

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 03.12.2013
Judgment pronounced on : 06.12.2013

+ **W.P.(C) 6948/2012 & CM No.18062/2012 (Stay)**

ASSOCIATION OF SELF FINANCING INSTITUTIONS..... Petitioner
Through: Mr. Rajmangal Kumar, Adv. for
Mr. S.K. Dubey, Adv. for the Petitioner.

versus

GOVT. OF NCT OF DELHI AND ANR Respondents
Through: Ms. Zubeda Begum, Standing Counsel,
GNCTD with Mr. Ajay Kumar,
Administrative Officer, Department of
Higher Education.
Mr. Harsh Kaushik, Adv. for R-2.

+ **W.P.(C) 7734/2012; CM Nos.19516/2012 (Stay), 303/2013**
(for modification of order dt. 11.12.2012) & 14277/2013 (Directions)

ANIRUDH DHAUMYA & ORS. Petitioners
Through: Mr. Davinder N. Grover, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS. Respondents
Through: Mr. Vaibhav Kalra, Advs. for R-1.
Mr. Abhay Singh, Ms. Yasmin Zafar &
Ms. Vindhya Singh, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

Section 6(1) of 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, requires the Government to constitute a Fee Regulatory Committee, for determination of the fee for pursuing courses in an institution. Sub-section (3) of the said Section, to the extent it is relevant, provides that the Government, after receipt of recommendations of the said Committee, shall notify the fee determined by the Committee. Sub-section (13) of the said Section provides that the fee notified by the Government shall be valid for three years though the Government can extend its validity for a further period to be notified by it. Section 10(1) of the Act provides that no institution shall collect any fee, over and above the fee determined by the Fee Regulatory Committee and notified by the Government.

2. Vide order dated 27.07.2011, which is stated to have been duly published in the Official Gazette, Government of NCT of Delhi on the recommendations of the Committee, notified the following fee structure for the academic year 2009-10:

The Committee recommends increase in the fee structure of the academic year 2009-10 and onwards as per details given below:-

S.No.	Grade of the Institute	% of the Fee hike	Base Year
1	A+	30%	Over the base year 2008-09
2	A	25%	-do-
3	B	20%	-do-
4	C	15%	-do-

“The fee structure recommended as annexed will be valid for the academic session 2009-10 and 2010 and a hike of 5% has been recommended for the students to be admitted to the various courses during the academic session 2011-12.

New Institutions which come into operation during the academic year 2009-10 will be given a hike in the fee structure on the base fee as is applicable to Grade-‘C’ institutions (i.e. 15% hike of base fee).”

Vide notification dated 7.02.2012, the first paragraph below the table was substituted by the following paragraph:

“The fee structure recommended as annexed will be valid for the academic session 2009-10 and a hike of 5% of this fee is allowed to be charged in the third year (i.e.2011-12) from the students who were enrolled in 2009-10.”

3. Vide the aforesaid notification dated 07.02.2012, the following fee structure was notified by the Government for the academic year 2011-12:

S.No.	Grade recommended by SFRC	Increase in fee recommended by the committee on the existing fee, for the Academic year 2010-11
1	A+	20%
2	A	15%
3	B	10%
4	C	5%
5	D	3%

Vide yet another notification dated 16.08.2013, the Government on the recommendations of the Committee, extended the fee structure, notified by it for the year 2011-12 to the academic year 2012-13.

4. Vide communication dated 24.02.2012, GGSIP University forwarded the order dated 07.02.2012 to all the privately managed self-financing institutions affiliated to the said University, for information of all concerned. A meeting of the Committee was held on 21.03.2012 in the office of the Secretary (Higher Education), Government of NCT of Delhi. It was noted in the said meeting that some institutes were charging extra fee from students enrolled in 2010-11. It was decided that the tuition fee fixed by the Committee was for the academic year 2011-12 and no hike has been prescribed for the students enrolled in the year 2010-11 and, therefore, no extra fee can be charged from them. It was

also decided that extra fee, if any, charged from the students should be returned back to them. The aforesaid decision taken by the Committee was circulated to all the self-financed privately managed institutes, including Gitarattan International Business School vide communication dated 23.08.2010, issued by the Government of NCT of Delhi and they were required to refund the extra fee, if any, collected by them from the students. Being aggrieved from the aforesaid decisions, the said institute has filed W.P.(C) No. 6948 of 2012 seeking quashing of the order dated 21.03.2012 which, in fact, are the minutes of the meeting held on that date.

