

AFR

RESERVE JUDGMENT

Delivered from Residence

Case :- WRIT - C No. - 6828 of 2024

Petitioner :- U.P. Unaided Medical And Allied Sciences College
Welfare Association And 17 Others

Respondent :- State Of U.P. Thru. The Addl. Chief Secy Medical
Education, Anubhag-4, Lko. And 2 Others

Counsel for Petitioner :- Amit Jaiswal Ojus Law

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Amit Jaiswal, Sri S.K. Chaudhary, Sri Mudit Agarwal, Ms. Aishvarya Mathur and Sri Aditya Singh, learned counsel for the petitioners as well as Sri Rahul Shukla, learned Additional Chief Standing Counsel for the respondents.

2. The petitioners are unaided private Medical Colleges who are aggrieved by the inaction of the State Government as well of the Fee Regulatory Committee as constituted under the Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (*hereinafter referred to as "the Act of 2006"*) in enhancing the fee to be charged from the students for various medical courses run by the petitioner Institutions for the academic session 2024-25.

3. It has been submitted by Sri Jaideep Narain Mathur, Senior Advocate, appearing on behalf of the petitioner Institutions that with the object that the students should receive education of the highest grade in the field of medicine, the petitioner Medical Colleges have been established with the permission of the National Medical Commission. The Medical Colleges provide comprehensive facilities, faculties, and expert trained professionals for teaching, research and

patient care. The petitioner Medical Colleges besides MBBS course offer various postgraduate and medical and allied courses in various clinical and non-clinical departments.

4. The admission to the petitioner Medical Colleges is done based on the National Eligibility Entrance Test (NEET) by the Director-General of Medical Education (DGME) through counseling.

5. The issue pertaining to the fee to be charged by the private medical colleges has been the subject of litigation for a very long time. The interest of the medical colleges who have created the infrastructure out of private funds and their desire to make certain profits resulting in higher fee directly militates with the interest of the students who have to be provided highest quality of education at affordable rates. The courts have consistently held that the private medical colleges cannot charge exorbitant capitation fee and the same have to be reasonably fixed. The balance was found in the case of ***P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537***, the relevant portion is quoted as under:-

“Capitation fees

140. *Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. “Profession” has to be distinguished from “business” or a mere “occupation”. While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education*

and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.”

6. To regulate the fee charged by the private professional education institutions, the State of Uttar Pradesh has enacted The Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006.

7. The Act of 2006 defines fee in Section 3 (d) as “*all fees including tuition fee and development charges*”, while sub-clause (i) defines Private Professional Educational Institution as “*a professional educational institution not established or maintained by the Central Government, the State Government or any public body*”, and sub-clause (o) defines Unaided Institution as “*a private professional educational institution, not being an aided institution*”.

8. Chapter II of the Act of 2006 provides for the constitution of Fee Regulatory Committee while Section 4 provides for composition, qualification and functions of the Committee. The Committee shall be presided over by a person who is or who has been a Senior Administrative Officer of the State or Vice-Chancellor of a Central University or a State University or a Deemed to be University who shall be called the Chairman of the Committee and shall include two other Members having experience in matters of finance or administration.

9. Sub Section (8) of Section 4 of the Act, 2006 provides for determination of fee by the Committee which is as under: -

“(8) The Committee may require a private aided or unaided professional educational institution or, a deemed to be University or a

private University to furnish, by a prescribed date, information as may be necessary for enabling the Committee to determine the fee as prescribed under section 10 of this Act that may be fixed by the institution in respect of each professional course, and the fee so determined shall be valid for such period as notified by the State Government.”

10. The parameters to be considered by the Fee Regulatory Committee to determine the fees to be charged by the private aided or unaided professional education institution have been provided in Section 10 of the Act, 2006, which is as follows:-

“10.(1) The Committee shall determine, the fee to be charged by a private aided or unaided professional educational institution having regard to:- (i) the nature of the professional course, (ii) the available infrastructure, (iii) a reasonable surplus required for growth and development of the professional institution, (iv) the expenditure on administration and maintenance, (v) the expenditure on teaching and non teaching employees of the institution, (vi) any other relevant factor. (2) The Committee, shall give the institution an opportunity of being heard before fixing any fee:- Provided that no such fee, as may be fixed by the Committee, shall amount to profiteering or commercialization of education.”

