THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.19604, 19718, 19879, 20626, 21229, 21246, 2025, 19613, 19614, 19616, 19621, 19629, 19634, 19669, 19679, 19684, 19686, 19694, 19708, 19722, 19729, 19730, 19745, 19751, 19757, 19760, 19761, 19763, 19768, 19770, 19791, 19795, 19813, 19833, 19835, 19857, 19877, 19889, 19900, 19908, 19914, 19920, 19927, 19928, 19930, 19931, 19934, 19936, 19938, 19940, 19941, 19950, 19956, 19959, 19960, 19968, 19973, 19981, 20002, 20010, 20029, 20048, 20080, 20092, 20101, 20105, 20108, 20112, 20114, 20143, 20153, 20154, 20169, 20186, 20198, 20199, 20212, 20245, 20246, 20249, 20333, 20338, 20339, 20341, 20358, 20375, 20396, 20459, 20463, 20464, 29469, 20471, 20524, 20652, 20681, 20706, 20741, 20791, 20792, 20794, 20795, 20796, 20866, 20873, 20980, 21293, 21303, 21636, 21645, 21656, 21686, 21822, 21829, 21833, 21994, 22023, 22208, 22224, 22232, 22256, 22320, 22323, 22329, 22333, 22351, 22360, 22508, 22733, 22942, 23033, 23035, 23036, 23180, 23188, 23400, 23478, 23487 23565, 23963, 24095, 24291, 24361, 24427, 24592, 24924 and 29686 of 2013 **&** 40770, 38046, 38209 and 40807 of 2014.

COMMON ORDER:

For the sake of convenience, this Court deems it apt and apposite to deal with W.P.Nos.21229 and 21246 of 2013, 40770, 38046, 38209 and 40807 of 2014 as one set of cases and rest of the writ petitions as separate set.

FIRST SET OF WRIT PETITIONS:

W.P.Nos.21229 and 21246 of 2013 &
40770, 38046, 38209 and 40807 of 2014

2. Shorn of inappropriate details, the facts and circumstances, in nutshell, leading to the filing of this batch of writ petitions are as follows:

2.1. In these matters, relating to fee fixation in Private Unaided Professional Colleges, the Admissions and Fee Regulatory Committee (hereinafter called 'AFRC') issued a notification dated 27.12.2012, proposing to review and determine the fee structures for the programmes viz., (1) Engineering, Pharmacy, Pharma-D, Planning & Architecture, (2) MBA & MCA, (3) 3 year & 5 Year LL.B/B.L, (4) B.Ed., (5) B.P.Ed/U.G.D.P.Ed, (6) Language Pandit Training, (7) P.G. Engineering including Technology, Pharmacy, Architecture and planning, (8) Graduate Level Pharma-D (PB) and (9) P.G.LAW (LL.M/M.L) in the Private Unaided Professional

Institutions for the Block period 2013-2014 to 2015-2016. By virtue of the said notification dated 27.12.2012, the AFRC required the managements of all concerned Private Unaided Professional Colleges to submit the relevant data, relating to the year 2012-2013, together with the audited Financial Statements for the year 2011-2012. The petitioners herein submitted their respective proposals along with the documentary evidence for the Block period 2013-2014, 2014-2015 and 2015-2016. Subsequently, the AFRC, after putting the petitioners on notice, submitted its reports in the month of July, 2013.

