



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.109/2021

1. Dr. Muness Akhtarkhavari,
Aged 27 years, Boys Hostel,
Goa Dental College and Hospital
Bambolim, Goa.
2. Dr. Neetu Yadav, Aged 26 years,
Qtr. No. F-5, Smita Apartments,
Near Gsl Club Behind Police
Station Chicalim, Vasco Goa.
3. Dr. Priya Jangid, Aged 27 years,
Girls Hostel, Goa Dental College
and Hospital, Bambolim, Goa.
4. Dr Vania Ferreria, Aged 27 years,
Plot No:26, Cupangle Society,
Behind Chowgule College,
Fatorda, Gogol 403602.
5. Dr. Manjeeta Dhume, Aged 27 years,
A wing, Ground Floor Shaniana
Co-op Housing Society, Margao, Goa.
6. Dr. Archana PG,
Aged 32 years, Girls Hostel,
Goa Dental College and Hospital,
Bambolim, Goa.
7. Dr. Alcina Fernandes
Aged 27 years, House No. 245,
Ganesh Nagar, Khandola,
Marcela, Goa 403107.
8. Dr. Indu Cheerla
Aged 27 years, Girl Hostel,
Goa Dental College and Hospital,
Bambolim.
9. Dr. Rahul Loliienkar
Aged 26 years, Kamat Classic,
Phase IV Building No. 8 Flat F-18
Caranzalem, Goa.

10. Dr. Shreekala Borkar,
Aged 28 years, H.No. 254/1,
Borim, Ponda, Goa.

11. Dr. Praveen Kumar,
Aged 26 years, Boys Hostel,
Goa Dental College and Hospital,
Bambolim.

12. Dr. Kime Nuyu,
Aged 28 years, Girl Hostel,
Goa Dental College and Hospital,
Bambolim.

13. Dr. Nadia Fernandes,
Aged 26 years, S-4, Ravidarshan
Co-operative housing society, Borda.

14. Dr. Jigar Parmar, Aged 25 years,
Boys Hostel, Goa Dental College
and Hospital, Bambolim.

15. Dr. Jyoti Parmar,
Aged 27 years, G-401,
Aldeia De Goa, Bambolim, Goa.

16. Dr. Arya Khandeparkar,
Aged 26 years, E-3, Pratibha Co-op
Housing Society, Aquem, Margao.

17. Dr. Alex Immanuel,
Aged 26 years, Boys Hostel,
Goa Dental College and Hospital,
Bambolim.

18. Dr. Diksha R Prabhu Gaunkar
Aged 26 years, H.No. 667,
1st Fatrade post office, Varca,
Salcete, Goa.

19. Dr. Alka Joseph,
Aged 25 years, H.No. F-3,
Sapana Habitat, Chogm Road,
Socorro, Bardez, Goa.

20. Dr. Sneha Rathee,
Aged 25 years, Flat No. 102,
Siddhakala Sankul, Chicalim, Vasco.

21. Dr. Archana Sen, Aged 25 years,
Girl Hostel, Goa Dental College
and Hospital, Bambolim.

22. Dr. Jitisha Savalkar,
Aged 26 years, H.No. 217/A,
Bilsow Vaddo,
Pedem, Mapusa, Goa.

23. Dr. Geethu Prasad
Aged 32 years, H.No. 744,
Tahiramande, St. Augustinho Waddo,
Santa Cruz, Goa.

24. Dr. Grazina Fernandes
Aged 26 years, H.No. 427,
4th Ward B, Behind Star Beach
Resort, Colva Salcete, Goa.

25. Dr. Sadhvi Gokuldas Naik,
Aged 26 years, H.No. 306/B
Shindolim, Sancoale, Goa.

26. Dr. Karthikeyan P.,
Aged 26 years, Boys Hostel,
Goa Dental College
and Hospital, Bambolim.

27. Dr. Ravi Kumar, Aged 26 years,
Boys Hostel, Goa Dental College
and Hospital, Bambolim.

28. Dr. Nidhi Ragnekar,
Aged 26 years, 508 Tarangan Tisk
Near Civil Court, Ponda, Goa.

29. Dr. Richa Borkar,
Aged 26 years, Fx Apartments,
2nd Floor Flat No. C-11,
Merces, Vasco, Goa.

30. Dr. Puja Sunil Jadekar,
Aged 25 years, Girl Hostel,
Goa Dental College and Hospital,
Bambolim.

31. Dr. Rachel Kimi Costa,
Aged 28 years, H.No. 144,
Choni Macasana, Salcete,
South Goa.

32. Dr. Shamli Prabhu Chodnekar,
H.No. 338 Vikas Nagar,
Carambolim, Goa, aged 24 years.

33. Dr. Loveleen Kaur,
Aged 27 years, Gf-02,

Dias Building, Mangoor hill,
Vasco Da Gama, Goa.