11. The Act of 2006 also provides for an appeal against the order of the Fee Regulatory Committee in the following terms:-

“11. The State Government shall appoint an Appellate Authority, headed by a person who has been a Judge of the High Court, before which a person or professional institution aggrieved by an order of the Committee may file an appeal, which a period of 30 days from the date of receipt of such an order.”

12. To give effect to the provisions of the Act, 2006, the State has framed U.P. Private Professional Educational Institutions (Regulation

of Admission and Fixation of Fee Consideration Committee), Rules, 2008 (*hereinafter referred to as “the Rules, 2008”*), by means of which composition of Committee has been fixed. According to Rule 3(1) of the Rules, 2008, Committee for admission and fee regulation has been constituted consisting of (a) Principal Secretary/Secretary to Government in the concerned Department as Chairman alongwith two other members who have experience in the matter of finance and administration.

13. Rule 5 of the Rules, 2008 further provides that any professional Institution being aggrieved by the order of the Fee Regulatory Committee can file an appeal before the appellate authority appointed under Section 11 of the Act, 2006, within a period of 30 days from the date of receipt of such an order.

14. Considering the facts of the present case it has been submitted that in exercise of power under the Act, 2006 read with Rules, 2008 the Fee Regulatory Committee had determined fee for the academic Session 2012-13 which was valid for three academic sessions and thereafter, fee determination was done in the year 2017 and was notified by means of Government Order dated 14.07.2017 for three academic sessions i.e. 2017-18, 2018-19 and 2019-20.

15. The Fee Regulatory Committee was again constituted by means of Government Order dated 13.10.2020 for fixing fee for academic session 2021-22 and according to the scheme provided for under the Act, 2006, proposals were invited alongwith relevant documents in prescribed format for fee determination vide letter dated 23.06.2021. After due consideration by the Fee Regulatory Committee the fee for MBBS, MD/MS was determined for the academic Session 2021-22 and the said fee structure was notified by Government Order dated 08.12.2021. It is relevant to note that as per aforesaid notification of the State Government dated 08.12.2021, the fee was notified only for academic session 2021-22.

16. In 2023, the Fee Regulatory Committee conducted its meetings on 26.09.2023, 27.06.2023 and 31.07.2023 and after considering the various documents and proposals, submitted by the Medical Colleges, it recommended to continue with the same fee structure, which was determined for academic session 2021-22, for academic session 2023-24.

17. For the academic session 2024-25, the Fee Regulatory Committee was constituted on 12.06.2024, but it seems that the Committee did not undertake the exercise as provided for under the Act, 2006 and neither did it make any recommendations to the State Government and in the aforesaid circumstances the State Government by means of impugned Government Order dated 11.07.2024, extended the fee structure as determined for academic session 2023-24 to the academic session 2024-25.

18. The petitioner Institutions have approached this Court by means of present writ petition challenging the notification dated 11.07.2024 and have further sought direction to the respondents to determine tuition fee and other fees on the basis of proposals and documents submitted by the Colleges for academic session 2024-25 in accordance with the Act of 2006. It has been submitted by learned counsel for the petitioners that the respondents are bound to comply with the provisions of Act, 2006 and determine the fee structure after expiry of notification previously issued whereby the fee was determined by the Fee Regulatory Committee and notified by the State Government.

19. It was submitted that the Government Order dated 11.07.2024 is illegal and arbitrary inasmuch as it has been issued bereft of any recommendations by the Fee Regulatory Committee and in absence of any recommendation, the Government has no power or jurisdiction to issue any notification with regard to the fee structure and accordingly the impugned Government Order has been passed without any jurisdiction.

20. Lastly, it was submitted that there is no nexus between the last date for counseling and fixation of fee, as the respondents were under a mandate to determine the fee prior to commencement of counseling or start of academic session which they have failed to do and now they are seeking benefit of their own lapse. It was submitted that there is no provision either in the Act of 2006 or in the Rules of 2008 providing for determination of the fee prior to counseling. In response to the stand of the State Government and other respondents that there is not much time left before commencement of counseling, it has been submitted on behalf of the petitioner Institutions that they would be ready and willing to give an undertaking that the fee may be enhanced applying the rate of inflation on the fee determined for academic session 2021-22, which exercise can be concluded within a short time, and in any case before the commencement of counseling.

