

(2004) 09 AHC CK 0135
In the Allahabad High Court
Case No : Writ Petition No. 3444 (M/S) of 2004

Yagya Dutt Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

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

Citation : (2005) 5 AWC 4404 : (2005) 3 ESC 1836 : (2005) 2 UPLBEC 1097

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Anand Mohan, for the Appellant; Ritu Raj Awasthi and G.K. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a petition for issuing a writ in the nature of *certiorari* quashing the impugned notice dated 11.7.2004"contained in Annexure No. 8 to the writ petition and for issuing a writ in the nature of *mandamus* commanding the opposite parties to collect the fees which they were charging in the previous year.

2. The petitioners are the students of MCA and MBA courses in Northern India Engineering College, Lucknow after being declared successful in the Entrance Test through Uttar Pradesh Management Combined Admission Test (hereinafter referred to UPMACT), 2003. The petitioners deposited Rs. 33,120/- including tuition fee, admission fee, development fee, security fee, Insurance fee etc. According to the Information Brochure, the fee structure is subject to change as per the directions of the U. P. Government in the academic year 2003-2004. The opposite parties issued a demand notice dated 12.9.2003 to all the students of MCA and MBA and they were required to deposit to Rs. 30,750 for the academic year 2003-2004. It is Annexure No. 3 to the writ petition. It is alleged that by means of Writ Petition No. 29756 of 2003 the Government Order dated 2.7.2003

(Annexure No. 4) was stayed in it was permitted to the institution to collect the fee, which they were charging in the previous year. The Government Order dated 2.7.2003 was issued in pursuance of the judgment of the Supreme Court dated 31.10.2002 in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . In this Government Order an amount of Rs. 19,000/- per year per student was fixed. Writ Petition No, 29756 of 2003 was filed by Welfare Association of Self Financed Institution in which the operation of the Government's Order dated 2.7.2003 was stayed and the educational institutions were permitted to collect the fee, which they were charging in the previous year. It is alleged that the judgment of this Court (Annexure No. 5) was misinterpreted by the opposite parties while the opposite parties were permitted to charge the fee, which they were charging in the previous year. The opposite party No. 3 Northern India Engineering College filed a Writ Petition No. 3590 (M/S) of 2003 and the interim order passed in this writ petition is Annexure No. 6. this writ petition was filed by only four students and as directed in that writ petition, a sum of Rs. 7000/- was taken from every student as remaining amount due as per general order. The Special Appeal No. 414 of 2003 filed against that order was dismissed. The petitioners were served the impugned notice dated 11.7.2004 demanding a sum of Rs. 98,520/- as a fee for second year of MCA course which was to be deposited before 18.8.2004. The case of the petitioners is that the students who had filed Writ Petition No. 3590 (M/S) of 2003 are being demanded to pay an amount of Rs. 31,020/- as fees for MCA IInd year and all other students who did not file Writ Petition No. 3590 (M/S) of 2003 arc being demanded to pay Rs. 98,520/- as fees for MCA IInd year while at the time of admission the fee prescribed by the University was of Rs. 19,000/- According to the petitioner the tec has been increased by 58%. The fees should not be enhanced in such a way and the students should be permitted to deposit the fee, which was conveyed to them at the time of admission.

3. The impugned notice dated 11.7.2004 is Annexure No. 8 to this petition. It is a notice demanding the enhanced fee to Vivek Singh Bhadauria, one of the petitioners.

4. The opposite parties No. 3 to 5 have filed the counter-affidavit. The petitioners' Counsel has given the statement that the petitioner do not want to file any rejoinder affidavit.

