

(2017) 08 DEL CK 0105

In the Delhi High Court

Case No : 2217 of 2016

THE SELF FINANCING EDUCATIONAL INSTITUTIONS
ASSOCIATION (REGD.)

APPELLANT

Vs

GOVERNMENT OF NCT OF DELHI AND ANR

RESPONDENT

Date of Decision : 31-08-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

General Clauses Act, 1897, Section 21 -
Power to issue, to include power to add to, amend

Citation : (2017) 08 DEL CK 0105

Hon'ble Judges : Indermeet Kaur

Bench : SINGLE BENCH

Advocate : R.K. Saini, Namit Suri, Sudhir Nandrajog, Anuj Aggarwal, Deboshree Mukherjee, Surya Rajappa

Judgement

1. The petitioner is an Association of Self Financing Private Institutes imparting higher education. It is a society registered under the Societies Registration Act, 1860. Guru Gobind Singh Indraprastha University (GGSIU) is a local university of Delhi. It grants affiliation to the self financing colleges/institutions; the members of the petitioner Association are said colleges/institutions. Statue 27 of the GGSIPU (clause 4-notified vide Notification dated 18.09.2002) relates to tuition fee payable by the students and provides the fee chargeable for such self-financing institutions. It is subject to the condition that it shall be revised as per the directions of the Government based on the recommendations of the State Level Committees.

2. Clause 4 reads herein as under:- "The fees chargeable as mentioned in clause 3 for self-financing institutions are subject to the condition that it shall be revised as per the directions of the Government, based on the recommendations of the State Level Committee constituted in accordance with the directions of the recognizing statutory authority, if applicable."

3. It specifically provides that the fees chargeable by these institutions are subject to the condition that it shall be revised as per the directions of the Government, based on the recommendations of the State Level Committee constituted in accordance with the directions of the recognizing statutory authority.

4. On 29.05.2007, the NCT of Delhi enacted "The Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other measures to ensure Equity and Excellence) Act, 2007" (hereinafter referred to as the Act of 2007). The object of the Act is to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotments of seats to Schedules Castes, Schedules Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the NCT of Delhi and for matters connected thereto. In accordance with the provisions of the Act under Section 6, a Fee Regulatory Committee shall be notified by the Government for determination of the fee for pursuing courses in such like institutions. The constitution of the Fee Regulatory Committee has been detailed in Section 6. Section 6 (3) is relevant. It reads herein as under:- "The Government, after receipt of the recommendations under subsection (2) and subject to its satisfaction, shall notify the fee determined by the Fee Regulatory Committee:

Provided that the Government may refer back the matter to the Fee Regulatory Committee along with its observations for re-consideration and during the intervening period, the Institution shall charge the fee as determined by the Fee Regulatory Committee."

5. This sub-section stipulates that the Government after receipt of the recommendations under sub-section 2 and on being satisfied shall notify the fee determined by the Fee Regulatory Committee. The proviso enunciates that the Government may refer the matter back to the Fee Regulatory Committee for a reconsideration but during this intervening period, the Institute shall be permitted to charge the fee as has been determined by the Fee Regulatory Committee.

6. Learned counsel for the petitioner has highlighted Section 6 (2) as well; submission being that it is a procedure which envisages an opportunity of being heard to the Institute before determining the fee to be fixed for the course of studies of such an Institution to the Government. Additional submission being that this procedure is a detailed fact finding inquiry which is entailed by the Fee Regulatory Committee where not only a physical inspection of the Institute is carried out but all documents as may be required by the said Committee are to be furnished to the satisfaction of the Committee to them.

7. Section 6 (13) reads herein as under:- ""The fee notified by the Government shall be valid for three years: Provided that the Government may extend the validity of such fee for a further period as may be notified."

8. This sub-section provides that the fee notified by the Government will have a validity period of 3 years; the Government has the discretion to extend the validity of such fee for a further period as it may notify.

9. It is averred that, a Fee Regulatory Committee had been constituted by the Notification dated 04.04.2008 for determining the fee to be charged by the privately managed institutions offering different courses in the NCT of Delhi. It had submitted to the Government on 30.10.2009 its report for the academic year 2009-2012 and subsequently another report dated 17.01.2010 for the academic year 2010-2011. The fee fixation was issued by the Lt. Governor vide Notification dated 07.02.2012. By a subsequent Notification dated 16.08.2013 issued by the Directorate of Higher Education, Government of NCT of Delhi, the fee structure of 2011-2012 was extended for the academic year 2012-2013 also.