2.2. The State Government thereafter vide G.O.Ms.No.57, Higher Education (EC/A2) Department, dated 06.07.2013 notified the fee structure as recommended by the AFRC. Questioning the said recommendations of the AFRC and the consequential notification issued by the State Government, some of the petitioners filed W.P.Nos.21229 and 21246 of 2013 and the petitioners in W.P.Nos.40770, 38046, 38209 and 40807 of 2014 filed WP.Nos.20412, 19726, 19889 and 20413 of 2013, and this Court on 26.04.2014 passed an order and the operative portion of the said order reads as follows:

> "However, the fact remains that for what reasons some of the components contained in the statements furnished by the colleges have been turned down have not been put across for the respective colleges to have a chance or an opportunity to explain to the satisfaction of the AFRC. The decision of the AFRC in that regard, to the extent of denying certain amounts of expenditure perhaps each college can be said to have suffered a handicap. If a proper hearing is accorded to the writ petition colleges, in whose cases some of the claims made by them have been turned down by the AFRC, they would be in a better position to appreciate the reasons behind the claim and then the decision taken thereafter will have a full fledged reflection of proper consideration in respect thereof. Therefore, while putting off the further date of hearing of these cases to 10.07.2014, I direct the AFRC to provide a brief hearing of not exceeding two hours duration to those colleges who make a request to provide such a specific and brief hearing to satisfy the AFRC that the claims, which have not been found favour by the AFRC are legitimate and can be explained to the satisfaction of the AFRC. Therefore, all such colleges/writ petitioners (confined

only to the writ petitioners) are provide one week time from today to inform the AFRC either online or through communication sent by registered post that they are desirous of seeking a brief hearing. Upon receipt of such information, a schedule of hearing may be drawn and communicate it online and also by post to the respective colleges.

Sri C. Sudesh Anand would submit that entire information relating to each of the colleges has been displayed on the website of the AFRC and hence, each of the colleges which are desirous of seeking a brief hearing, can consult the material that is available on the website of the AFRC and then participate in the hearing.

The AFRC would in the meantime, put on their websites the reports made available by the agencies such as Chartered Accountants consulted by it and the expert advice secured from "pay scale consultants" on their domain, if already done.

Accordingly, the AFRC will take appropriate decision and announce the said decision by publishing it on their website and also make the same available along with reports/affidavits to be brought on record of this case file latest by 10.07.2014.

Post on 10.07.2014 for further hearing."

2.3. Thereafter, the petitioners submitted representations and the AFRC issued proceedings dated 12.09.2014, allowing certain claims and disallowing some. Subsequently, the State Government notified the same vide G.O.Ms.No.55, Higher Education (EC.A2) Department dated 24.11.2014 and G.O.Rt.No.465, Higher Education. In view of the above developments, pending writ petitions, petitioners in W.P.Nos.21229 and 21246 of 2013 filed WPMP.Nos.19600/2015 and 20729 of 2015, seeking amendment of the relief portion in the direction of challenging the above said latter proceedings and the petitioners in WP.Nos.20412, 19726, 19889 and 20413 of 2013 filed the present Writ Petitions Nos.40770, 38046, 30209 and 40807 of 2014 questioning the subsequent proceedings dated 12.09.2014 and the consequential notification issued by the State Government.

3. Heard Sri M.Ravindranath Reddy, learned counsel for the petitioners in W.P.Nos.21229 and 21246 of 2013 and Sri C.V.Mohan Reddy, learned Senior Counsel and Sri S.Srinivas Reddy for Sri Harsha V.Reddy counsel

on record for the petitioners in WP.Nos.40770, 38046, 38209 and 40807 of 2014 and Sri Sudesh Anand and Sri A. Abhisekh Reddy, learned Standing Counsel for the AFRC for the States of Andhra Pradesh and Telangana on record, respectively, apart from perusing the material available on record.

4. Submissions/Contentions of Sri M.Ravindranath Reddy:

4.1. The Proceedings under challenge are erroneous, contrary to law and material on record, violative of Articles 14, 19 (1) (g) and 141 of the Constitution of India and contrary to the Judgments of the Hon'ble Apex Court and this Court.

4.2. The questioned proceedings are opposed to the very spirit and object of the provisions of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006.

4.3. The impugned action tantamounts to infliction of unreasonable restrictions on the petitioners' constitutional right guaranteed under Article 19 (1) (g) of the Constitution of India.