5. Technical education is the subject of concurrent list. In the year 1987, the Parliament has passed "All India Council for Technical Education Act" (hereinafter to be referred as AICTE Act). Section 10 of AICTE Act lays down the power and function of AICTE. Section 10(j).gives power to the AICTE to fix norms and guidelines for charging tuition and other fees. Thus, it is AICTE which has to determine and fix the fees structure as provided u/s 10(j) of AICTE Act and the Regulation made thereunder. The AICTE after exercising power u/s 10 read with Section 23 of AICTE Act, the AICTE framed "Regulations" fixing norms and guidelines for charging tuition fee and other fees and provided guidelines for

admission of Students in Technical Institutions known as All India Council for Technical Education (Norms & Guidelines for Fees and Guidelines for Admission in Professional Colleges) Regulations, 1994 (hereinafter to be referred as "1994 Regulations") which is Annexure No. 1 to the counter- affidavit. Regulation 7 of the Regulations provides that the State Government shall constitute a State Level Committee, which shall recommend the Fee to be charged for individual Courses run by the Private Unaided Professional Educational Institutions. In the year 1992 in Vnnikrishnan v. State of Andhra Pradesh 1993 SCC 645, the Supreme Court issued certain directions to the State Government for constituting a Committee to fix the ceiling on fee chargeable by Technical Institutions. The Committee was to consist of Vice Chancellor of a State University nominated by the State Government, Secretary, Department of "Technical Education, director of Medical/Technical Education two economists or Experts to be nominated by the State Government. According to the GO. dated 4.3.1995, the determination of fee was done by the State Level Committee constituted under the AICTE Regulations, 1994. A copy of the G.O. dated 4:3.1995 is Annexure No. 2 to the counter-affidavit. The State Level Committee approved by the AICTE had given its recommendations for determination of fees structure for MBA and MCA courses run by the Private Unaided Professional Educational Institutions. The State Government issued G.O. dated 19.9.1998 and provided fees structure of the aforesaid courses for the academic year 1998-1999.. Afterwards the State Government issued G.O. dated 18.2.2000 revising the Development Fee for Management and other Courses. This GO. dated 18.2.2000 is Annexure No. 4 to the counter-affidavit. In the Academic Year 2002-2003, the fee charged for various Management Courses namely; MBA and MCA run by the College were being charged as per G.O. dated 19.9.1998 and 18.2.2000.

6. In T. M. A. Pai Foundation and Ors. v. State of Kamataka and others (1995) 5 SCC 11, the State Government was directed to appoint a Committee with the approval of the AICTE for determining/revising the Fee Structure. The Supreme Court had also allowed the NRI Quota in the Private Unaided Professional Educational Institutions in order to compensate the high cost of education in the said College. After that the Ministry of Human Resource Development, Government of India framed the Resolution indicating Policy of Fee Fixation in Private Unaided Professional Educational Institutions. The said Resolutions were framed in consultation with the State Government. Thus, the resolutions were issued vide letter dated 18.3.1997 by the Ministry of Human Resource Development, Government of India, a copy of which is Annexure No. 5 to the counter-affidavit. After the aforesaid judgment, the Supreme Court again considered the fee structure in another Constitutional Bench in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, : Supreme Court held that excellence in Professional Education would require greater emphasis on merit of students seeking admission and appropriate Regulations for this purpose may be made for Professional and Technical colleges; the merit is usually determined by common entrance test conducted by the Government agencies. In

accordance with the directions given by the Supreme Court in that case the State Governments were required to prescribe a certain percentage of seats, which can be reserved for admission by Management of Technical Institutions. The percentage of the Management Quota was to be made by the State Government. The Supreme Court of India has also held that the education is in essence regarded as charitable and therefore, the Government shall ensure that the Private Unaided Institutions shall not enter into profiteering. It has also been held that the essence of Private Educational Institutions is in the Autonomy that the Institutions must have in its Management and Administration. Thus, it was left open to the Institute to determine the scheme of Fee that it can charge from the students. In the aforesaid judgment it was also held that the decision of the Fee to be charged must necessarily be left to the Private Educational Institutions alone. After the judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the AICTE issued the Interim Policy Regulations by the aforesaid Notification dated 7.3.2003, a copy of which is Annexure No. 6. In this Notification it was provided that the task of drafting of Guidelines/Formula for fixation of Fee will be assigned to a High Power Committee to be appointed by the AICTE. It was decided that there shall be no Payment and Free categories of Seats. The Uniform Fee so decided shall be applicable to the fresh batch of the students to be admitted during current Academic Year 2003-2004. In terms of the aforesaid Interim Policy Regulations of the AICTE, the State Government issued an order dated 2.7.2003 without appointing any Fee Committee and also without consulting the Private Unaided Professional Educational Institutions. The copy of the said GO. dated 2.7.2003 is Annexure No. 7 to the counter-affidavit.