10. In the instant case in terms of Section 6 (1) of the said Act, the Government of NCT of Delhi constituted a State Fee Regulatory Committee vide a Notification dated 01.02.2013 for determining the fee structure for the academic year 2013-2016. The report was submitted by the Committee in the year 2015. However no action was taken on this report. The petitioner was constrained to file W.P.(C) No.10334/2015 titled Vivekananda Institute of Professional Studies Vs. Government of NCT of Delhi & Anr. This petition was disposed of on 04.11.2015. The Single Bench of this Court had directed the respondent to take a decision in the matter in terms of the aforementioned Act of 2007. Relevant extract of the said order reads herein as under:- "Accordingly, the respondents are directed to take a decision in terms of the 2007 Act as to whether or not they propose to accept the recommendations. The decision, in this behalf, will be taken (if not already taken), as expeditiously as possible through, not later than two months from today. Needless to say, if the recommendations are accepted, they will be duly notified."

11. This direction by the Court had directed the respondent to take a decision as to whether they propose to accept the recommendations of the Fee Regulatory Committee or not; this decision was to be taken within two months; if the recommendation was accepted, it was required to be notified. The petition was disposed of in the above terms.

12. On 19.02.2016, the Government of NCT of Delhi issued a Notification conveying its decision that the fee structure proposed for the academic year 2013-2016 by the State Fee Regulatory Committee be notified for the years 2014-2017. In terms of the said Notification, the fee structure for the years 2014-2017, 2014-2018 and 2014-2019 for 3, 4 & 5 years courses had been notified. Relevant extract of the aforementioned Notification reads herein as under:- "Now, in exercise of the powers conferred by sections (3) and (13) of section 6 of the said Act, the Government of National Capital Territory of Delhi notify that the proposed fees for the academic year 2013-2016 given by the State Fee Regulatory Committee for the academic year 2014-2017 and for the year 2014-2018 for four years course and 2014-2019 for five years course

respectively"

13. On 10.03.2016 this Notification stood rescinded. The Notification issuing the rescinding order is Annexure P-5; relevant extract of which reads herein as under:- "And further in exercise of the powers conferred by sections (3) and (13) of section 6 of the said Act, the Government of National Capital Territory of Delhi notify that the proposed fees for the academic year 2013- 2016 given by the State Fee Regulatory Committee for the academic year 2014-2017 and for the year 2014-2018 for four years course and 2014-2019 for five years course respectively vide Extra Ordinary Gazette Notification NO. F.DHE4(68)/SFRC/14-15/9728 dated 19.02.2016. Considering the fact that thousands of students have been affected by the revision of the fee with retrospective effect, the Government of National Capital Territory of Delhi rescinds the aforesaid Gazette Notification NO. F.DHE4(68)/SFRC/14-15/9728 dated 19.02.2016"

14. This Notification dated 10.03.2016 issued within 25 days of the earlier Notification dated 19.02.2016 stating that the rescinding order was passed for the reasons that several thousands of students who had been affected by the revision of fee which was with retrospective effect had led the Government to pass this order.

15. It is this order (dated 10.03.2016) which is under challenge; submission being that the earlier Notification of the NCT of Delhi having accepted the recommendations of the Fee Regulatory Committee on 19.02.2016 could not have now rescinded this Notification. Such an exercise is arbitrary and illegal and has necessarily to be set aside.

16. Counter affidavit of the respondent has negated these submissions. It is pointed out that although admittedly pursuant to the recommendations of the Fee Regulatory Committee, a Notification dated 19.02.2016 had been issued accepting the recommendations of the Fee Regulatory Committee but thereafter several thousands of representations were filed by various students who had been effected by the fee hike. It had been brought to the notice of the Government that the fee hike not only affected the studies of the children but their lives had been seriously impacted. Since there was considerable fee hike, they were not in a position to continue with their studies as this fee hike was creating a hurdle against them. It were these representations which had been kept in mind which had led them to pass the subsequent Notification dated 10.03.2016 rescinding its earlier Notification dated 19.02.2016. Learned senior counsel for the respondent points out that education is not a business; it is not an industry; the rescinding order passed on 10.03.2016 has to be viewed in the light of this submission of the respondent; the earlier Notification dated 19.02.2016 had had a huge financial implication on the lives of several students who had already enrolled themselves, such a Notification coming midterm i.e. at the time when they were about to complete their course and the financial implications being so heavy, the students were forced to even discontinue their studies. It was in this background that the Notification dated 10.03.2016 was

