obedience to the directives of the Supreme Court, the AICTE constituted the State Level Committee under the Chairmanship of the Vice-Chancellor, Roorkee University consisting of six other members including the Principal Secretary, Technical Education and Secretary, Finance, Government of U.P., Director, Technical Education, U.P. and three other experts, vide its letter dated 16.7.1998. The State Level Committee took into consideration the various aspects regarding fee fixation in consultation with the representatives of various Unaided Technical Education Institutions in Private Sector including the representative of the respondent institution, who submitted their representation to the said Committee in respect of the expenses incurred in running their institutions and imparting education on all counts indicated in the Resolution of 18th March, 1997. The State Level Committee after considering the matter in its full perspective submitted its recommendation to the State Government on 28.7.1998 and in turn the State Government, after duly considering all aspects in this regard, issued the Government Order dated 30.7.1998 prescribing the fee structure in the Self-Financed Unaided Technical Education Institutions in the Private Sector to be effective from the Academic Session 1998-99 onwards. The fee structure, according to the opposite parties, has, thus, been prescribed in pursuance of the policy decision of the Central Government and the recommendation of the State Level Committee in consultation with the Ministry of Human Resource Development Government of India and duly approved by the AICTE, as per the directives issued by the Apex Court.

7. The All India Council for Technical Education Act (hereinafter referred to as the AICTE Act) was enacted by the Parliament in the year 1987 keeping in view the object of proper planning and co-ordinated development of the Technical Education throughout the country and for promotion of qualitative improvement of education. The main object of the AICTE Act was to provide necessary statutory authority and power to the All India Council for Technical Education to ensure :

(i) proper planning and co-ordinated development of Technical Education System throughout the country;

(ii) promotion of qualitative improvement of Technical Education in relation to planned quantitative growth;

(iii) regulation of the system and proper maintenance of norms and standards.

8. Sections 2(g) and 2(h) of the AICTE Act defines Technical Education and Technical Institution:

(g) "Technical Education" means programmes of education, research, and training in Engineering Technology, Architecture, Town Planning, Management, Pharmacy, Applied Articles and Crafts and such other programme or areas, as the Central Government may, in consultation with the Council, by notification in Official Gazette, declare :

(h) "Technical Institution" means an institution not being a University, which offers courses or programmes of Technical Education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as Technical Institution.

9. Section 3(1) of the AICTE Act provides for establishment of a Council known as All India Council for Technical Education. Section 10 of the Act lays down the power and functions of the AICTE. Section 10(i) gives power to the AICTE to lay down the norms and standard for Courses, curricular, physical and instructional facilities, staff qualification etc. whereas Section 10(j) gives power to the AICTE to fix norms and guidelines for charging tuition and other fee. The relevant sections are quoted below :

"10. (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of Technical and Management Education and maintenance of standards and for the purposes of performing its function under this Act, the Council may:

10. (i) lay down norms and standards for courses, curricular, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examination;

10. (j) fix norms and guidelines for charging tuition and other fees;

10. (o) provide guidelines for admission of students to technical institutions and Universities Imparting Technical Education."

10. Regulation 3(e) of All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 (hereinafter referred to as Regulations of 1994) defines the words "free seat" which means the seats on which the fees payable is same as prescribed for the Government institution in the concerned State, "payments seats" is defined in Regulation 3(f) which means the seats on which the fees payable shall be substantially higher than for free seats.

11. Regulation 7 of the aforesaid Regulations of 1994 lays down the determination of fee. Regulation 7(1) provides that the tuition and other fees for a professional college shall be determined by a State Level Committee. As per Regulation 7(2) the Council shall constitute a Standing Committee for each State

to fix ceiling on the fees chargeable for individual courses by a professional college or class of professional colleges, as the case may be. The constitution of the Standing Committee, as given, is as under :

(i) Vice-Chancellor of a University in a State, to be nominated by the State Government;

(ii) Secretary, Technical Education and Secretary, Finance of respective State;

(iii) Two economists or experts in cost accountancy with background of institutional financing, to be nominated by the Council; and

(iv) Member-Secretary not below the rank of Joint Secretary or Director of the respective State Government, to be nominated by the State Government.