7. Every year the Information Brochure was issued. Information Brochure with regard to MBA and MCA courses for the Academic Years 2000-01 and 2002-03 are Annexure No. 9 to the counter-affidavit. The Information Brochure for the Academic Year 2003-04 is Annexure No. 10. It indicates the same Fee Structure as provided under the aforesaid G.O. dated 19.9.1998 and Office Order dated 18.2.2000. The G.O. dated 2.7.2003 prescribed the Fee for various courses as Rs. 19,000/- per annum per student. In the meantime, the matter was again considered by the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, . It has been held by the Supreme Court in this judgment that there can be no fixing of a rigid Fee Structure by the Government. Each Institution must have the freedom to fix its own Fee Structure taking into consideration the need to generate funds to run the Institute and to provide facilities necessary for the benefit of the students. In the said judgment, the Supreme Court has issued directions that in order to give effect to the judgment in the case of TMA Pat Foundation (supra), the respective State Government shall set up in each State, a Committee headed by a retired High Court Judge, who shall be nominated by the Chief Justice of that State. The Professional Colleges shall place before the Committee their proposals regarding Fee Structure and the Committee shall determine the fee to be charged by each individual Institute.

The fee fixed by the Committee shall be effective for the period of three years.

8. The Welfare Association of Self Financed Institutes filed Writ Petition No. 29756 of 2003 before this Court at Allahabad challenging the validity of the G.O. dated 2.7.2003. An interim order was passed in this writ petition and it was provided that in the meantime, the fee which has been fixed by the State by means of G.O. dated 2nd July, 2003 shall be considered as provisional in nature and same shall abide by the final judgment of this Court the copy of which is Annexure No. 11 to the counter-affidavit. Further by another interim order dated 2.9.2003 in the aforesaid writ petition, this Court stayed the operation of the G.O. dated 2.7.2003 and directed that the Institutions shall be permitted to collect the fee, which they were charging in the previous year. It was also made clear that the fee collected by the Institution shall abide by the decision of the Committee and if, any excess fee had been charged, the same shall be refunded to the students. The copy of the order dated 2.9.2003 of this Court is Annexure No: 13 to the counter- affidavit.

9. Babu Banarasi Das National Institute of Technology and Management, Lucknow has also challenged the G.O. dated 2.7.2003 in Writ Petition No. 4326 (MB) of 2003. The Division Bench of this Court vide order dated 16.9.2003 stayed the effect and operation of the G.O. dated 2.7.2003 with the directions that the petitioners' institution would be permitted to collect average fee which they were charging in the previous year. It was also provided that the fee collected by the institution shall abide by the decision of the Committee and if any excess fee had been charged, the same shall be refunded to the students. The copy of the interim order dated 16.9.2003 is Annexure No. 14. The opposite party No. 3 has also challenged the G.O. dated 2.7.2003 in Writ Petition No. 3547/(M/S) of 2003. In this writ petition also this Court passed an interim order dated 24.9.2003 and directed the opposite party No. 3 College to collect the average fee, which they were charging in the previous year. A copy of this order is Annexure No. 15 to the counter-affidavit. At the time of admission in the allotment letter, it was made clear that the fee charged from the student is provisional. The Fee mentioned in the UPMCAT Information Brochure was not charged from the petitioners-students as it was in respect to the various categories of seats namely; free category of Seat, Payment category of Seat and NRI/NRI Sponsored Seats and after the pronouncement of Apex Court judgment in TMA Pai Foundation case (supra) the scheme of Free and Payment category of Seats have been abolished and there is one single uniform fee is to be charged from all the students irrespective of their Seats/Quota under which they were admitted.