issued. Learned senior counsel for the respondent points that under Section 21 of the General Clauses Act, 1897, there is ample power with the Government to rescind a Notification which it has otherwise notified; there is in fact no curtailment of this power. Learned senior counsel for the respondent in support of this submission has placed reliance upon (2011) 3 SCC 193 Shree Sidhbal Steel Ltd. and Others Vs. State of U.P. and Others. Submission being that the exercise of power to make a subordinate legislation including the power to rescind the same is clearly enumerated in Section 21 of the General Clauses Act; it is without limitations or conditions; principle of promissory estoppel is not permitted to be raised as a defence by the other side. Reliance has also been placed upon (2010) 10 SCC 677 Ritesh Tewari and Anr. Vs. State of U.P. & Others to support the submission that the powers under Article 226 of the Constitution of India are discretionary and supervisory in nature; there are fetters on this power; the Court has to balance competing interest keeping in mind that the interest of justice and public interest are coalesce generally; a Court of equity while exercising its equitable jurisdiction must act so as to prevent perpetration of any fraud and to promote good faith and equity which equity is equitable to all parties concerned. Submission again being reiterated that it was in the background of enormous representations received from various students that the Government of NCT of Delhi was constrained to pass the subsequent Notification dated 10.03.2016 rescinding the earlier Notification.

17. In rejoinder, learned counsel for the petitioner points out that the powers as contained in Section 21 of the General Clauses Act cannot be used to defeat a Notification which is otherwise wholly justifiable; Section 21 only lays down a rule of construction; the application is not absolute; it has to depend on the facts and circumstances of each case keeping in mind the object of the Act. It is pointed out that respondent No.1 even otherwise does not have a role of fixation or determination of fee; it only had to notify the fee which had been recommended by the Fee Regulatory Committee after it had gone into a detailed fact finding inquiry. The Prospectus was known to all the students at the time when they joined the Institute which had informed them that the fee was under the process of revision; moreover, the fee is not an exploitative amount; it is as per the recommendations made by the Fee Regulatory Committee.

18. Arguments have been heard. Record has been perused.

19. Record shows that the petitioner Association which is an Association of Self-Financing Private Institutes in terms of the Act of 2007 and pursuant to the appointment of Fee Regulatory Committee (04.04.2008) had put up its case before the Committee. The question as to whether a fee hike was permissible in these institutes or not was to be considered by the said Committee. There were several hearings which took place before the said Committee. This fact is not in dispute.

20. At this stage, it would be relevant to note the object of the Act of 2007. The object of the Act of 2007 was to prevent prohibition of capitation fee, regulation

of admission, fixation of non-exploitative fee. It is this latter aspect which has been highlighted by the learned counsel for the petitioner; submission is that a non-exploitative fee had to be fixed by the Fee Regulatory Committee which had been set up in terms of this Act and the object of the Act had to be kept in mind by the said Committee. It had made recommendations qua the aforementioned institutes. The procedure before the Committee envisaged an opportunity of being heard to the institutes before determining the fee that could be fixed by such an institute. This was a detailed fact finding inquiry and at the cost of repletion, entailed several hearings before the Committee. It also mandated a physical inspection of the aforementioned institutes.

21. The Fee Regulatory Committee has been defined under Section 3 (i) of the Act. It defines the Committee as a Committee constituted by the Government under Section 6 for determining fees for admission to an institution. Section 6 regulates the setting up of Fee Regulatory Committee which shall be notified in the official Gazette comprising of more than 7 members details of which mention in Section 6 (1) (all of whom are senior bureaucrats or other experts). The Fee Regulatory Committee was free to adopt its own procedure for the conduct of its business (sub-Section 2). SubSection 3 envisages that the Government after receipt of recommendations under sub-Section 2, subject to its satisfaction, would notify the fee determined by the said Committee. There is a proviso which provides that the Government may refer the matter back to the Committee for a reconsideration but in this intervening period, the institution would charge the fee as determined by the said Committee.

22. This sub-Section along with proviso has been highlighted by the learned counsel for the petitioner to advance his submission that the proviso comes into play only in that scenario where the Government is not willing to accept the recommendations of the Committee and sends it back to the Committee for a reconsideration; in this intervening period, the fee which has already been determined by the Committee may be permitted to be charged by the said institute; the object being to cover the delay which may occur during the course of a re-consideration. Sub-Section 13 has been highlighted to state that the fee notified by the Government shall be valid for a period of 3 years to be read along with the proviso which stipulates that the Government may extend the validity of such fee for such further period as may be notified.