21. The respondents on the other hand have vehemently opposed the writ petition. A preliminary objection has been raised by them that the writ petition having been filed by an Association is not maintainable, in as much as the beneficiaries, if any would be the individual medical colleges and not the Association.

22. It has been submitted that the State Government by means of an order dated 11.07.2024, has decided to continue with the same fee structure as decided by Government Order dated 02.08.2023 for the academic session 2023-24. It was further stated that the said decision has been taken keeping in view the fact that counseling for the MDS course would commence much earlier than in the previous years and not much time is left before commencement of counseling, therefore the fee structure had to be notified so that the students are aware of the fee structure at the time of filing their choices of the Medical Colleges.

23. In the aforesaid circumstances it was submitted that the Government Order dated 11.07.2024 does not suffer from any

illegality and the decision has been taken only in the interest of the students so that they do not suffer difficulty while filling up their choice of Institutions during PG Counseling and NEET UG Counseling.

24. It was further submitted that as per the provisions of Section 4(8) of the Act, 2006 it is prerogative of the State Government to extend the fee decided in any particular year to the next academic year, and therefore it was within the jurisdiction of the State Government to have passed the impugned Government Order.

25. It is further submitted by the respondents that the Fee Regulatory Committee was constituted by the Government order dated 12.06.2024 and is in the process to determine fee for five new Medical Colleges who will start the course in the academic session 2024-25. Since fee structure of five new Medical Colleges was not determined, they stand on completely different footing than the petitioner Institutions. It was further submitted that it not necessary that fee be determined every year nor there is any statutory provision providing for the same and accordingly, there is no illegality in continuing the same fee structure for subsequent years which was determined for the academic session 2021-22.

26. Heard learned counsel for the parties and perused the record.

27. The question which falls for consideration before this court is whether the State Government can issue a notification in the exercise of its powers under section 4(8) of the Act of 2006 without there being any determination of fee by the Fee Regulatory Committee?

28. The issue pertaining to regulation of the fee chargeable from the students by the medical and other professional institutions has been subject matter of litigation before the Hon'ble Apex Court and in the case of **P.A. Inamdar & Ors vs State Of Maharashtra & Ors, (2006)13 SCC 293** it was held that the Committee should be formed

which would determine the fee to be charged by the professional institutes taking into account various aspects, in the following terms as stated in paragraph 68 of the said judgement:-

“B. FEES:

The Committee suggested by Islamic Academy and the procedure mentioned therein, appears to be the only safe method of ensuring that extortionate fees are not charged by the medical colleges. At the same time, it would be wrong to deny expenditure which the institution undertakes for ensuring excellence in education. Equally, a reasonable surplus should be permitted so that the fees charged cover the entire revenue expenditure and in addition leaves a reasonable surplus for future expansion. This alone would prevent the clandestine collection of capitation fees and would result in entrepreneurs investing in new medical colleges.

The Committee suggested by Islamic Academy appears to be the ideal one consisting of a chartered accountant, a representative of the MCI or AICTE as the case may be, with a retired judge of the High Court or the Supreme Court as the head.

The fee is to be fixed on the proposal of the institution supported by documents and the procedure of fee finalization should commence at least 6 months in advance of the commencement of the academic year.”

29. The State of U.P with the object to provide for regulation of admission and fixation of fee in private professional education Institutions and the matters connected therewith enacted the Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 which provided for constitution of an admission and Fee Regulatory Committee. The procedure to be followed by the said Committee was provided for

under section 4(8) according to which the Committee would require the private aided or unaided professional education Institution to furnish information regarding the nature of professional course, the availability of infrastructure, a reasonable surplus required for growth and development, expenditure on Administration and maintenance the expenditure on teaching and non-teaching employees of the institution etc. as provided in Section 10 of the Act of 2006.

30. Once the information is furnished by the institutions, the committee would proceed to determine the fee to be charged from the students, and such determination would be valid for such period as notified by the State Government.

