

**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2022

(@ Special Leave Petition (Civil) Nos. 2969-2970 of 2021)

Narayana Medical College

...Appellant(s)

Versus

The State of Andhra Pradesh & Ors.

...Respondent(s)

**JUDGMENT**

M.R. SHAH, J.

Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Andhra Pradesh at Amravati in Writ Petition Nos. 33656/2018 and 8210/2019 the medical college/institution has preferred the present appeals.
2. Pursuant to the judgment and order passed by this Court in the case of **P.A. Inamdar and Ors. Vs. State of Maharashtra and Ors.; (2005) 6 SCC 537**, the State of Andhra Pradesh framed Rules called the Andhra Pradesh

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Reason:

Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 (hereinafter referred to as the Rules, 2006). Rule 4 of the Rules, 2006 is with respect to the fee fixation. Following the report of the Admission and Fee Regulatory Committee (hereinafter referred to as the AFRC), the State Government issued G.O. dated 18.06.2011 fixing and enhancing the fee for the academic years 2011-12 to 2013-14. However, for the subsequent years, more particularly, for the block years 2017 to 2020 (period in question) without waiting for the report from the AFRC and on the representations made by the private medical colleges, the State Government issued G.O. dated 06.09.2017 and enhanced the tuition fee payable by the MBBS students. At this stage, it is required to be noted that under the said G.O. the State Government enhanced the tuition fee at an exorbitant rate of Rs. 24 lakhs per annum i.e., almost seven times the tuition fee notified for the previous block period. The G.O. dated 06.09.2017 was the subject matter of writ petitions before the High Court. By the impugned common judgment and order the High

Court has set aside the G.O. dated 06.09.2017 by observing and holding that considering the provisions of the Rules, 2006 the fee cannot be enhanced/fixed without the recommendations/report of the AFRC. Therefore, the High Court by the impugned common judgment and order has held that the recovery of enhanced tuition fee by the respective private medical colleges is bad in law. Consequently, the High Court has set aside the G.O. dated 06.09.2017 to the extent of enhancement of fee. The High Court has also directed that if any fee already fixed by the Government vide G.O. dated 06.09.2017 dehors the G.O. dated 18.06.2011, the same shall be refunded by the colleges to the students after adjusting the amounts payable under G.O. dated 18.06.2011.

- 2.1 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the respective medical college/institution qua who now is required to refund the amount collected pursuant to G.O. dated 06.09.2017 has preferred the present appeals.
3. Having heard Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the appellant, Shri Basava

Prabhu S. Patil, learned Senior Advocate appearing on behalf of the original writ petitioners, learned counsel appearing on behalf of the State of Andhra Pradesh and Shri Krishna Dev Jagarlamudi, learned counsel appearing on behalf of A.P. Admission and Fee Regulatory Committee and on considering the impugned common judgment and order passed by the High Court, we are of the opinion that the High Court has not committed any error in quashing and setting aside the G.O. dated 06.09.2017 enhancing the tuition fee for the block years 2017-2020. Even Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the appellant – medical college has fairly conceded that the tuition fee could not have been enhanced by the State Government unilaterally and without report/recommendations by the AFRC under the provisions of the Rules, 2006.

- 3.1 Even otherwise considering the relevant provisions of the Rules, 2006 the fixation could have been only on the recommendations/report by the AFRC and under Rule 4 of the Rules, 2006 a duty is cast upon the AFRC to recommend the fee fixation. Under the relevant provisions

of the Rules, 2006, the AFRC while fixing the fee is required to undertake detailed enquiry as provided in Rule 4 of the Rules, 2006. Rule 4 of the Rules, 2006 reads as under: -

**“4. Fee Fixation.** - (i) The AFRC shall call for, from each Institution, its proposed fee structure well in advance before the date of issue of notification for admission for the academic year along with all the relevant documents and books of accounts for security,

(ii) The AFRC shall decide whether the fees proposed by the Institution is justified and does not amount to profiteering or charging of capitation fee.

(iii) The AFRC shall be at liberty to approve or alter the proposed fee for each course to be charged by the Institution. Provided that it shall give the Institution an Opportunity of being heard before fixing any fee or fees.