23. On 04.04.2008 (in terms of the said Act) the Fee Regulatory Committee had been set up. The recommendations made by it had been submitted to the Government in the year 2015. Since no action was taken, W.P. (C)No. 10344/2015 was filed by the petitioner. This petition was disposed of on 04.11.2015 giving a direction to the respondent Government to take a decision in the matter. What has been highlighted is that the Government had been directed to take a decision whether they proposed to accept the recommendations or not; if these recommendations were accepted, then the same would be duly notified.

24. The extract of the aforementioned order reproduced supra clearly mandated the

Government to take a decision as expeditiously as possible and preferably within a period of 2 months; what has rightly been emphasized by the learned counsel for the petitioner is that if the recommendations were accepted, they would be duly notified and not otherwise.

25. It is also a matter of record that these recommendations of the Fee Regulatory Committee were accepted by the Government and Notification dated 19.02.2016 was issued by the Government conveying its fee structure for the year 2013-2016 determined by the said Committee. The fee structure was notified for the period 2014-2017; accordingly a separate the fee structure for 2014-2017, 2014-2018 & 2014-2019 for the 3, 4 and 5 year course was notified.

26. On 10.03.2016 i.e. within less than 25 days of the aforementioned Notification, the said Notification stood rescinded. The extract of the aforementioned rescinding order dated 10.03.2016 has already been reproduced supra. What had weighed in the mind of the Government is that thousands of students had been affected by the revision of the fee and as such the rescinding order was passed. No other reason was given.

27. The respondent is taking coverage under its powers as embodied in Section 21 of the General Clauses Act to support its order dated 10.03.2016.

28. Section 21 of the General Clauses Act reads herein as under:- "21 Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. -Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

29. The State Government has powers under this Section to withdraw its consent to a Notification earlier granted by it. There is no dispute to this fact that the provisions of the Act whether a Central Act or Regulations or rules made thereunder by virtue of the powers exercisable under any such Act, Regulation or the Rules can be rescinded. The question however is whether such a power which was exercised by the respondent could have been exercised by it or not.

30. As rightly pointed out by the learned counsel for the petitioner, the recommendation of the Fee Regulatory Committee was a recommendation which had been arrived at after a lengthy fact finding hearing; not only were the institutes granted an oral hearing along with their necessary documentation but a physical inspection of the institutes had also taken place. This Court has been informed that hearings in some of the cases lasted for more than one year. This fact has not been disputed. That being the scenario, the fact finding arrived at by the Fee Regulatory Committee which had submitted its recommendations to the Government, sub-Section 3 of Section 6 of the Act of 2007 clearly provided that the Government after the receipt of the aforementioned recommendations shall notify the fee determined by the said Committee. The proviso attached to the sub-

section no doubt gives an opportunity to the Government to send the matter back to the Fee Regulatory Committee for a reconsideration. This however did not happen in the instant case. The question of a reconsideration by the Government did not arise as the Government on the recommendations of the Fee Regulatory Committee (having been examined) concluded that these recommendations required to be given effect to and were thus duly notified on 19.02.2016.

31. The validity of this recommendation of the Fee Regulatory Committee was for a period of 3 years as is clear from Section 6 (13).

32. The observations of the Apex Court in AIR 1958 SC 1018 State of Bihar Vs. D.N. Ganguly & Others in the context of provision of Section 21 of the General Clauses Act had inter-alia noted as under:- "It is conceded by Dr. Bannerjee that the Act does not expressly confer any power on the appropriate Government to cancel or supersede a reference made under section 10(1) of the Act. He, however, argues that the power to cancel or supersede such a reference must be held to be implied, and in support of his argument he relies on the provisions of section 21 of the General Clauses Act, 1897 (X of 1897). Section 21 provides that "where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bylaws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules, or bylaws so issued." It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by section 21, the appellant's contention is justified that the power to cancel the reference made under section 10(1) can be said to vest in the appropriate Government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section. We must, therefore, proceed to examine the relevant provisions of the Act itself."

33. Thus what is now required to be examined is as to whether by the application of the rule of construction embodied in Section 21 the earlier Notification (19.02.2016) accepting and notifying the recommendations of the said Committee could be cancelled/rescinded by the subsequent Notification dated 10.03.2016. Whether this subsequent Notification stood the test of validity?

34. To answer this question, it would be necessary to carefully examine the scheme of the Act before deciding whether by the application of this aforementioned rule, the petitioner's contention is justified that the Notification (10.03.2016) rescinding the earlier Notification (19.02.2016) was a power vested in the

Government to cancel it. The subsequent Notification can pass the test of a valid Notification only if this Court comes to the conclusion that the relevant provisions of the Act of 2007 are repugnant to the application of the said rule of construction.