31. With regard to the issue of maintainability it is noticed that the present writ petition has been filed by the U.P Unaided Medical and Allied Sciences College Welfare Association, Bareilly along with 17 Medical Colleges. The association has been made a petitioner as the individual medical colleges were in communication with the State Government under the umbrella of the Association. While even if the objections of the respondents are sustained, which are only with regard to the Association, it is noticed that 17 individual medical colleges have also joined as petitioners in the present writ petition, and these individual medical colleges have a common grievance against the respondents pertaining to the determination of fee for the academic session 2024-25 and hence there is no doubt that the petition under Article 226 of the Constitution of India would be maintainable at their behest, as undoubtedly they are the “aggrieved persons” seeking redressal against the purportedly illegal and arbitrary State action. According, the preliminary objection with regard to the maintainability of the writ petition is rejected.

32. The issue for consideration before this court is with regard to the fact as to whether the State Government can notify the fees in exercise of its powers under Section 4 (8) of the Act of 2006 without there

being any determination by the Fee Regulatory Committee as has been done for the academic session 2024-25.

33. The answer to the aforesaid question can be found on prudent perusal of Section 4(8) and Section 10 of the Act of 2006, which confers the power and provides the procedure for determination of the fee. In sub-clause 8 of Section 4 the Fee Regulatory Committee after its constitution would require the institutions to furnish information as per Section 10 which may enable it to make determination of fee. The private aided or unaided professional education Institutions or private university etc. must furnish such information to the Committee as sought which is necessary for the Committee which has to “determine” the fee. Therefore, a bare perusal of the aforesaid provisions, clearly indicate that the responsibility of determination of fee has been given only to the Fee Regulatory Committee constituted under the said act. Once the fee has been determined, the State Government would have to notify the said fees and also the period for which such determination has been made.

34. The aforesaid interpretation is also fortified by reading of Section 10 of the Act of 2006 which clearly states that “*committee shall determine the fee to be charged...*”, and therefore, only the Fee Regulatory Committee has been given the mandate to determine the fee. The State Government only has to notify such determination and also specify the period during which is that determination of fee shall remain valid. The recommendations of the Fee Regulatory Committee are binding of the State Government but are implementable on their being notified by the State Government.

35. This Court in the case of **Indian Institute of Management and Engineering Society and Another vs State of UP and others, 2016 SCC Online All 3451** had an occasion to consider a similar controversy whereby the private technical Institutions had been directed to charge fee for the session 2016-17 as determined earlier by

the Fee Regulatory Committee for session 2012-13. The State therein had also taken a similar plea stating that due to paucity of time the fee determined earlier would continue to be the fee for the session 2016-17 as no determination has been made by the Committee. The dispute which had engaged the attention of this Court was also to be resolved having regard to the provisions of the Act of 2006 and therefore the findings of the Court are germane for determination of the controversy in the instant case. This Court had allowed the writ petition in the following terms:-

“The learned counsel for the respondent would urge that in continuing the fee fixed earlier for 2016-17 is in keeping with the interest of the students. The argument on face value appears attractive, but tested in depth, appears shallow and lacks merit. The interest of the students is sub-served best by institutions of repute, imparting quality education of international standard. The students are prepared to pay more on placement in such institutions; if the argument that is sought to be advanced by the learned counsel for the respondent is accepted then a much lower fee would serve the student interest but unfortunately the State does not sponsor or assist financially in either setting up such private institutions or provide working capital. It is for these reasons the Apex Court held that fixation of fee should be left to the private institutions but should be monitored by a Committee so as to prohibit profiteering or from charging capitation fee; the role of the Committee is not that of a 'big brother' to force upon an institution fees determined three years earlier and compel the institution to run the courses at rates which makes it unworkable, therefore, seriously undermining quality instructions to the students. The cow cannot be milked for long without appropriately feeding it.

The cut of date fixed for admission would have no bearing, as admittedly the Committee failed to discharge its statutory duty cast

upon it under the Act 2006 and Regulation 2015 framed thereunder. A writ would issue directing the Committee to discharge its legal duty. The conduct of the Committee has not only been casual as reflected from the record but also arbitrary which is deprecated. It is not open for the Committee to say that it would not discharge its statutory duty due to paucity of time.

In the facts of the present case, out of 24 institutions only 5 institutions had submitted their proposal and only three institutions have approached this Court for enhancement of their fee for session 2016-17. The other institutions which have not approached are either not having students in requisite number or infrastructure to cater the students, therefore, may have preferred to continue on the fee determined in 2013. The petitioner-Institution being a premium private institute has sought revision, therefore, it was incumbent upon the Committee to have addressed the issue of fee review.