(iv) The AFRC shall take into consideration the following factors while prescribing the fee: (a) the location of the professional institution, (b) the nature of the professional course, (c) the cost of available infrastructure, (d) the expenditure on administration and maintenance, (e) a reasonable surplus required for growth and development of the professional Institution, (f) the revenue foregone on account of waiver of fee, if any, in respect of students belonging to the Schedule Caste, Schedule Tribes and wherever applicable to the Socially and Educationally Backward Classes and other Economically Weaker Sections of the society, to such extent as shall be notified by the Government from time to time. (g) Any other relevant factor. Provided that, no such fees, as may be fixed by the AFRC, shall amount to profiteering or commercialization of education,

(v) The AFRC shall communicate the fee structure as determined by it, to the Government, for notification.

(vi) The fee or scale of fee determined by the AFRC shall be valid for a period of three years.

(vii) The fee so determined shall be applicable to a candidate who is admitted to an institution in that academic year and shall not be altered till the completion of his course in the Institution in which he was originally admitted. No Professional Educational Institution shall collect at a time a fee which is more than one year's fee from a candidate."

Therefore, the G.O. issued by the State Government enhancing the tuition fee for the private medical colleges on the representations made by the private medical colleges was wholly impermissible and most arbitrary and only with a view to favour and/or oblige the private medical colleges. The same is rightly set aside by the High Court. The State could not have issued the G.O. enhancing the tuition fee for private medical colleges dehors the recommendations of the AFRC. Any enhancement of the tuition fee without the recommendations of the AFRC shall be contrary to the decision of this Court in the case of **P.A. Inamdar** (supra) and even the relevant provisions of the Rules, 2006. Therefore, the High Court has rightly quashed and set aside G.O. dated 06.09.2017.

4. Now so far as the directions issued by the High Court to refund the amount collected under G.O. dated 06.09.2017

after adjusting the fee fixed by the Government vide G.O. dated 18.06.2011 by the colleges to the students is concerned, Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the appellant – private medical college has submitted that it is true that the State Government could not have enhanced the tuition fee without recommendations/report of the AFRC. It is true that in the present case the tuition fee was lastly fixed in the year 2011 and thereafter the process for determination/fixation of tuition fee for the block period 2017 to 2020 was in progress by the AFRC. It is submitted that between 2011 and 2017 the costs/expenses of the colleges had increased and the requirement of paying stipend to students has been introduced in the year 2016 and therefore, the fee fixed in the year 2011 would cause significant loss to the colleges and the tuition fee is bound to be increased and therefore, the increase which the respective college is entitled to recover (enhanced fee). It is, therefore, prayed that at this stage the respective colleges may not be directed to refund the amount i.e., tuition fee collected pursuant to G.O. dated 06.09.2017

after adjusting the amount of tuition fee to be paid as per G.O. dated 18.06.2011. Shri K.V. Viswanathan, learned Senior Advocate has pointed out that in many cases students have adjusted the difference in the subsequent fees. [

- 4.1 The prayer on behalf of the medical college not to refund the amount at this stage is vehemently opposed by Shri Basava Prabhu S. Patil, learned Senior Advocate appearing on behalf of the students. It is submitted that with respect to the similar G.O. issued by the State of Telangana the same has been set aside by the High Court and the High Court has directed to refund the amount paid in excess, paid pursuant to illegal G.O. issued by the State Government. It is vehemently submitted that the private medical colleges who are the beneficiaries of illegal G.O. which was issued on the representations made by the private medical colleges cannot be permitted to retain the amount which they have recovered illegally on the basis of the illegal G.O.
- 4.2 It is submitted that under G.O. dated 06.09.2017 there was an exorbitant increase of tuition fee of Rs. 24 lakhs

i.e., seven times the tuition fixed earlier by the AFRC and many students/their parents were required to avail the bank loan to pay the exorbitant tuition fee and were required to pay the higher rate of interest. Therefore, it is prayed not to interfere with the impugned common judgment and order passed by the High Court including the order of refund passed by the High Court.