4.4. The absence of supporting reasons for the recommendations of the AFRC would be fatal to the entire exercise undertaken by the AFRC.

4.5. None of the institutions including the petitioners were given specific show-cause notices, pointing out the reasons as to why any of the proposals made by the colleges were not found to be acceptable.

4.6. If the procedure under the relevant rules and the orders of the Hon'ble Apex Court were to be undertaken, the proposals of every institution should be considered on their own merits and in the event of the AFRC not being in agreement with the proposals, it is obligatory on the part of the AFRC to issue notice to the institution for hearing and thereafter take a decision on the recommendations to be made and the institution-wise verification is also mandatory on the part of the AFRC.

4.7. Despite placing the copies of the Judgments of the Hon'ble Apex Court and this Court before the AFRC, the AFRC did not consider the same.

4.8. Written submissions/contentions submitted by the petitioners on 08.07.2014 were also not considered.

4.9. Despite submitting a memo dated 11.08.2014 with a request to furnish copy of the decision of AFRC consequent upon the hearing, the AFRC did not furnish the same which is violative of the directions as contained in paragraph 150 (xii) of the Judgment of a Division Bench of this Court in ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC. v. GOVERNMENT OF ANDHRA PRADESH***[1].

4.10. The AFRC, without pointing out any elements of profiteering and capitation fee, in an unreasonable and arbitrary manner, disallowed certain claims and the AFRC did not record valid and cogent reasons for the said refusal.

4.11. The complexity of the issues, by any stretch of imagination, cannot be a valid ground for refusal to undertake the exercise stipulated by the statute.

4.12. Since the respondents did not adhere to the earlier judgments of the Hon'ble Apex Court and this Court, petitioners are entitled for positive directions from this Court.

In support of his submissions and contentions, Sri M.Ravindranath Reddy, learned counsel for the petitioners placed reliance on the Judgments of the Hon'ble Apex Court and other Courts and this Court in ***T.M.A. PAI FOUNDATIN AND ORS.***

V. STATE OF KARNATAKA AND ORS.[2]***, ISLAMIC ACADEMY OF EDUCATION AND ANR. V. STATE OF KARNATAKA AND ORS***[3]*,* ***P.A. INAMDAR AND ORS. V. STATE OF MAHARASHTRA AND ORS.***[4]***, SUNIL KUMAR BANERJEE V. STATE OF WEST BENGAL AND ORS.***[5]***, S.N. MUKHERJEE v. UNION OF INDIA***[6]***, M/S MYSORE MINERALS LIMITED v. THE COMMISSIONERS OF INCOME TAX, KARNATAKA, BANGALORE***[7]***, C.M. THRI VIKRAMA VARMA v. AVINASH MOHANTY AND ORS.***[8]***, COMPTROLLER AND AUDITOR-GENERAL OF INDIA, GIAN PRAKASH, NEW DELHI AND ANR. v. K.S. JAGANNATHAN AND ANR.***[9]***, CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1),* ***NARSINGDAS SURAJMAL PROPERTIES (P.) LTD. v. COMMISSIONER OF INCOME TAX***[10]***, SUNITA INDUSTRIES V. STATE OF A.P. AND ORS.***[11]***, DHARMA RAO AND ORS. V. MANAGING DIRECTOR, A.P.T.T.D.C. LTD. AND ANR.***[12] and ***GOLLAPALLI BALA V. A.P. TRANSCO AND ANR.***[13]

5. Submissions/contentions of Sri C.V.Mohan Reddy, learned Senior Counsel:

5.1. The questioned proceedings are contrary to the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 and the Judgements of the Hon’ble Apex Court and this Court.

5.2. No notice under Rule 4 (iii) is issued, asking the petitioners to explain as to how the proposed amounts would tantamount to profiteering and capitation.