In these circumstances, the impugned order dated 22 June 2016 passed by the third respondent-Special Secretary, Government of Uttar Pradesh, Lucknow cannot be sustained, accordingly, quashed.

The writ petition is allowed with the following directions:

- (i) Committee shall fix the fee for session 2016-17 in respect of the Institutions before the Court, after hearing their representative;*
- (ii) Institutions undertake to submit their proposal before the Committee within one week from date i.e. by 29 August 2016;*
- (iii) Committee shall determine the fee for 2016-17 within four weeks thereafter i.e. by 26 September 2016;*
- (iv) The fee charged by the Institution for 2016-17 would be provisional fee subject to the final fee determined by the Committee;*
- (v) Upon enhancement, the arrears would be payable by the students in installment (half yearly/quarterly) depending upon the hike*

recommended by the Committee. Installment to be determined by the Committee.

(vi) Committee in future to discharge its statutory function in determination of fee well in advance.”

36. We have perused a few of the previous Government Orders notifying the fee and found that, even the State Government has notified the fee after recommendations have been made by the Fee Regulatory Committee. They had followed this very procedure for the academic session 2011-12, which was preceded by recommendation of the Fee Regulatory Committee. By means of Government Order any 02/06/2016 decision was taken by the Fee Regulatory Committee to extend the fees previously fixed. For academic session 2021–22 the Constitution of the committee was notified on 08/12/2021. On 02/08/2023 the Government order was issued conveying the recommendations of the Fee Regulatory Committee extending the fee for academic session 2023-24. Therefore, the State has all along been issuing notifications conveying the recommendations of the Fee Regulatory Committee. It is for the academic session 2024-25 that the impugned notification has been issued by the State Government in absence of any recommendations having been made by the Fee Regulatory Committee. In paragraph 24 of the counter affidavit, it has been stated that the State Government by means of its order dated 11/07/2023 has decided to continue with the same fee structure as decided by GO dated 02/08/2023, therefore there is no doubt with regard to the fact that for the academic session 2024-25 the determination has been made by the State Government itself to continue with the fee structure decided previously. This decision in the considered opinion of this Court is illegal, arbitrary and contrary to provisions contained in the Act of 2006, where it has been provided that the power to determine the fee of the educational institutions vests only with the Fee Regulatory Committee and the role of the

State Government is limited only to notifying such determination/decision as made by the Committee.

37. For the academic session 2024-25 the Fee Regulatory Committee has been constituted on 12/06/2024, and as per the statutory duty cast on it by the Act of 2006, it was under a duty to proceed to determination the fees following the procedure prescribed in the Act of 2006 read with rules of 2008. The counter affidavit has also been filed on behalf of Fee Regulatory Committee, but there is no mention about the stage of exercise which has been conducted by them towards determining the fee, while on the other hand it has been contended that the schedule for counseling of MBBS is to start shortly and therefore there is no time left to determine the fee and the State Government has decided to continue with the same fee structure as decided for previous years. It seems that the Fee Regulatory Committee has failed to undertake the exercise after being duly constituted and has not made any recommendations determining the fee which is certainly a very serious lapse on its part resulting in deprivation of the enhanced fee which the petitioner institutions would have been legally and validly entitled to.

38. Once the Fee Regulatory Committee has been constituted, it has to proceed to determine the fee in accordance with law, and its mandate ends only when such determination has been made, or the State Government terminates its constitution. In the present case after being duly constituted by means of Government Order dated 12/06/2024, the committee has not forwarded its recommendations to the State Government for notification, nor is there any notification ending its mandate and therefore its mandate continues as neither of these contingencies have occurred.

39. The delay in the Constitution of the Fee Fixation Committee has been attributed to the General Elections in the country. It could not be demonstrated on behalf of the respondents that fixation of fee for

educational institutions has any bearing on the elections, or there was any order of the Election Commission restraining the constitution of the said Committee, or further even if there was any confusion in this regard whether any permission was sought from the Election Commission. No plausible explanation in this regard is forthcoming from the respondents. Accordingly, there is no plausible reason for the delay in the constitution of the Committee which is deprecated in strongest terms.

40. Another issue that has been raised and contested by both the parties is with regard to the period during which the recommendations of the Fee Regulatory Committee would hold field, and whether such an exercise would have to be conducted annually.