10. Now the question is as to whether the Average Fee is being calculated after abiding the interim orders of this Court cited above. It has been stated in the counter-affidavit that for calculating the Average Fee, the Academic Fee (Tuition Fee, Development Fee) for the free category of Seats and Payment category of seats was added and divided by 2, which workout to Rs. 59,750/- per student

per annum excluding Security (One time Refundable), University Fee, Examination Fee, Admission Fee (One Time) and Insurance Charges. By the impugned notice dated 11.7.2004. the petitioner-students were asked to deposit Average Tuition Fee, which was calculated as above. The State Government has also issued G.O. dated 27.5.2003. A copy of this order is Annexure No. 16 to the counter-affidavit. The respondent College had also made a representation dated 11.7.2003 whereby it was requested to approve the Fee of Rs. 92,500/- per student per annum for MCA and Rs. 88,760/- per student per annum for MBA Courses for the Academic Year 2003-2004. With the said representation, the details of recurring expenditure par annum for MBA and MCA Courses were contained. The copy of the said representation is Annexure No. 14 to the counter-affidavit. After two interim orders; one by the Division Bench and one by the Single Judge permitting the Private Unaided Professional Educational Institutions to charge the Average Fee for the Academic Year 2002-2003, the State Government has issued a G.O. dated 9.7.2004 and has allowed these Institutions to charge the Average Fee in the current Academic Year 2004-2005. The opposite parties have been directed to charge Average Fee. The Fee so charged shall be subject to the Fee prescribed by the Fee Committee. The copy of G.O. dated 9.7.2004 is Annexure No. 21 to the counter-affidavit. The case of the opposite parties is that in the Information Brochure it was mentioned that the fee indicated in the Brochure is subject to revision. After the aforesaid judgment of the Supreme Court and the two interim orders passed by this Court in Writ Petition Nos. 4326 of 2003 and 3547 (M/S) of 2003, the opposite parties have been permitted to charge average fee and this average fee has also been approved by the State Government through G.O. dated 9,7.2004 (Annexure No. 21). The opposite parties have also stated that this average fee which is being charged is approved by the U. P. Technical University vide Annexure No. 23. This average fee is being realised subject to the decision of the Committee headed by a retired High Court Judge appointed in compliance of the Supreme Court's judgment in TMA Pai Foundation case (supra).

11. In view of the aforesaid facts, it appears to me that the opposite parties are charging the fees as per directions of the Court in the aforesaid two writ petitions and duly authorised by the State Government by the G.O. dated 9.7.2004 (Annexure No. 21). Since a Committee headed by a retired High Court Judge appointed in compliance of the Supreme Court judgment is functional and as it has not been able to submit any report as per directions of the Supreme Court, there has to be some arrangement made by the State Government. The State Government has permitted the opposite parties to realise the average fee of the fees, which were being charged in the previous year 2002-2003. The Government Order dated 9.7.2004 issued by the State Government is based on the orders of this Court referred to above.

12. Now the question is as to what shall be the criteria for calculating the average fee? According to the Technical University, the average fee which is to be charged from the students shall be on the basis of the average of the fees, which