34. Dr. Anuja R. Naik,
Aged 28 years, H.No.1297/A,
Damon East Raia Salcete Goa.

35. Dr. Ashina Kumar,
Aged 28 years Sapana Heights,
St. Inez, Panjim Goa.

36. Dr. Aneesh V M, Aged 33 years,
Boys Hostel, Goa Dental College
and Hospital, Bambolim.

37. Dr. Shyama P.M.,
Aged 27 years, Chaithanya,
Peruvazhikkadavy, P.O. MIE
Kunnamangalam, Calicut,
Kerela 673571.

38. Dr. Fouzia Khan,
Aged 29 years, Ismail Manzil,
Layamati, Davorlim, Salcete Goa.

39. Dr. Sonal A. Prabhudesai,
Aged 27 years Sahara,
Shri Dattaprasad Colony,
Cunchelim, Mattawado, Mapusa Goa.

40. Dr. Pooja G. Choudhary,
Aged 28 years, Lal Kuthi Mitra
Para Road Haliashahar (m),
North 24 Parganas,
West Bengal 743135.

41. Dr. Deepthi M.,
Aged 29 years, Thanal Iringavoor,
Vaniyannur Tirur-3, Malappuram
Kerela, 676103.

42. Dr. Deepthi Priya M.,
Aged 27 years, Girls Hostel,
Goa dental College and Hospital,
Bambolim Goa.

43. Dr. Neha Chodankar,
Aged 29 years, St. Cruz, Panjim Goa.

44. Dr. Mohammed Anas,
Aged 31 years Boys Hostel,
Goa Dental College and Hospital,
Bambolim.

45. Dr. Chinju Thomas
Aged 28 years, Girls Hostel,
Goa dental College and Hospital,
Bambolim Goa.

46. Dr. Arati M. Naik,
Aged 28 years, 861/7A
Aframenth Bhatim Shiroda, Goa.

47. Dr. Arti Naik,
Aged 27 years, H.No. 61,
Dutale Wada, Madkai, Ponda, Goa.

... PETITIONERS

Versus

1. State of Goa, Through its
Chief Secretary, Secretariat,
Porvorim, Goa.

2. Goa Dental College
Through its Dean, Bambolim, Goa.

3. Secretary (Health) Public
Health Department, Secretariat,
Porvorim, Bardez, Goa.

4. Under Secretary (Health)
Public Health Department,
Secretariat, Porvorim, Bardez, Goa.

5. Director, Public Health Department,
Secretariat, Porvorim Bardez, Goa.

... RESPONDENTS

Shri S. D. Lotlikar, Senior Advocate with Ms S. Kenny, Advocate for
the Petitioners.

Shri Devidas Pangam, Advocate General with Ms Maria Correia, AGA
for the State.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

Reserved on: 27th JUNE 2024

Pronounced on: 3rd JULY 2024

JUDGMENT: (Per M. S. Karnik, J.)

1. Heard Shri S. D. Lotlikar, learned Senior Advocate who appears along with Ms S. Kenny for the Petitioners and Shri Devidas Pangam, learned Advocate General who appears along with Ms Maria Correia, learned AGA for the State.
2. This petition is filed by the petitioners who at the relevant time were pursuing Masters in Dental Surgery Course (MDS for short), for Post Graduate students at Goa Dental College at Bambolim, Goa under Article 226 of the Constitution of India. The principal contention raised on behalf of the petitioners is that an unreasonable hike in the fees has been implemented for the post-graduation course which the petitioners were pursuing, after they had taken admission in the said course.
3. According to the petitioners, the impugned order dated 06.01.2020 increasing the fees manifold from Rs.12,000/- to Rs.1,00,000/- per semester is arbitrary. There have been some developments during the pendency of the petition. The respondents reconsidered the revision and brought it down to Rs.48,000/- per semester in view of the representations made and objections raised by the students against such alleged arbitrary hike.
4. Learned Senior Advocate Shri S. D. Lotlikar submitted that when the petitioners were admitted to the MDS course, fees in vogue were admittedly Rs.12,000/-. The petitioners secured admission on the basis of this impression as all along the representation made was that the fees would be Rs.12,000/- per semester. The MDS is a three year course of six semesters. Shri Lotlikar submits that there was no prospectus in place at

the time of admission. Though the petitioners were admitted since the academic year 2019 onwards, the prospectus and the application form for the academic year 2016-17 which formed the basis of the fee structure as per the Government Order No.9/1/95-II dated 02.03.2001, as per which the total fees payable were in terms of the below mentioned table:

FEES PAYABLE FOR THE M.D.S. COURSE				
Sr No	ITEM	First Year M.D.S.	Second Year M.D.S.	Third Year M.D.S.
1	Admission Fees	300	N.A.	N.A.
2	Tuition Fees	12,000	12,000	12,000
3	Library Deposit	2,000	N.A.	N.A.
Total Fees Payable		14,300	12,000	12,000

5. Shri Lotlikar submitted that the fee structure in the aforementioned prospectus was in fact displayed on the website and followed at the time of admission of the petitioners and the same is therefore applicable for the entire duration of the course of the petitioners. The petitioners were neither provided copy of the prospectus prior to the admission or at the time of admission. It is submitted that after all the petitioners secured admission and were in the midst of different semesters, by a letter dated 06.11.2020, respondent no.4 – Under Secretary, Public Health Department informed respondent no.2 – Goa Dental College through its Dean that the Government had granted approval for revision of fees for MDS courses and fees of the petitioners herein stood revised to Rs.1,20,000/- for the first semester and Rs.1,00,000/- for the remaining five semesters. This was seriously objected by the students as the same was without any prior notice or any kind of intimation. The petitioners realized from the website, that the originally displayed fee structure had

been removed and no longer available online, which was the basis for the petitioners' securing admission. The same is replaced with the arbitrarily increased fee structure. The petitioners, some of who faced financial constraints found it difficult to shoulder such increase in fees.

6. Shri Lotlikar submitted that apart from his principal contention that such hike without any notice or intimation is unjustified, the approach of the respondent no.4 in first hiking the fees and then bringing it down would reflect a complete non-application of mind. It is submitted that such hike is resorted to without any basis, such hike was in the absence of a proper study of all relevant factors. Shri Lotlikar stands firm in his submission that having represented about the fees payable at the time of admission, any subsequent hike is impermissible during the duration of the course. It is also the submission that the stand of the respondents in the affidavit in reply that the students are paid a substantial stipend is hardly of any relevance in the context of a challenge to the increase in fees. The two have no co-relation with each other. According to Shri Lotlikar, these are two separate and distinct matters. Shri Lotlikar relied upon the decision of the Hon'ble Supreme Court in *Farzana Batool v/s. Union of India and Others - Writ Petition (Civil) No.364 of 2021* to contend that the State has affirmative obligation to facilitate access to education at all levels. It is submitted that while the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a Governmental largesse. Shri Lotlikar submitted that it is an important obligation cast on the respondents to create an enabling environment to make it possible to the students such as the petitioners to pursue professional education. Shri Lotlikar submits that as an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and

obtain the means to participate fully in their communities. Shri Lotlikar submits that merely because the petitioners are in receipt of stipend which is an obligation cast on the respondents and not a State largesse, it would be an unfair stand on the part of the State to contend that because the petitioners are in receipt of stipend, they cannot make a grievance that such hike in fee is arbitrary and unjust. According to Shri Lotlikar, the payment of such stipend is made as an obligation and not by way of grace.

7. Shri Lotlikar then relied on the decision of the Kerala High Court in *Rahul O. R. & Ors. v/s. Indian Institute of Space Science And Technology, represented by its Registrar, Valiamala PO, Thiruvananthapuram & Ors. - Writ Petition (C) No.379/2008 (V)* to contend that in similar circumstances it is held that fees can be collected only after informing the applicants by way of a prospectus and as there was no intimation in the admission notifications pursuant to which the petitioners were admitted, such hike can only have a prospective operation.

8. Shri Lotlikar, relying upon the regulations called the Dental Council of India, Master of Dental Surgery Course Regulations, 2017, submits that once the petitioners are admitted to the Post Graduation Degree Course, under no circumstances, the migration or transfer of students is permitted by the University. Not only this, but no inter-change of the speciality in the same institution or in any other institution is permitted after the commencement of the session. This is placed for our consideration to buttress the submission that once the petitioners are admitted to a course, there is no turning back as the petitioners are left with no choice but to complete the course.