41. Learned Additional Chief Standing counsel on behalf of the respondents has vehemently urged that this aspect of the matter has been concluded by the Supreme Court in the case of ***Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697*** where it was held:-

“161. Fees once fixed should not ordinarily be changed for a period of three years, unless there exists an extraordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/body set up. For this purpose the application should not be filed later than April of the preceding year of the relevant education session. The authority/body shall take the decision as regards fees chargeable latest by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalized bank. In other words, no employee or any other person employed by the management shall be entitled to take fees in cash from the students concerned directly. The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the

effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation.”

42. In this regard it is noticed that the directions of the Supreme Court in the case of ***Islamic Academy of Education v. State of Karnataka, (supra)*** with regard to the fee Committee hold field only till appropriate statutory regulations are made by the State Governments. This was clearly stated in paragraph 159 which is as follows: -

“159. With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.”

43. Considering the above, this Court is of the view that once the State of Uttar Pradesh has enacted the Act of 2006, then the provisions contained therein shall prevail. As already discussed above in detail regarding the provisions contained in Section 4(8) of the Act of 2006, the Fee Regulatory Committee has to call for relevant data and material from the educational institutions and determine the fee. The determination has to be notified by the State Government which has also to provide for *“fee so determined to be valid for such period....”*. Therefore, the validity of the determination made by the Fee Regulatory Committee shall hold field for the duration for which notification has been issued by the State Government. At this stage we would also like to make it clear that even the period of the validity of the fee fixed by the Fee Regulatory Committee must be made by the Committee and is not at the discretion of the Government. The Fee Regulatory Committee at the time of determining the fee can take into

account such conditions and apply the principles for fixing the fee, which can extend its validity beyond an academic session or for 2 or more years. Accordingly, this Court is of the considered view that even the extension of the period for which the fee is determined is part of the process of “determination” of fee as per Section 4(8) read with Section 10 of the Act of 2006, which has to be done by the Fee Regulatory Committee. The State Government therefore is tasked only to notify the recommendations of the Committee with regard to the fee as well as the period of its validity.

44. Section 11 of the Act of 2006 provides for constitution of an appellate authority which is headed by a person who has been a Judge of the High Court, before whom a person or professional Institution aggrieved by the order of the committee may file an appeal within 30 days from the date of receipt of the order. Section 11 also makes it clear that only the order of the Committee, is appealable, which means that the quantum of fee fixed by the Committee as well as the validity of the period determination made by the Committee can be subjected to appeal before the appellate authority. There may be a situation where there may not be a dispute about the quantum of fee fixed, but with regard to the period of its validity as the Committee may fix a greater time frame like 3, 5 or 7 years for the validity of the fee against which an appeal can be preferred.

45. In the instant case the impugned order extending the period of the validity of the fee passed by the State Government cannot be subjected to appeal as only the decision of the Fee Regulatory Committee can be subjected to an appeal. It could not have been the intention of the legislature to have constituted an appellate authority only for hearing appeals against the quantum of determination of fee by the Committee and not against the period of its validity. This leads us to the irresistible conclusion that even the period of validity of the fees has to be recommended by the Committee as it amounts to

determination of fee, and this part of the determination can also be appeal against before the appellate authority. Apart from the above, the other reason for coming to the said conclusion is that the Committee while determining the fee will have to consider such other relevant factors so that determination holds good for the duration of its validity, failing which the determination itself would be liable to rendered arbitrary.

46. The precipice of the aforesaid consideration would be that once the Fee Regulatory Committee has been notified it would proceed to embark on its mandate and call for the relevant material as provided in section 10 of the Act of 2006, and proceed to determine the fee for each institution, as the data for each institution would be different. The recommendations of the Committee would have to be notified by the State Government, and as per Section 4(8) and such notification would also indicate the period for which the determination of fee by the Committee would remain valid.