12. The Ministry of Human Resource Development in its resolution dated 18.3.1997 laid down the policy for fixation of fee for imparting Technical Education and higher education wherein in Clause 6.4 of the Resolution determination of fee which re-asserts that the fee in institutions imparting Technical Education will be determined by the State Level Committee consisting of the following :

(i) Vice-Chancellor of one of the Universities in the State to be nominated by the State Government concerned-Chairperson;

(ii) Secretaries of the Department of Technical Education and Finance Department of the State Government concerned or their nominees-Members;

(iii) Three experts, one each in Economics, Cost Accountancy and Institutional Finance, to be nominated by the All India Council of Technical Education-Members; and

(iv) Director, Technical Education of the State concerned, the Member-Secretary.

13. It is, thus, not disputed that the fee structure was to be laid down by the State Level Committee in consultation with the Ministry of Human Resource Development with the approval of the AICTE. The respondents vehemently urged that the Government Order dated 11.11.1997 was not meant for Unaided Technical Education Institutions in the Private Sector, as it related to Government aided institutions and autonomous institutions (excluding Self-Financed Unaided Technical Education Institutions in the Private Sector) and that the fee to be charged by Unaided Technical Education Institutions and Higher Education Institutions in the Private Secretary in the State was provided by means of the Government Order dated 30.7.1998 and as such the petitioners cannot rely for realization of the fee upon the Government Order dated 1.11.1997.

14. With regard to the participation of Private Sector in the Professional Technical and Higher Education and the establishment of such institutions, the Government of U.P. issued the Government Order dated February 6, 1991, whereby decision was taken to allow Unaided Technical Education and Higher Education Institutions

in the Private Sector for imparting Technical Education and Higher Education. The Government Order dated 4.3.1995 decided the terms and conditions for establishment of such institutions. In the meantime, in the year 1993, the Supreme Court in the case of Unni Krishnan J.P. (supra) issued directions to the AICTE for laying down the guidelines and scheme regulating the admission and levy of fee in Private Technical Education Institutions. It was thereafter that the AICTE framed Regulations of 1994. In the State of U.P., the Unaided Technical Education Institutions in the Private Sector were established in the year 1996 after the fixation of terms and conditions for establishment of such institutions by the aforesaid Government Order dated 4.3.1995. The fee structure for different category of seats in the Unaided Technical Education Institutions in the Private Sector was fixed by the State Government by Government Order dated 8.3.1996 which fee was applicable for the students admitted in the year 1996-97 onwards. The Supreme Court again issued directions in the case of T.M.A. Pai Foundation (supra) with regard to the procedure for fixation of fee for various category of seats for Technical and Management Courses run by the Unaided Technical Education Institutions in the Private Sector which fall within the ambit of AICTE.

15. In the case of T.M.A. Pai Foundation (supra), the Supreme Court made it clear that with effect from the academic year 1997-98, it shall be the responsibility of the authorities to prescribe fee payable to the colleges. The State Government was, thus, fully justified in undertaking exercise of fixation of fee in this regard for the year 1997-98 and onwards. The Supreme Court in the aforesaid case also observed, as under:

....

At least 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 interests 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.

....

....

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."

16. It is in the light of the directives issued by the Supreme Court, the fee structure has been re-framed for the Unaided Technical Education Institutions in the Private Sector.

17. Since, the petitioners are pursuing their studies under the self-supporting scheme and no challenge has been made by the students who have taken admission against the ''free seats'' or N.R.I. seats, there is no occasion for this Court to enter into controversy thereof. The challenge, therefore, is apparently limited only to the fee structure with respect to the students who have taken admission under self-supporting scheme.

18. The sheet anchor of the defence is that the fee has been prescribed for the Unaided Technical Education Institutions in the Private Sector as per directions issued by the Supreme Court and in conformity with the Resolution dated 18.3.1997 of Ministry of Human Resource Development and as per Regulations of 1994.

19. The argument of the learned Counsel for the petitioners that once the fee has been prescribed by the Government Order dated 11.11.1997, the State Government was not at liberty to re-constitute a Committee and determine the fee within a span of three years has to be tested in the light of the Government Order dated 8.3.19996 and the Government Order dated 4.3.1995, a reference of which has been made in the impugned Government Order dated 30.7.1998. The Government Order dated 4.3.1995 was issued by the State Government modifying the earlier Government Order dated 6.2.1991 with respect to the establishment of Private Professional/Technical Education Institutions carrying Graduate and Post Graduate Courses wherein it has been provided in Clause 10 that the fee shall be determined by a State Level Committee constituted under the Regulations of AICTE and the institutions would not be entitled to realize any other amount as fee. In the Government Order dated 8.3.1996, which modified the Government Order dated 4.3.1995, the Department of Technical Education, Government of U.P., decided that the fee with regard to the ''payment seats'' in Unaided Technical Education Institutions in the Private Sector would be Rs. 35,000/- per year and the fee against ''free seats'' would be Rs. 3,000/- per year. This Government Order which determined the fee with respect to the ''payment seats'' also in the Unaided Technical Education Institutions in the Private Sector was obviously not issued as per the Resolution dated 18.3.1997 nor the fee was determined by the Standing Committee under the approval of AICTE. The Government Order dated 30.7.1998 determined the fee structure with respect to the aforesaid nature of institutions as per the recommendations of the State