5.3. Rules 5 (ii) (iii) were completely given a go-bye by resorting to outsourcing by the Chartered Accountants which is contrary to the Judgment in ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)***.**

5.4. The AFRC has no jurisdiction to limit the amounts unless there is element of profiteering.

5.5. The figures arrived at are due to wrong and mis-calculations also.

In support of his submissions, learned counsel places reliance on ***COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY AND ANR. v. THOMAS P. JOHN AND ORS.*** [14] and ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)***.**

6. Submissions/contentions of Sri Sudesh Anand and Sri Abhisekh Reddy:

6.1. There is no illegality nor there exists any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioners are not entitled for any relief from this Court under Article 226 of the Constitution of India.

6.2. The recommendations made by the AFRC and the orders passed thereon are strictly in conformity with the Act and the Rules.

6.3. Only after giving notices and opportunity to the petitioners and only on through consideration of the entire material including the material furnished by the petitioners, the AFRC issued the impugned proceedings.

6.4. Since certain calculations and amounts shown are exorbitant and completely bereft of any supporting material, the AFRC is justified in rejecting the same. The AFRC adopted reasonable yardstick and for crosschecking the documents produced by the petitioners there is no mechanism available with the AFRC.

6.5. The orders impugned are in conformity with the Rule 3 (vii) (viii) and Rule 4 (i), (ii), (iii) and (vii) of 2006 Rules.

6.6. Once the fee is fixed, the same cannot be disturbed as laid down by the Hon'ble Apex Court in ***FEE REGULATORY COMMITTEE VS. KALOL INSTITUTE OF MANAGEMENT*** and as per paragraphs 122 of the Judgment in ***ISLAMIC ACADEMY OF EDUCATION AND ANR*** *(supra 3)*, AFRC can impose reasonable restrictions within the permissible limits and the petitioners' colleges do not have absolute right with regard to fixation of fee.

6.7. The High Court cannot substitute its opinion under Article 226 of the Constitution of India and cannot act as appellate authority on the orders of the AFRC and its recommendations.

In support of his submissions, learned Standing counsel places reliance on ***T.M.A. PAI FOUNDATIN AND ORS.*** *(supra 2)*, ***ISLAMIC ACADEMY OF EDUCATION AND ANR*** *(supra 3)*, ***P.A. INAMDAR AND ORS.*** *(supra 4)*, ***FEE REGULATORY COMMITTEE VS. KALOL INSTITUTE OF MANAGEMENT***[15], ***INDIAN MEDICAL ASSOCIATION v. UNION OF INDIA***[16] and ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)*.

7. In the above background, the issues that emerge for consideration of this Court are:

(1) Whether the respondents acted in accordance with the Andhra

Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 ?

(2) Whether the questioned orders are in conformity with the principles and parameters laid down by the Hon'ble Supreme Court and this Court in various pronouncements? And

(3) Whether the petitioners are entitled for any relief from this Court under Article 226 of the Constitution of India?

8. The State Government with a laudable object and intention of regulating the admissions into educational institutions and to prohibit and curb the collection of capitation fee brought in a legislation called "the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983." In exercise of the powers conferred by Section 15 read with Sections 3 and 7 of the Act, the State Government framed the Rules called "the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006" (hereinafter called 'the Rules') notified vide G.O.Ms.No.6, Higher Education (EC.2) Department, dated 08.01.2007. According to Section 2 (b) of the Act the term "Capitation Fee" means any amount collected in excess of fee prescribed under Section 7. Section 5 of the Act prohibits the collection of Capitation Fee. Section 6 of the Act deals with the manner of giving donation. Section 7 of the Act deals with the regulation of fee and the said provision of law reads as under:

> 7 (i) it shall be competent for the Government by a notification, to regulate the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students.
>
> Sub-section (2) - No educational institution shall collect any fee in excess of the fee notified under Sub-section (1).

Sub-section (3)-every educational institution shall issue official receipt for the fee collected by it.