47. Once the period of validity of fee as notified by the State Government expires, the natural consequence would be the reconstitution of the Fee Regulatory Committee, which would conduct the exercise of determination of fee afresh, which would thereafter be notified by the Government prescribing the period for its validity and it would be a cyclic procedure. Therefore, the answer to the question as to whether determination of fee would be an annual exercise, is accordingly answered that the fresh determination of a would have to be made after the expiry of the validity of the previous fee fixed by the Committee. This procedure has been followed by the State Government itself and is evidenced by the previous exercise conducted for determination of fee for the session 2023-24 which was done on the recommendations of the Fee Regulatory Committee which had conducted its meeting on 26/06/2023, 27/06/2023 and 31/07/2023 and after giving due opportunity of hearing to the

institutions and had made recommendations to continue with the same fee structure as determined for the session 2021-22. Even previously, in 2017 on the recommendations of the Fee Regulatory Committee, the State Government by means of Government order dated 14/07/2017, notified fee which was valid for 3 academic sessions that is 2017-18, 2018-19 and 2019-20. The said fee continued for the 3 academic sessions and the next determination was made only after the expiry of the period of its validity i.e for academic session 2020-21.

48. It is only for the session 2024-25 the State Government has notified the fee structure on its own, without reference to the recommendations of the Fee Regulatory Committee which in the considered opinion of this court is illegal and arbitrary and wholly without jurisdiction. Once the Fee Regulatory Committee has been constituted, it is deemed to have commenced its function to determine the fee, and the educational institutions as well as the State Government have no option except to wait for the recommendations of the committee, and neither the educational institutions can charge any enhanced fees, nor can the State Government notify the fee structure on its own without waiting for the recommendations of the fee committee.

49. Finally, the issue raised by the respondents deserve to be examined, that the counseling is to commence from 20/08/2024, and there is no time left to conduct the exercise for determination of fee as per the provisions contained in the Act of 2006 and therefore the State had issued the Government order for continuing the fee structure determined previously. In the peculiar facts, it was prayed that they may be allowed to continue with the fee structure as notified by the impugned order.

50. As per the facts narrated above, there is no dispute that firstly, the State Government was fully aware that the last fee determined by the Committee for professional educational institutions was notified for

the academic session 2023-24 and therefore a fresh determination had to be made for the academic session 2024-25. Being in full knowledge of the aforesaid facts they chose to belatedly notify the constitution of the Fee Regulatory Committee only on 12/06/2024 knowing fully well that the counseling for various courses of medical education is to commence from July/August 2024. As per the averments made in the counter affidavit, 2-3 month's time is required for calling for the records, hearing and determining of fee. Merely because the State has slept over the matter despite fully knowing that the statutory provisions contained in the Act of 2006 must be implemented for the academic session 2024-25, cannot be a ground for not determining the fee for the said academic session. The State as well as the Committee were under a duty to determine the fee which it has clearly failed to perform, and it is for this very reason that the Constitutional Courts are required to interfere and see that the obligations placed upon the State by the legislature are complied with in letter and spirit. Similar argument of the State was also considered in paragraph 21 by the coordinate bench of this Court in the case of **Indian Institute of Management and engineering Society**(Supra) in following terms:-

“21. It is averred in the counter affidavit that the fee for the session 2016-17 could not have been determined by the Committee due to paucity of time. The fee, therefore, determined earlier (2013) would be the fee for session 2016-17. The delay has not been attributed to the institutions. Admittedly, five institutions responded, as against 24 Institutions, for fixing Standard Fee, however, the Committee was unable to determine the fee even in respect of the five institutions. Petitioner-Institution being aggrieved by non determination of fee has pleaded that it would not be possible, even considering the inflation, to run the Institution, maintain quality and pay higher salary to the teachers upon implementation of the 7th Pay Commission Report,

therefore, the Institution would have to run at expenses less than their revenue, thus, eroding its surplus.”

51. The aforesaid argument was considered and rejected in paragraph 31 in the following terms:-

“31. The cut of date fixed for admission would have no bearing, as admittedly the Committee failed to discharge its statutory duty cast upon it under the Act 2006 and Regulation 2015 framed thereunder. A writ would issue directing the Committee to discharge its legal duty. The conduct of the Committee has not only been casual as reflected from the record but also arbitrary which is deprecated. It is not open for the Committee to say that it would not discharge its statutory duty due to paucity of time.”

52. This Court, not in very uncertain terms had clearly stated that the conduct of the Committee has not only been casual as reflected on record but also arbitrary, which is deprecated. Despite inviting such observations and comments from this court the State Government and the Fee Regulatory Committee have raised the same plea for being unable to determine the fee for the academic session 2024-25. It is also important to point out that this Court has been informed that the above judgment of this court has become final as no appeal was filed before the Supreme Court. Accordingly, there is no reason for this Court to take any other view of the matter than what has already been taken in the above case. The failure of the Fee Regulatory Committee to determine the fee in absence of any reasonable cause for not doing so, is writ large on the face of the record, and equally culpable is the State Government for not have learnt anything from the previous judgments despite harsh words like the “deprecated” having been used for them with regard to their conduct in similar circumstances.