Level Committee and provided the following fee structure:

Free Seats Rs. 24,000/- per annum Paid Seats Rs. 68,000/- per annum N.R.I. Seats Rs. 2,05,000/- per annum 20. A bare perusal of the Government Order dated 11.11.1997, indicates that the same has been issued by the Higher Education Department of the Government of U.P. and not by the State Level Committee duly constituted as per the Resolution dated 18.3.1997 or Regulations of 1994. It is also not clear from the aforesaid Government Order that the same has been issued with the approval of AICTE. It has been specifically urged by the respondents that this Government Order dated 11.11.1997 did not relate to the Unaided Technical Education Institutions in the Private Sector and that it was not issued by the State Level Committee as per requirements of Regulations of 1994 or the Resolution dated 18.3.1997 and that it was also not in consonance with the directives issued by the Supreme Court in T.M.A. Pai Foundation (supra) and Unni Krishnan J.P., (supra). It is also the specific case of the respondents that at no point of time the fee in the Unaided Technical Education Institutions in the Private Sector was charged as per the Government Order dated 11.11.1997, but as a matter of fact earlier the fee was being charged as per the Government Order dated 8.3.1996 and later on in pursuance of the Government Order dated 30.7.1998, as these are the Government Orders which are applicable in the case of Unaided Technical Education Institutions in the Private Sector. The Government Order dated 30.7.1998 has been issued by a Committee constituted under the Regulations of 1994 as per the Resolution dated 18.3.1997 with the approval of the AICTE. The fee structure for Unaided Technical Education Institutions in the Private Sector is to be prescribed by the Department of Technical Education, Government of U.P., whereas the Government Order dated ''11.11.1997 was issued by the Department of Higher Education. It is no doubt true that in the Government Order dated 11.11.1997, a reference has been made with respect to the courses falling under the ambit of AICTE and also prescribed the fee for the courses under different category of seats but the same has been issued with a view to grant recognition/affiliation/permission for establishing the institution. This Government Order has not been issued by the Department of Technical Education of the Government of U.P., nor by the Committee constituted under the Regulations of the Resolution dated 18.3.1997, with the approval of the AICTE. Once the fact that the fee was never charged as per the Government Order dated 11.11.1997 having not been disputed by the petitioners, it can very well be inferred that the Government Order which was applicable earlier was the Government Order dated 8.3.1996 and later on the Government Order dated 30.7.1998. The Government Order dated 11.11.1997, thus, cannot be said to be the determination of fee in pursuance of the directives issued by the Supreme Court nor in accordance with the Resolution dated 18.3.1997, nor Regulations'' of 1994. The embargo placed in Regulation 7(4) of Regulations of 1994, that the fee shall be fixed once in every three years or at such longer intervals, as the Committee may think fit, would not be attracted with respect to the Government Order dated 11.11.1997, as the same has not been issued under the aforesaid Regulations. On the other hand, the Government Order dated 30.7.1998 clearly recites that the fee has been determined in pursuance of the decision of the Committee constituted by the AICTE for the Unaided Technical Education Institutions in the Private Sector falling within the purview of Technical Education Institutions in U.P. for a period of three years.

21. The fact that the Government Order dated 11.11.1997 was not to be applied to the Unaided Technical Education Institutions in the Private Sector and fee for the said institution has to be determined by the State Level Committee under Regulation 7 of 1994, Regulations was clarified by the State Government in its letter dated 25.7.1998. This letter has been brought on record which indicates, that the fee with respect to the aforesaid institutions would be shortly determined by the Committee constituted by the AICTE, namely, State Level Committee. This supports the stand taken by the respondents that the Government Order dated 11.11.1997 was not issued on the recommendation of the State Level Committee.

22. In T.M.A. Pai''s case (supra), the Supreme Court observed, that the fixation of fee is not the function of the 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 Counsel for Technical Education. The Supreme Court further, observed, "... ....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."