5. W.P.(C) No. 7734/2012 has been filed by the students of Banarsi Das Chandiwalla Institute of Professional Studies-respondent No. 2 in the said petition seeking quashing of the demand notice dated 26.06.2012, issued to them by the said institute seeking fee of Rs 68,500/- from the second year student of 2011-14 batch and third year student of 2010-13 batch for the academic year 2011-13.

6. It would be seen from the above-referred notifications, issued by the Government of NCT of Delhi, that the students who took admission in the academic year 2009-10 were required to pay the fee stipulated in

the notification dated 27.07.2011 for the year 2009-10 as well as 2010-11 and the fee was to increase by 5% in the academic year 2011-12. There was no hike in the fee payable by the students admitted in the academic year 2010-11, meaning thereby that, they were to pay the same fee which the students admitted in the year 2009-10 were to pay and for the year 2011-12, the fee was to increase by 5% as was the case in respect of the students admitted in the year 2009-10. As regards the students who took admission in the year 2011-12, according to Government of NCT, they were to pay the fee, as stipulated in the order dated 07.02.2012 which provided for hike of 20%, 15%, 10%, 5% and 3% for the students graded as A+, A, B, C and D respectively over the fee notified for the year 2010-11.

7. During the course of hearing on 03rd December, 2013 the learned standing counsel for the Government of NCT of Delhi stated, on instructions that the fee notified by the Government for the students taking admission in the year 2009-10 was to apply to such students for three years 2009-10, 2010-11 and 2011-12, the fee, notified for the students taking admission in the year 2010-11 which incidentally was the same as was the fee notified for the students taking admission in the year

2009-10, would apply to such students for the academic year 2010-11, 2011-12 and 2012-13 and the fee notified for the students taking admission in the year 2011-12 would apply to them for the years 2011-12, 2012-13 and 2013-14. However, the learned standing counsel did not clarify as to in which academic year the fee would increase by 5% for the students who took admission in the year 2010-11, i.e., whether it would increase in the academic year 2011-12 or 2012-13.

8. The learned counsel for the petitioner n W.P.(C) No. 6948 of 2012 submitted that in fact, the notification dated 07.02.2012 provides for increase in fee for the academic year 2010-11 and not for the year 2011-12. I, however, find no merit in this contention. It is clearly stated in the first paragraph of the order dated 07.02.2012 that the Government vide said order, was notifying the fee determined by the Committee for the period 2011-12. The third paragraph of the said order dated 07.02.2012 also refers to the report of the Committee for the academic year 2011-12. Similarly, in the second paragraph of the order dated 07.02.2012 on page 55 of the paper book, the Committee accepted the plea of certain institutions with respect to the fee for the year 2011-12. In the second last paragraph on page 55 of the paper book, the Committee fixed the fee

to be charged by certain new institutions at the lowest rate given in the corresponding 'C' category institutions, in the year 2011-12.

Though in its meeting held on 21.03.2012, the Committee clarified that it had not granted any hike for the year 2010-11 even in the absence of such clarification, there is no escape from the conclusion that the order dated 07.02.2012 referred only to the fee fixed for the year 2011-12 and not to the fee for the year 2010-11.

9. The respondents have in order to put the matter beyond any shade of doubt placed on record a letter dated 17.01.2011, written by the Chairman of the Committee to the Government of NCT of Delhi, enclosing therewith a report of the Committee with respect to fee structure. It is clearly stated in the said report that the Committee had decided that for the year 2010-11, last year's fee may continue and there was no need to fix a new fee for the said year.