53. Apart from the above, this Court is of the considered view that the petitioners have a legitimate expectation from the State Government as well as from the Fee Regulatory Committee to perform their duty

as per the Act of 2006. It is not merely a hope or an expectation or an anticipation, but a legal duty cast upon them to have determined the fee for the academic session 2024-25, which statutory duty they have miserably failed to perform, and no explanation whatsoever is forthcoming for the delay caused in determining the fee. It has recently been held by the Apex court in the case of **Army Welfare Education Society New Delhi versus Sunil Kumar Sharma and others, 2024 SCC online 1683** as follows :-

“48. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

a. First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;

b. Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

c. Thirdly, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;

d. Fourthly, legitimate expectation operates in relation to both substantive and procedural matters;

e. Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.

f. Sixthly, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally.

49. The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in state action. It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field.”

54. In the present case the petitioners are seeking a direction to the State Government to comply with the provisions of the act of 2006, since despite Constitution of the Fee Regulatory Committee, and submission of all the documents, it has failed to make any recommendations determining the fee for the academic session 2024-25. The duty has been cast on the Committee by the Act of 2006, and consequently at the end of the validity of the previous notification the Committee has to make a fresh determination which it has failed to do, and consequently the petitioners have a legitimate expectation that the Committee will determine the fee as it is statutory required to do. The State Government on its part could not have issued the notification without such recommendation and therefore there is a complete failure of the machinery for determination of fees for the professional medical colleges requiring interference of this Court under Article 226 of the Constitution of India.

55. In light of the above this Court is of the considered opinion that the State Government does not have jurisdiction to pass the impugned Government order dated 11/07/2024 without there being any recommendations of the fee regulatory committee and accordingly the same is quashed.

56. Writ petition is **allowed** with the following directions: -

- a. The Fee Regulatory Committee shall proceed fix the fee for academic session 2024-25 in respect of the Institutions before this Court, in accordance with law.
- b. The petitioner Institutions are required to submit all the documents and the proposal, if not already done, within one week from today i.e by 24.8.2024.
- c. The Committee shall determine the fee for the academic session 2024-25 within 4 weeks thereafter i.e by 21.09.2024, it shall be open for the Committee to consider the request of the petitioner Institutions for enhancement of the fee in proportion to the rate of inflation on the fee determined for academic session 2021-22 as provided for in the order of this Court dated 14/08/2024.
- d. At the time of counselling the students will be informed about the fees determined for academic session 2023-24, which would be the provisional fee subject to the final fee determined by the Committee.
- e. Upon enhancement, the arrears would be payable by the students in instalments (half yearly/quarterly) depending upon the hike recommended by the Committee, which shall also determine the number of instalments to be paid by the students.
- f. This Court while interpreting the provisions of the Act of 2006 in the case of **Indian Institute of Management and Engineering Society and Another, 2016 SCC Online All 3451** had clearly stated that the Committee in future has to discharge its statutory function in determination of fee well in advance, and the Hon'ble Supreme Court in the case of **Islamic Academy (supra)** had stated that the fee shall be determine 6 months in advance and despite the said directions the Committee has not determined the fee for the academic session 2024-25, despite the fact that the counselling is about to commence, which clearly amounts to defiance of the orders of this Court and hence they are liable to be proceeded for contempt, but after due consideration

this Court is of the view that the end of justice in the present case would be met by directing the Chief Secretary, Government of U.P. to conduct an enquiry against the persons responsible for delay in constitution of the Fee Fixation Committee and also with regard to the failure of the Committee to make determination of fee as mandated by the Act of 2006. Let the enquiry be concluded within a period of 2 months, and a copy shall be forwarded to this Court through its Senior Registrar. We again caution the State Government as well as the Fee Fixation Committee to proceed to determine the fee well in advance for the next session failing which they shall be liable to be proceeded in contempt.

57. No order as to costs.

Order Date :- 17.8.2024

A. Verma

(Alok Mathur, J.)