was prescribed for payment seats and free seats in the Academic Year 2002-2003. The average fee has been permitted for the period upto the decision of the Committee appointed in pursuance of the directions of the Supreme Court. This demand of increased fees has been challenged by the petitioners on various grounds. It is alleged that the opposite parties are charging approximately 58% increased capitation fees in cash in pursuance of the impugned notice dated 11.7.2004 which is illegal, arbitrary, bad and full of malafide and against the spirit of the judgment passed by the Supreme Court. During the course of the arguments, the learned Counsel for the petitioners has argued that the fixation of fee is highly excessive. On the face of it, this argument can appear to be attractive but in view of the pleadings as on the record, the petitioners have not made any attempt to establish even a prima facie case as to how the fixation of the enhanced fee is excessive. Merely, saying that the amount of fees is excessive or determination of fee is arbitrary would not be sufficient to uphold the contention of the petitioners. The burden lies upon the petitioners to plead and prove the arbitrariness in determination of the fees by giving some relevant data. On the contrary, the Government Order shows that the average fee has been permitted to be realised on the basis of interim orders of this Court for a period, the Committee headed by a retired High Court Judge determines the quantum of the fees.

13. It has been argued before me that there is no criteria of the calculation of average fee. This contention has no force in view of the letter of the Registrar of U. P. Technical University who has laid down the criteria for determination of the average fee. It has been argued that the opposite parties have not considered the total strength of the seats while arriving at the average fee, so being charged in the academic session as per orders of this Court. It is submitted that the average fee ought to have been arrived at by the opposite party-institution in such a manner so that it may not appear that the enhancement of the fee is for earning some profit. It is submitted that the total fee of all the 57 students of MBA course of the previous year should be got calculated and then it should be divided by 57 and it should be the average fee of each student instead of taking fee of one student on payment seat and one student of free seat divided by two to find out the average as has been done by the opposite parties. According to the argument of the learned Counsel for the petitioners the average fee of the total students collected during the previous year if, taken into consideration it comes to Rs. 35,895/- per student. The learned Counsel for the opposite parties has submitted that this is not the correct criteria. If, the average fee calculating the fee of all the students is to be collected then the fees to be charged should be collected on the basis of the sanctioned strength. The sanctioned strength was more than 57 and out of the sanctioned strength the payment seats were 50%. Out of 50% payment seats, the NRI quota was 15% and if, the average fee of the total strength is to be calculated, it goes much higher. I do not want to enter in this controversy because of the simple reason that the Supreme Court has given this task to a Committee headed by a retired High Court Judge and the

enhancement has been made on the basis of the earlier orders of this Court and the G.O. dated 9.7.2004. Here, it would not be out of place to mention that in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , it has been held by the Supreme Court in this judgment that there can be no fixing of a rigid Fee Structure by the Government. Each Institution must have the freedom to fix its own Fee Structure taking into consideration the need to generate funds to run the Institute and to provide facilities necessary for the benefit of the students. So the question as to whether the amount, which is being demanded amounts to captivation or not is the matter, to be decided by the Committee headed by a retired High Court Judge.

14. It has been next contended by the learned Counsel for the petitioners that no institution should charge the fee more than the fee as mentioned in the prospectus. The opposite parties have filed the Information Brochure of UPMCAT. 2003 (Annexure No. 10) in which after indicating the fees for free seats and payment seats a note has been given by the institution that the fee structure is subject to change by U. P. Government Directives as applicable at the time of registration. So it cannot be said that there has been no notice to the students at the time of admission that the fee shown in the prospectus can be varied.

15. The next argument is that commercialization of the education cannot be permitted but there is no data on the record to hold that the education is going to be commercialized by demanding the impugned fee. It has been next contended by the learned Counsel for the petitioners that the opposite parties are violating the principle of Articles 14 and 21 of Constitution of India. I am of the view that this contention has no force.

16. In the end, I would like to mention here that the fee is being charged on the basis of the G.O. dated 9.7.2004 which has not been challenged in the petition. I further point out that the procedure of calculation of average fee has been indicated by the U.P. Technical University in its letter dated 31.7.2004 and this direction contained in the letter of the University has also not been challenged.

17. Therefore, in view of the above, the writ petition is dismissed with the observations that the fee demanded by the opposite parties shall remain subject to the decision of High Power Committee headed by a retired High Court Judge and it will be adjusted/refunded if, so required/after the decision of the High Power Committee, which is already functional.