23. In pursuance of the aforesaid directions of the Supreme Court, the Ministry of Human Resource Development passed the Resolution dated 18.3.1997 laying down the constitution of the Committee for the purpose as well as the factors which were to be taken into consideration by such Committee in prescribing the fee. The Government Order dated 11.11.1997 though has been "issued after the judgment rendered by the Supreme Court in the case of .T.M.A. Pai (supra) and the Resolution dated 18.3.1997 of the Ministry of Human Resource Development, it was not issued as per Regulation 7(3) of the Regulations of 1994 by a Committee constituted by the AIGTE read with Regulation 10(j)- The Committee so constituted by the State Government was not a Committee, which could have deliberated on the issue of fee fixation in the matter of Unaided Technical Education Institutions in the Private Sector.

24. It appears that feeling this discrepancy, the deliberations took place and on the basis of the policy as approved by Government of India formulated on the basis of broad principles arrived at in the meeting of the officials of the State Governments of Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu and also endorsed in the meeting of the Ministers of State Governments for Higher

and Technical Education, the Resolution dated 18.3.1997 was passed. It is, thus, obvious that the Government Order dated 11.11.1997 cannot be said to have been issued in pursuance of the directives of the Supreme Court, Resolution dated 18.3.1997 of Ministry of Human Resource Development and Regulations of 1994. It is also significant to note that the fee as prescribed by the Government Order dated 8.3.1996 which has been considered and a reference of which has been made in the Government Order dated 30.7.1998 prescribes Rs. 35,000/- per year for paid seats whereas in the Government Order dated 11.11.1997 that was reduced to Rs. 30,000/- per year. This decrease of fee was not acted upon by the Unaided Technical Education Institutions in the Private Sector probably because the aforesaid Government Order was not sought to be enforced by the State Government against the Unaided Technical Education Institutions in the Private Sector and therefore, they were allowed to realise fee as per Government Order dated 8.3.1996 though the fee structure in the said Government Order also was not prescribed by the State Level Committee as per the directives issued by the Supreme Court. I, therefore, do not find any substance in the argument of the petitioners that within a span of three years after issuance of the Government Order dated 11.11.1997, the fee could not have been re-determined by the Government Order dated 30.7.1998.

25. The next argument of the petitioners is that the Committee which has been constituted by the AICTE was not a Committee, as was required to be constituted under Regulation 7(3) of Regulations of 1994 nor in accordance with the Resolution dated 18.3.1997 and that the quorum of the Committee was not complete and therefore, any decision taken by such Committee was not implementable. With respect to the nomination of the Committee, it has come on record that the Committee has been constituted by AICTE as per Resolution dated 18.3.1997 under the Chairmanship of Vice-Chancellor of one of the Universities in the State nominated by the State Government and Secretary, Department of Finance and Secretary, Department of Technical Education of the State Government as its Members. Three experts were nominated by the AICTE and the Director, Department of Technical Education was its Member-Secretary. This State Level Committee was approved by the AICTE vide its letter dated 16.7.1998. The experts having been nominated by the AICTE and the State Level Committee having been duly approved by the AICTE, it cannot be broadly inferred that the Committee was not duly constituted and the experts nominated were not the experts as required under the Resolution. The Committee, thus, being duly constituted and the experts having been nominated by the AICTE, the constitution of the Committee, unless it suffers from the vice of malice or disqualification or ineligibility of any expert, cannot be termed as an invalid Committee so as to render its decision as invalid or arbitrary.

26. The meeting of the State Level Committee was attended by 7 persons including five persons as special invitees and as such no defect could be pointed out to the quorum of the Committee also, though it has not been brought on record as to what should be the quorum under1 the Regulations for meeting of

such Committee.