9. Section 8 of the Act enables the State Government to take over the management of the institution for a period not exceeding five years when there is contravention of the provisions of this Act. Section 9 of the Act deals with the penalties which stipulate that 'whoever contravenes the provisions of the Act or the Rules is liable for punishment with imprisonment for a term which shall not be less than three years, but shall not exceed seven years and with fine.

10. According to Section 12, this Act has overriding effect on other laws. According to Rule 2 (h) of the Rules 'fee' means all fee including tuition fee and development charges.

11. Rule 3 of the Rules deals with the constitution, composition, disqualification and functions of Admissions and Fee Regulatory Committee, which reads as follows:

"3. Constitution, composition, disqualification and functions of admission and fee regulatory committee:

i) Government shall by notification constitute an AFRC for regulating the admission and fixation the fee to be charged from the candidates seeking admissions to all the private unaided professional institutions.

ii) The AFRC shall consist of the following:

a) A retired Judge of High Court –Chairman.

b) Vice-Chancellor of one of the State Universities nominated by the committee provided that the Vice-Chancellor of J.N.T.U & NTR University of Health Sciences shall be nominated in case of Engineering Medical Education. – Member

c) The Members having experience in the matters of i) Education administration in the concerned discipline and (ii) Finance nominated by the Committee. – Member

d) Chairman Andhra Pradesh State Council of Higher Education –Member

e) Principal Secretary/Secretary to Government-Higher Education/Medical and Health/School

Education (Depending on type of Professional Education involved). – Member Secretary

f) One representative of AICTE/MCI/BCI/NCTE as the case may be – Member.

iii) Subject to pleasure of the Government the term of office of the AFRC shall be three years from the date of its constitution and in case of any vacancy arising earlier, for any reason, the Government shall fill such vacancy for the remainder of the term.

iv) No act or proceedings of the AFRC shall be deemed to be invalid by reason merely of any vacancy in or any defect in the constitution of the committee.

v) No person who associates with a Private Unaided Institutions shall be eligible for being a member of the AFRC.

vi) A Member of the AFRC shall cause to be so if he performs by act which in the opinion of the Government is unbecoming of a member of the AFRC.

Provided that, no such member shall be removed from the AFRC, without giving him an opportunity of being heard.

vii) the AFRC may frame its own procedure in accordance with the Regulations notified by the Government in this regard.

viii) The AFRC shall have power to require private unaided professional Educational institutions to furnish, by a prescribed date. Information as may be necessary for enabling the Committee to regulate the conduct of Admissions and/or to fix the fee in respect of each professional course offered in the institution.

ix) The AFRC shall specify the standard and procedure to be adopted by the Association of private unaided professional educational institutions in conducting the CET for admission to professional courses and shall oversee the conduct of such tests and declaration of their results.

x) The AFRC shall ensure that the CET is conducted in a fair and transparent manner. If the AFRC comes to the conclusion, they giving an opportunity of representation, that the CET was not conducted in a fair and transparent manner, it shall have the power to cancel the test and order either for a fresh test to be conducted by the Convenor without charging any extra fee for the purpose from the candidates, or recommended to the competent Authority to step in and conduct re-examination. In the latter event, the association of private Unaided Colleges shall reimburse the expenditure incurred in that regard and determined by the competent Authority.

xi) The AFRC may, if it comes to the conclusion there giving an opportunity of representation, that as institution has violated and provisions of the Act, these rules, or the relevant admission rules, recommended to the appropriate statutory body and the concerned University for the withdrawal of the affiliation or recognition of such institution.

xii) The AFRC shall call for options from unaided Minority and Non-Minority Professional Institutions to opt either for the Common Entrance Test conducted by the Government or its Agency or the Common Entrance Test conducted by the Association of professional Colleges.

xiii) The AFRC shall call for the options from Unaided Minority Professional Institutions to opt either for the single window system for admissions to be operated by the Government or its agency or the same operated by the Association of Unaided Professional Institutions.

xiv) The AFRC shall supervise the admissions made by the Private Professional Educational Institutions and ensure that the admissions are done in a fair, transparent and non-exploitative manner. If the AFRC comes to the conclusion after giving an opportunity of representation, that the admissions were not conducted in a fair, transparent and non-exploitative manner or were not conducted in accordance with the relevant admission rules, it shall have the power to cancel such admissions and issue such order as may done fit."