35. On an examination of the aforementioned Act, the object of the Act would have to necessarily be scrutinized. It reads herein as under:- "An Act to provide for prohibition of capitation fee, regulation of admission and fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matter connected therewith or incidental thereto"

36. This Act provides for the prohibition of capitation fee, regulation of admission and fixation of non-exploitative fee. The Act was enacted to promote equity and excellence in education in the Capital Territory of Delhi. Keeping this object in mind as also the admitted position that all the aforementioned institutes had issued their relevant prospectus bringing it to the knowledge of all the incumbent students that the fee structure was under consideration and the fee structure already given to the students was only a provisional amount (the academic session 2011-2012) and the fee hike in the subsequent years 2012-2013, 2013-2014 & 2014-2015 was under a revision of the said Fee Regulatory Committee and in such an eventuality the candidate will have to pay a revised fee is a relevant fact.

37. The fact that all this information was a part of the brochure of the institutes is also not in dispute. One such Notification of the Guru Gobind Indraprastha College has been placed on record. This information which had been detailed in the Prospects is reproduced herein as under:- "14 Programme Wise, Institute wise details of academic fee for the academic session 2013-2014 Important: The fee shown as under is a provision amount, based on the decision for Academic Session 2011-12. The fee structure for session 2012-2013, 2013-2014 in under revision by State Fee Regulatory Committee. In case there is any revision of fee by the State Fee Committee for the academic Session 2013-2014, then the candidates will have to pay the revised fees, if any."

38. This information was again repeated in the admission brochure of 2014-2015 and the same programme wise, institute wise details of the academic year 2013-2014 were given. The institutes as detailed in para C of this admission brochure are all members of the petitioner association.

39. The fact that this information had been attached in the prospectus thus giving knowledge to all the incumbent students (of the aforementioned institutes) that the fee they were currently paying (for the year 2011-2012) was only a provisional fee; their fee structure was yet under consideration by the State Fee Regulatory Committee who had been appointed to look into the matter; in case there was any revision in the fee structure, the students would have to pay the

revised fee; details for the academic years 2012-2013, 2013-2014 & 2014-2015 had also been given. All these facts were in the knowhow of all students who were admitted in the aforementioned institutes. The fact that the Prospectus of an educational institution is a statutory document is also an admitted position.

40. In this background, the respondent Department within 25 days of the Notification of 19.02.2016 rescinding the same vide subsequent Notification dated 10.03.2016 on the submission that representations had been received from students on this count who were unhappy with this fee hike really has little strength. The object of the Act had been kept in mind by the Fee Regulatory Committee while laying down the fee structure for the subsequent years; it is not the case of the respondent that the Committee had not acted in accordance with the object of the Act; the object of the Act being to ensure that there is no exploitative fee charged by the institutes. Had it been the case of the Government that it was unhappy with the recommendations of the Fee Regulatory Committee, it would not have notified the recommendations. The direction given in W.P.(C) No.10334/2015 on 04.11.2015 had given an option to the Government either to accept the recommendations or not; in case they accepted the recommendations, they had to be notified. The Government chose to accept the recommendations and which were to the satisfaction of the Government on a fact finding inquiry which had led them to draw the conclusion that it did. At the cost of repetition, it is not the case of the Government that Fee Regulatory Committee did not act within the mandate of the object of the Act of 2007.

41. This recommendation further stipulated that this fee structure would come into force for a period of 3 years. The fees of educational institutions have to be enhanced like all other fee structures; inflation and growth of the economy with the passage of time must be kept in mind. The fact that the fee being paid by the students of the aforementioned institutions was a provisional fee was also known to them. This was duly notified in their Prospectus. As such the defence of the Department that they had to rescind the Notification because of the representations of the students which they had received appears to be not in conformity with their first decision of 19.02.2016 which was a Notification issued by them after having satisfied themselves on the recommendations of the Fee Regulatory Committee. The respondent cannot take the umbrella protection under Section 21 of the General Clauses Act. This would not be available to them in the instant case.

42. The submission made by the learned senior counsel for the respondent that they would have no objection for the fee being hiked for the year 2016- 2017 alone was not acceptable to the petitioner. The petitioner institutes not having been permitted to hike their fee since 2011-2012 and they not working on charity, having to make ends meet, clearly make out a case in their favour.

43. Petition allowed and disposed of in the above terms.