27. It has also been asserted during the course of arguments that the fee fixation is highly excessive and therefore, arbitrary. In this context, reliance has been placed on the fee fixation as made in the Government Order dated 11.11.1997 which prescribes only Rs. 30,000/- per year from payment seats. The argument is that within a span of 8 months, the fee could not have been enhanced to Rs. 68,000/-. On the face of it, the argument appears to be attractive but in the wake of pleadings, as on record, the petitioners have not made any attempt to establish even prima facie as to how the fixation of Rs. 68,000/- is excessive. Merely saying that the amount of fee is excessive or determination of fee is arbitrary would not be sufficient to uphold the contention of the petitioners. The burden lay upon the petitioners to plead and prove the arbitrariness in the determination of fee by giving some relevant data. On the contrary, the Government Order says that the fee has been determined on the recommendation of the State Level Committee for a period of three years. The Resolution dated 18.3.1997 of the Ministry of Human Resource Development (Department of Education) clearly lays down the policy of fee fixation for Unaided Technical Education Institutions in Private Sector imparting Higher Technical Education. The Resolution has been passed in obedience to the wishes of the Supreme Court as propounded in the case of Unni Krishncm J.P. (supra), which laid down the scheme regulating admission and levy of fee in Private Unaided Educational Institutions particularly those imparting professional Education and in pursuance of the Regulations of 1994. The Resolution takes note of the fact that the orders passed on 9.8.1996 by the Supreme Court required the Central Government, including the Ministry of Education to take steps to convene a meeting of all the concerned authorities for evolving a proper fee structure for Medical, Engineering and Dental Colleges throughout the country within three months. The meeting of all concerned, viz., the Ministries of Health and Family Welfare and Law and the Medical Council of India, the Dental Council of India, the AICTE and the UGC, and Representatives of Technical, Higher and Medical Education Departments were accordingly held on 30.8.1996 and 8.10.1996 where all the relevant issues were considered. For taking a final view in the matter, a meeting of State Higher and Technical Education Ministers was convened by the Union Minister of Human Resource Development on 10th December, 1996 wherein it was decided that self-contained policy directions could be issued applicable to sectors of education, falling within the purview of the Ministry of Human Resource Development, namely, Higher and Technical Education. The meeting also 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 rates of fee. It is in this background that the policy decision was taken by the Ministry of Human Resource Development (Department of Education). In Clause 6.6 of the Resolution, determination of fee was categorized in two broad categories, namely, Tuition Fee and Development

Fee.

28. Clause 6.6 of the Resolution reads as under :

"Fee Determination.-(a) Fee will have two broad categories.-Tuition Fee and Development Fee.

Besides, the management of the institutions may realize the actual cost of boarding and messing from the above students subject to the relevant Committee being satisfied about the reasonableness of such costs.

(b) Tuition Fee will seek to recover the actual cost of imparting education. While assessing a fair tuition fee, the Committee will take into account the following:

(i) Salary and allowances including bonus, if admissible, to teaching and non-teaching employees;

(ii) Expenditure on administrative services;

(iii) Cost of maintenance of laboratories including consumables;

(iv) Contingent expenditure including statutory requirements like audit fee etc.;

(v) Cost of acquisition of books and journals for libraries; and

(vi) Maintenance of buildings and other assets including rents and tariffs.

Keeping the above parameters in view, suitable rates will be fixed for holders of ''free'', ''payment'' and NRI/Foreign Students'' categories.

(c) The UGC and AICTE will forthwith prepare norms relating to staffing and scales of expenditure for other items wherever such norms have not so far been worked out, to, the extent feasible. In cases, where it is difficult to lay down specific quantified norms, the relevant Committee shall satisfy themselves about the adequacy and reasonableness of the expenditure involved. Care will be taken to ensure that the projected expenditure does not become a source of profit to the sponsors.

(d) As the scheme in Unnikrishnan prohibits commercialization and profit making, it will not be open to the institutions concerned to claim any return on investments. This should, however, not come in the way of the institutions in mobilizing resources for replacement and upgradation of assets. Further, while earning return of investment would not be permissible, the Court had in the Unnikrishnan judgment on the question of recovering investment from the Central Government and the statutory bodies. It is, therefore, considered desirable that the Development fee could provide for an element of partial capital cost recovery to the Management (but not a return on investment) and to serve as a resource for upkeep and replacement."

29. In the counter-affidavit filed by the State Government in the case of Nirpesh Vikram and others v. State of U.P. and others [Writ Petition No. 2327 (MS) of

2001], it has been stated that the Standing Committee while deciding the fee structure took into consideration the Resolution dated March 18, 1997 issued by Ministry of Human Resource Development (Department of Education), Government of India. The resolution named "Scheme in Unnikrishnan" was issued in compliance of orders of Hon''ble Supreme Court in the matter of Unnikrishna J.P. v. State of Andhra Pradesh. The delegates from Private Engineering Colleges were called for detailed discussions on the question of determination of fee structure and other expenditure incurred on a student. The delegates participated in the meeting held on 28.7.1998 and they in detail narrated the per student expenditure etc. On the basis of the said discussion and mathematical calculations that recommendations were made in the said meeting of delegates of Private Engineering Colleges. Thus, the Private Engineering Colleges were given due hearing as provided by the Hon''ble Supreme Court before determining the fee structure and other expenditure etc. Thus, there was no denial of opportunity of hearing to the Private Engineering Colleges in the matter of determination of fee structure and other expenses. The Standing Committee also took into consideration the recommendations made by the meeting of Private Engineering Colleges.