12. Rule 4 of the Rules deals with the procedure for fixation of fee by the AFRC, which reads as under:

"**4. Fee Fixation:**

i) The AFRC shall call for, from each institution on, its proposed fee structure well in advance before the date of issue of notification on for admission for the academic year along with all the relevant documents and books of accounts for scrutiny.

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 facto5rs 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 whenever 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 the 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 commercialisation 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 candidate who is admitted to an institutional in that academic year and shall not be altered till the completion of his course in the institute 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 candidate."

13. The issues in these cases are required to be examined and dealt with in the light of the Act and the Rules and the principles and parameters laid down by the Hon'ble Apex Court and this Court in various pronouncements. In order to have clarity and coherence, this Court deems it apt and apposite to deal with the issues writ petition wise.

14. **WP.21229 of 2013**

This is a writ petition filed by M/s.Vasavi Academy of Education which is running an institution in the name and style of M/s. Vasavi College of Engineering at Ibrahimbagh, Hyderabad, Telangana State. Pursuant to the interim orders dated 26.04.2014 passed by this Court, the AFRC by way of Lr.No.1/AFRC/PPC/Court Cases/2014/108 dated 02.06.2014 informed that the AFRC would determine the issue subject to the material evidence placed before it with regard to the disallowed amounts and that in the event of the said information not being furnished, the AFRC would be handicapped to examine the reasonableness of the claims. In response to the said notification dated 02.06.2014 and in terms of the interim orders of this Court dated 26.04.2014, petitioner institution submitted a representation dated 09.06.2014 along with the supporting material. Petitioner also made a representation on 18.06.2014 requesting the AFRC to furnish certain documents. Subsequently, on 21.06.2014 petitioner also submitted a representation and the relevant portion of the said representation reads as under:

> "1. It is submitted that pursuant to the Orders dated 26th April, 2014 of the Hon'ble High Court, this institution has put forward its claims with supporting reasons/documents, vide its letter/representation dated 9th June, 2014. Consequently, the AFRC would refer the said claims to the Auditors and Consultants for their report/comments. Thereafter, the AFRC would consider the said claims vis-à-vis the said comments/reports of the said Auditor and Consultant. Upon such consideration, the AFRC would come to a provisional conclusion as to allow or disallow the said claims.
>
> 2. It is submitted that if, upon such consideration, the AFRC comes to a conclusion to allow any of such claims, then no further enquiry and consequential hearing would be required with respect to such claims which are proposed to be allowed.
>
> 3. But, on the contrary, if the AFRC comes to a provisional conclusion that any of such claims are to be disallowed, then alone further enquiry including hearing would be required with respect to such claims which are proposed to be disallowed.
>
> 4. Hence, it is hereby prayed that the AFRC may kindly communicate the causes/reasons as to such of the claims which AFRC provisionally decides to disallow and also communicate the comments/reports of the Auditor and Consultant and give the Institution reasonable time to prepare and appear for hearing proposed to be held pursuant to the Orders of the High Court dated 26th April, 2014, with respect

to such claims which AFRC provisionally proposes to disallow.

5. This would be in compliance of Principles of Natural Justice in their true spirits and consequently facilitate the Hon'ble High Court to adjudicate of such disallowed claims, when the Writ Petitions are again listed for hearing on 10th July, 2014.

6. In this regard it would also be pertinent to bring it to the notice of the Hon'ble Committee the findings of the Constitutional Bench of Hon'ble Supreme Court in *P.A. Inamdar Vs. State of Maharashtra reported in (2005) 6 Supreme Court Cases 537 in paragraph 149 and 150*. The said paragraphs are extracted in the Annexure to this letter for your kind perusal."