9. Shri Lotlikar submitted that Clause 12 of the Regulations demonstrates that it is obligatory on the part of the State/College to pay

stipend for the duration of the course which clearly indicates that stipend is an obligation and not a grace. Shri Lotlikar therefore submits that it would not be inequitable to ask the petitioners to deposit the balance fees, as in any case, by the interim order this Court had protected the petitioners.

10. On the other hand, Shri Devidas Pangam, learned Advocate General vehemently opposed the petition. It is submitted that since 2001 the fee structure has not been revised. It is submitted that the fee structure has been revised after taking into consideration all materials on record and the decision was taken based on the available information. Learned AG invited our attention to the affidavit in reply filed on behalf of the respondents.

11. We have heard the learned Senior Advocate for the petitioners and the learned AG appearing for the State. We have perused the memo of the petition, the relevant annexures, affidavit in reply filed by respondent no.2 as well as the rejoinder filed by the petitioners.

12. The MDS course was started in the year 1998. The fees then charged were Rs.6,000/- per semester. There was no stipend paid to the students at the relevant point of time. In the year 2001, the fees were hiked to Rs.12,000/- per semester. Stipend was introduced for the students of MDS course for the first time in the year 2002 at Rs.1,500/- per month. The stipend has been periodically increased to Rs.6,000/- per month. On 03.11.2009 the stipend was yet again increased to Rs.15,000/- per month and in April 2013 the stipend was increased to Rs.25,000/- per month. In December 2017, the stipend received by the MDS students was increased to Rs.50,000/- per month for the first year MDS students, Rs.52,500/- per month for the second year students and Rs.55,000/- per month to the third year MDS students. It is thus seen from the record that the stipend amount has been increased from time to time.

13. As per the stand of the respondents and admittedly the fees for the MDS course had not been revised since 2001 and that the fees that were being paid for the Post Graduate MDS Course was much lesser in comparison to the Graduate BDS Course. In 2018, the respondent no.2 moved a proposal seeking revision of fees payable towards the MDS Course. As per the affidavit in reply, the State Government on an average spent on each student an amount of Rs.1,00,000/- on consumable dental material alone. The consumable dental materials are in the nature of gloves, masks and such other materials. It is the stand of the respondents that the fees which were levied until 2001 did not take into account the consumables, neither did it take into account the usage or wear and tear of the state of the art equipment and other infrastructure which is made available to the students of Post Graduate Course. For the entire three year duration of MDS course, the stipend payable per student is Rs.18,00,000/-. The same works out to Rs.6,00,000/- per year, per student. Taking an overall view of the matter having regard to the expenditure incurred by the State Government, the respondent no.2 recommended to the State Government to revise the fee structure to an extent of Rs.1,00,000/- per semester. According to respondent no.2, the cost of educating students includes within its ambit the facilities provided to the students in the nature of buildings, laboratories, equipment, salaries to the faculty members and other ancillary staff and the practical knowledge provided to the students by working at the respondent no.2 clinic for which an appropriate fee structure was necessary to be evolved. The revised fee includes tuition, consumable material, breakage, wear and tear of laboratory equipments, state of art seminar room and well furnished library and other expenses incurred by the College and Hospital for providing the students with quality education including the salaries payable to the teaching and other ancillary staff. The equipment which are made available

to the post Graduate course students estimates at over Rs.9 crore. According to respondent no.2, the salary of the permanent teaching staff at the Goa Dental College which includes Professors, Assistant Professors and Lecturers but excluding the contract Lecturers for the month of February 2021 amounted to Rs.73,28,724/-. Additionally, a sum of Rs.19,00,000/- was spent in February 2021 towards the salary of Lecturers of the respondent no.2 who are employed on contract basis.

14. The Government of Goa by communication dated 06.11.2020, conveyed its approval for the revision of fees for MDS courses at the Goa Dental College and Hospital at Rs.1,00,000/- per semester. By an order dated 29.09.2021, the fees of the MDS course was revised retrospectively by reducing the fees to Rs.48,000/- per semester in order to bring the MDS course at par with the MD/MS courses offered at the Goa Medical College.