4.3 Learned counsel appearing on behalf of the AFRC has submitted that during the enquiry/proceedings to determine the tuition fee for the block period 2017-2020, the State Government unilaterally and without waiting for the report/recommendations by the AFRC increased the tuition fee. It is submitted that in fact the AFRC vide notification dated 08.12.2016 proposed to review and determine the fees' structure and call for relevant materials from the medical colleges and the students and the review and determination of fees was pending, the association of the colleges addressed a letter to the Government seeking revision which the State Government granted/permited in clandestine manner.

5. As observed hereinabove no error has been committed by the High Court in quashing and setting aside G.O. dated 06.09.2017 enhancing the tuition fee for the private medical colleges. The Government of Andhra Pradesh on the representations made by the private medical colleges enhanced the tuition fee for private medical colleges though the revision of fees was pending consideration with the AFRC. The State Government enhanced the tuition fee exorbitantly to Rs. 24 lakhs per annum which was seven times the fee fixed earlier. Once the State Government enacted the Rules, 2006 which provides determination and fixation and the review of the tuition fees by the AFRC, the State Government was bound by the Rules, 2006 and could not have enhanced the fee during the review pending with the AFRC. To enhance the fee unilaterally would be contrary to the objects and purpose of Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 as well as the Rules, 2006 and the decision of this Court in the case of **P.A. Inamdar** (supra). To enhance the fee to Rs. 24 lakhs per annum i.e., seven times more than the fee fixed earlier

was not justifiable at all. The education is not the business to earn profit. The tuition fee shall always be affordable. Determination of fee/review of fee shall be within the parameters of the fixation rules and shall have direct nexus on the factors mentioned in Rule 4 of the Rules, 2006, namely, (a) the location of the professional institution; (b) the nature of the professional course; (c) the cost of available infrastructure; (d) the expenditure on administration and maintenance; (e) a reasonable surplus required for growth and development of the professional Institution; (f) the revenue foregone on account of waiver of fee, if any, in respect of students belonging to the reserved category and other Economically Weaker Sections of the society. All the aforesaid factors are required to be considered by the AFRC while determining/reviewing the tuition fees. Therefore, the High Court is absolutely justified in quashing and setting aside G.O. dated 06.09.2017.

6. Now so far as the directions issued by the High Court to refund the amount of tuition fee collected under G.O. dated 06.09.2017 and to refund the balance amount after

adjusting the fee paid pursuant to the earlier determination as per G.O. dated 18.06.2011 is concerned, we are of the opinion that the High Court has not committed any error in issuing such directions. The management cannot be permitted to retain the amount recovered/collected pursuant to the illegal G.O. dated 06.09.2017. The medical colleges are the beneficiaries of the illegal G.O. dated 06.09.2017 which is rightly set aside by the High Court. The respective medical colleges have used/utilized the amount recovered under G.O. dated 06.09.2017 for a number years and kept with them for a number of years on the other hand students paid the exorbitant tuition fee after obtaining loan from the financial institutions/banks and paid the higher rate of interest. If at all the AFRC determines/fixes the tuition fee which is higher than the tuition fee fixed earlier it will be always open for the medical colleges to recover the same from the concerned students, however, the respective medical colleges cannot be permitted to retain the amount collected illegally pursuant to G.O. dated 06.09.2017. Therefore, even the directions issued by the High Court to

refund the amount of tuition fee collected pursuant to G.O. dated 06.09.2017 after adjusting the amount payable as per the earlier determination is not required to be interfered with.

7. In view of the above and for the reasons stated above both the appeals fail and the same deserve to be dismissed and are accordingly dismissed, however, with cost which is quantified at Rs. 5 lakhs to be equally paid by the appellant(s) as well as the State of Andhra Pradesh (i.e., Rs. 2.5 lakh by the appellant(s) and Rs. 2.5 lakh by the State of Andhra Pradesh) to be deposited with the Registry of this Court within a period of six weeks from today and on such deposit the same be transferred to National Legal Services Authority (NALSA) and Mediation and Conciliation Project Committee, Supreme Court of India (MCPC) equally.

.....J.  
[M.R. SHAH]

NEW DELHI;  
NOVEMBER 07, 2022

.....J.  
[SUDHANSHU DHULIA]