30. In view of the specific stand taken by the respondents that while determining the fee structure relevant factors as enunciated in the Resolution dated 18.3.1997 of the Ministry of Human Resource Development were taken into consideration, the representatives of the Private Technical Education Institutions were also given opportunity to put forward their claim and on consideration of the entire aspects of the matter and the factors relevant for determination of fee, the fee has been prescribed which determination could not be successfully challenged by the petitioners by giving any such material, which may pursue the Court to disapprove the decision taken by the State Level Committee.

31. Lastly, it has also been urged that the institution was charging health insurance fee also which could not be charged in view of the Annexure under the heading "Items to be taken into account for determining the tuition fee and other fees to be charged by a professional College" annexed with the Regulations of 1994. In this annexure the items to be taken into consideration by the Committee also provide for health care. In response to the aforesaid claim the institution has asserted that firstly, the tuition fee which has been determined under the Government Order dated 30.7.1998 does not include any fee towards health care and secondly, the health insurance amount is the amount of premium for health insurance of all the students. He has also submitted that under the Group Insurance Scheme of the institution while the student is to pay a nominal amount of money towards the premium, he is provided full cover under the health insurance scheme, like Mediclaim etc. In the first year, namely, in the year 1998-99, insurance premium was charged at the rate of Rs. 200/- per annum from each student and in the second year, namely, in the year 1999-2000, it has been charged at the rate of Rs. 500/- per annum, in the third year, namely, in the year 2000-2001, insurance premium has been charged at the rate of Rs.

750/- per annum while in the fourth year, namely, in the year 2001-2002, it has been charged at the rate of Rs. 1000/- per annum. The benefits which have been provided under the aforesaid scheme to the students have also been disclosed wherein the medical facilities have been provided to various students for the amount much in excess of the premium paid in different years. A student covered under the health insurance scheme gets benefit of the health insurance while he is inside the campus of the institution and also outside the campus wherever he might be. Regular visit of couple of Doctors and regular medical check up by them and treatment facilities inside the campus is also provided. The health cover is an essential part for every student and if for that purpose the institution is charging a nominal premium as per the Group Insurance Scheme, it cannot be said that charging of such premium is arbitrary or illegal. The premium amount is paid to the Insurance Company and the institution does not derive any benefit of that amount. It is a facility provided to the students, which covers the entire health risk and provides necessary treatment to the needy students. Such facility is not only essential but is also being beneficially availed of by the students. It has also been asserted by the learned Counsel for the respondent institution that at the time of admission the students and their parents/guardians had been informed about, the said insurance scheme and they have willingly contributed for the same.

32. In the circumstances, I do not find any illegality in charging the health insurance fee, which is for the betterment, safety and health of the students, particularly when it provides full cover to the students, both inside and outside the campus for the period for which he/she has been insured under the Group Insurance Scheme.

33. There is one more aspect of the matter which cannot be ignored, namely, the institution in question had started functioning for the first time after the issuance of the Government Order dated 30.7.1998. Thus, on very opening of the institution, the Government Order dated 30.7.1998 was the only Government Order, which was in vogue, which prescribed the fee for pursuing the Engineering Course in the said institution. The students, namely, the petitioners had taken their admission by paying the fee as per the aforesaid Government Order and had not made any protest at any point of time except when they successfully cleared their 1st and IInd year course and started pursuing their studies in the IIIrd year. The institution having come into existence after the determination of fee by Government Order dated 30.7.1998 has been rightly charging fee under the said Government Order. The petitioners had applied for admission and had accepted the admission with full knowledge of the fee structure as determined by the aforesaid Government Order. The petitioners having failed to establish any arbitrariness on the part of the Government in prescribing the fee structure by means of the Government Order dated 30.7.1998, the reasons for which have been stated above, I do not find any merit in the claim put forward by the petitioners so as to interfere with the fee structure. The writ petition is liable to be dismissed.

34. All the above writ petitions are dismissed.

35. No order as to costs.