15. The petitioners plead a mandatory requirement on the respondents for payment of stipend to the Post Graduate course students for the duration of three years as may be fixed by the State Government. In our opinion, such payment of stipend cannot be a factor justifying the increase in fees arbitrarily. Payment of stipend and payment of fees are two separate and distinct matters. We make it clear that in coming to the conclusion that the revision in fee is not arbitrary, the aspect regarding the petitioners receiving stipend is not factored in by us. We have only considered the receipt of such stipend in the context of the submission of the learned Senior Advocate about the students made to face financial distress as a result of sudden increase in fees without any intimation.

16. In the present case, it is seen that there was no revision of fees since the year 2001 whereas the stipend was increased on a regular basis. We

thus find that admittedly there was no revision of fees for twenty years. The MDS course which the petitioners were undergoing, was a six semester, three years' course. In the affidavit in reply the respondent no.2 has set out the details about the expenditure incurred for conducting such course. It is the stand of the respondent no.2 that the factors such as inflation, expenditure incurred, regular increase in payment of stipend have been taken into consideration which justify the fee revision. The fee has been revised to Rs.48,000/- per semester admittedly after the petitioners secured admission to the MDS course. Even according to the respondent no.2, the prospectus was under printing and that the petitioners were admitted on the basis of the fee structure that was prevailing since the year 2001 and as indicated in the prospectus of the previous years. In the facts of the present case, we do not find the action on the part of the respondent no.2 so arbitrary that they just ought not to have resorted to the fee revision after the petitioners were admitted to the course. We do not find any reason to discard the stand of the respondents that the revised fee structure has been prepared upon taking into consideration the ground realities such as average expenditure incurred per student and the sophisticated equipment and experienced staff made available for the wholesome education of the students.

17. The MDS course is required to have sophisticated equipment, trained staff, qualified specialists and super specialists to produce better professionals. There is no denial that all these facilities are available at the Goa Dental College where the petitioners were pursuing the MDS course. Respondent no.2 did try to increase the fee to Rs.1,00,000/- per semester which was later reduced to Rs.48,000/- per semester to bring it at par with other Post Graduate courses. There is a proper application of mind and sufficient justification for such increase in the contextual facts of this case. No doubt, it would have been advisable to inform the students before

taking admission as regards the fee structure payable or the likelihood of a fee revision. However, taking an overall view of the matter, the justification by the respondents necessitating such increase; the due application of mind to the material circumstances necessitating such increase; the facilities provided over which the petitioners have no dispute, in our opinion, completely outweighs the submission of the petitioners that such increase in fees without any intimation or in the absence of any prospectus effected midway after securing admission is arbitrary.

18. The reliance placed by learned Senior Advocate on Clause 6 of the UGC [Institutions Deemed To Be Universities] Regulations, 2016 as to the provisions regarding admission and fee structure cannot be of any assistance to the petitioners in the contextual facts of this case.

19. We do not find any infirmity or illegality in the decision of the respondents regards the fee revision. There is no provision brought to our notice that such a fee revision mid-way after the admission to the Post Graduate course is prohibited particularly in a fact situation when such a revision cannot be said to be exorbitant, unreasonable or arbitrary or in any manner causing prejudice to the petitioners. The argument that revising the fees from Rs.12,000/- per semester to Rs.48,000/- per semester will pose financial difficulties and hardships to the petitioners is without any substance. The petitioners are in receipt of a minimum stipend of Rs.50,000/- per month as against the fees of Rs.48,000/- which they are required to pay per semester for a three year duration course comprising of six semesters.

20. The decision of the Hon'ble Supreme Court in *Farzana Batool (supra)* relied upon by the petitioners is distinguishable on facts. Present is not a case where the petitioners are denied access to professional education

for they were not only admitted to the MDS course but were in receipt of stipend. *Farzana Batool (supra)* was a case where the students were not yet admitted to the course of studies despite due nomination by the Administration of Union Territory of Ladakh and on the terms of the seats notified by the Union Government.

21. The decision of the Kerala High Court in *Rahul O. R. & Ors. (supra)*, relied upon by the petitioners will have no application in the facts of the present case as the same was rendered in the contextual facts of that case where there was a prospectus which had specific provisions regarding the manner in which tuition fee was to be collected and in view of the specific conditions set out in the admission notifications on the basis of which the petitioners were admitted.

22. We, therefore, do not find any merit in this petition. The petition is dismissed.

23. Rule is discharged with no order as to costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.