10. Shri S.K. Dubey, the learned counsel for the petitioner in W.P.(C) No. 6948/2012 emphasized upon the use of the academic year 2010-11 in the table given in the order dated 07.2.2012. In my view, the words "increase in fee recommended by the Committee on the existing fee for the academic year 2010-11" means that for the year 2011-12, the

Committee was recommending increase, by the percentage specified in the table, on the fee which was applicable for the academic year 2010-11. It would be wrong understanding of the aforesaid table to say that the Committee recommended enhancement by the percentage stipulated in the table for the academic year 2010-11.

For the reasons stated hereinabove, I find no merit in W.P.(C) No. 6948/2012 filed by the Association of Self Financing Institutions.

11. Coming to W.P.(C) No. 7743/2012, it is quite clear from a careful perusal of sub-section (1) of Section 6 of the Act that the Government is required to determine fee 'for various courses' and not for various batches of different courses. The Government thus was required to determine fee payable by the students taking admission in various courses such as BBA, LLB, B.Tech, BCA, MCA, B.Ed. M.Ed., etc. on the recommendations of the Fee Regulatory Committee. This is also evident from the proviso to sub-section (2), which provides for hearing to the Institution before determining 'the fee to be fixed for a course of study' and recommending fee 'in each course of study'. Of course, there can be different fee for different courses, but once the Government has determined the fee for a particular course by way a Gazette Notification,

such fee remains valid for a period of three years in terms of sub-section (13) of the said Section. Though the Government is competent to extend the validity of such fee for a term beyond three years it cannot reduce the period of validity of such fee, by fixing a different fee for a period prior to three years. The aforesaid Section, in my view, does not permit the Government to determine fees for each batch of students, i.e., one fee for the students taking admission in 2009-10, second fee for the students taking admission in 2010-11 and the third fee for the students taking admission in 2011-12. Therefore, the fee which the Government determined vide notification dated 27.07.2011 was valid for the years 2009-10, 2010-11 and 2011-12 irrespective of whether the students took admission in the year 2009-10, 2010-11 and 2011-12. Since the aforesaid order carried a stipulation for hike by 5% in the year 2011-12 'for the students taking admission in the year 2009-10', the students who have taken admission in the said year, i.e., 2009-10, in a course having duration of three years or more, will have to pay the fee hiked by 5% over the fee of 2009-10, in the year 2011-12. Considering that the students taking admission in the year 2009-2010 were to pay enhanced fee in the academic year 2011-2012, I see no reason why the students who took

admission in the year 2010-11 also should not suffer a similar hike in the third year of their study, i.e., academic year 2012-13, wherever the course had duration of three or more years.

On the same lines, I am of the view that the students who took admission in the academic year 2011-12 shall have to pay, for the said year, the fee fixed for 2009-10 vide order dated 27.07.2011. For the year 2012-2013, the Government may either fix the fee by way of a separate order or it may extend the fee fixed vide notification dated 27.7.2011 for the said year.

12. As regards the notification dated 07.02.2012, giving hike of 20%, 15%, 10%, 5%, 3% to A+, A, B, C and D grade institutions, over and above the fee fixed for the year 2010-11, I am of the view that the said order cannot apply for the academic year 2011-12. The fee determined by the Government vide order dated 27.07.2011 could be hiked on the recommendations of the Committee only for the year 2012-13 and not in an earlier year.

13. It is made clear that respondent No. 2 in the said petition shall not be entitled to charge any fee in excess of the fee stipulated in the order dated 27.07.2011 from any student in the year 2009-10, 2010-11 and 2011-12. If respondent No. 2 in W.P.(C) No. 7734/2012 has charged any

fee over and above, the fee stipulated in the order dated 27.07.2011, as interpreted in this judgment, such fee shall be adjusted/refunded to the petitioners within four weeks from today.

The writ petitions stand disposed of. All the pending applications also stand disposed of. No order as to costs.

V.K.JAIN, J

DECEMBER 06, 2013
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