15. Thereafter, the AFRC issued a notification on 21.06.2014, fixing the dates of personal hearing for various institutions, commencing from 30.06.2014 to 08.07.2014 and the AFRC fixed the date of hearing for the petitioner as 08.07.2014. Petitioner institution submitted a representation on 21.06.2016, requesting the AFRC to communicate the comments of the auditor and consultants and to give institution a reasonable time to prepare and appear for hearing and the contents of the same are reproduced above. The information on record further reveals that on 03.07.2014 the learned counsel for the petitioners filed a memo, requesting the AFRC to furnish the information/documents referred to at para 20 of the representation dated 09.06.2014. At this juncture, it may be apt to refer to para 20 of the representation dated 09.06.2014 and the same reads as follows:

"20. We also hereby request the AFRC to furnish copies of the following documents:

i) Report of the Consultant as referred to in Paragraph No.10 of the proceedings of the AFRC under Ref. No.1/AFRC/FF-UG-ENGG/2013-16/75(5) dated 20th July, 2013.

ii) Report of the Chartered accounts as referred to in Paragraph No.10 of the proceedings of the AFRC under Ref.No.1/AFRC/FF-UG-ENGG/2013-16/75 (5) dated 20th July, 2013.

iii) The details of functions etc., entrusted by AFRC to the above said Consultants and the Chartered Accountant.

iv) Copies of all written communication given to the said Consultant and Chartered Accountant and

v) Information of all documents forwarded to the Consultants and Chartered Accountant with respect to Vasavi College of Engineering for the above said evaluation.

16. According to the petitioners, AFRC did not respond positively for the said request and proceeded with hearing and on 08.07.2014, the petitioner submitted written statements and oral submissions were made on 08.07.2014 from 3-00 pm to 5-30 pm, on 09.07.2014 from 11-00 AM to 2-00 Pm and on 10.07.2014 from 11-30 AM to 2-30 PM and the accounts were verified on 11.07.2014, 16.07.2014, 17.07.2014, 18.07.2014 and 23.07.2014.

17. It is submitted by the petitioners that thereafter without communicating the orders dated 12.09.2014 as per paragraph 150 (xii) of the Judgment reported in ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)*, the AFRC forwarded the said orders to the Government and the State of A.P notified the same vide G.O.Ms.No.55, Higher Education (EC-AII) Department dated 24.11.2014 and no notification has been issued so far by the State of Telangana and the petitioners filed WP.No.41293/2014 seeking a direction for notifying the same and the same is pending.

18. During the course of hearing, learned counsel for the petitioners, Sri M.Ravindranath Reddy has submitted that in the present writ petition petitioners are claiming and restricting their claim to the amounts under the heads (i) Depreciation (ii) Deferred Revenue and (iii) Gratuity. Therefore, this Court only proposes to deal with the above aspects basing on the material available before this Court. The AFRC passed the impugned order vide proceedings No.1/AFRC/FF/CG-Eng/2013/116/107 dated 12.09.2014.

19. So far as the element of depreciation is concerned – AFRC dealt with the same in paragraph 18 (c) (ix) of the order dated 12.09.2014. Initially, under this head, the AFRC disallowed an amount of Rs.1,91,75,455/-. Pursuant to the interim orders of this Court dated 26.04.2014, after the petitioners submitted their representation, by virtue of the impugned order dated 12.09.2014, the AFRC disallowed the said

claim of Rs.1,91,75,455/- saying that there is no acceptable clarification or explanation. In this connection, it would be appropriate to examine and verify the reasons assigned by the petitioners. As evident from the representation dated 09.06.2014, petitioners sought to justify their claims of Rs.1,91,75,455/- towards the depreciation, which reads as under:

"7. Disallowance of Depreciation:

a) As per the data submitted by Vasavi College of Engineering, Depreciation amount is Rs.2,04,53,682 which is shown in Income and Expenditure statement of the institution (copy attached) and also in Schedule 12 (Depreciation) of the Appendix I of data uploaded (copy attached). However, AFRC has considered the Depreciation figure from the Balance Sheet of Society "Vasavi Academy of Education" by taking the difference between the Net block and fixed assets which works out to Rs.12,78,227 proportionately for BE course. This amount of Rs.12,78,227/- was taken as expenditure for computation of fee.

b) Further it may be noted that in the Variance analysis statement given by the AFRC vide proceedings dt 20.07.2013 (enclosed along with Counter affidavit) (copy enclosed), Depreciation has been taken as Rs.2,04,53,682. Hence it is hereby requested that the correct Depreciation of the Vasavi College of Engineering which is Rs.2,04,53,682 be allowed. The details are furnished hereunder:

Amount as per VCE (Rs.)	Amount as per AFRC (Rs.)	Disallowed amount (Rs.)	Uploaded data reference	Enclosure No.
2,04,53,682	12,78,227	19,175,455	Appendix I – Page 51, 69, 77 Schedule 12, AFRC Counter Affidavit- Variance analysis statement (page 129), Expenditure summary (page 132)	Annexure 1, page 15

20. In the impugned order dated 12.09.2014, the AFRC observed that on perusal of the balance sheet filed along with the original orders, it is clear

that the balance sheet belongs to or belonged to Vasavi College of Engineering only. While referring to the above said reason, it is the submission of the learned counsel for the petitioners that the said reason is a result of total non-consideration of the issue and a clear deviation of the principles of natural justice and being a *quasi* judicial authority the AFRC grossly erred in passing the orders, turning down the claim without assigning any reasons. There is absolutely no dispute on the reality that the petitioners furnished revised balance-sheet of Vasavi College of Engineering. In this context, it may also be apt and appropriate to refer to the work-sheets wherein the auditors of the AFRC recorded in the remarks column as follows:

> "Supportings are made available. While evaluating the fee earlier, the college has submitted a balance sheet in which the total fixed assets were shown as Rs.3,28,35,052/-. Corresponding previous figure is Rs.3,47,73,442/-. Hence, depreciation was disallowed proportionately at the time of earlier valuation. The management has claimed that earlier the society's balance-sheet was wrongly considered and the balance sheet of the institution was not taken into consideration. On verification of the records available online, it was found that the balance sheet submitted earlier is related to the institution and not to the society and hence it is not being considered by us."

21. This Court finds sufficient force in the submission of the learned counsel for the petitioner that when supportings are available, there is absolutely no justification on the part of the respondents in rejecting the claim under this head without assigning valid and cogent reasons. It may also be pertinent to observe that there is no finding by the AFRC or its auditors that the supportings are irrelevant and invalid and are liable to be discarded.

22. No plausible explanation is forthcoming for non-consideration of the said supportings made available by the petitioners. In the absence of any finding with regard to the profiteering or involvement of element of capitation, **this Court is of the opinion that the petitioners herein are entitled for the amount under this head i.e., depreciation.**

23. So far as the amount claimed under the head 'deferred revenue'_ under this head AFRC earlier disallowed an amount of Rs.17,07,762/- and by virtue of the impugned order dated 12.09.2014, the AFRC rejected the same saying that it would be difficult to accept the claim as the institution had not come up with detailed reasoning as to why the revised balance sheet was now only provided. In the explanation dated 09.06.2014, at paragraph 11, the petitioners have set out and offered their justification as follows:

"11. Deferred Revenue Expenditure:

a) AFRC disallowed this expenditure stating that Deferred Revenue Expenditure was not shown in the Balance sheet of 2011-2012. We would like to clarify that Schedule 88 (copy enclosed) of uploaded data clearly indicates Rs.19,38,475 towards Deferred Revenue expenditure for 2011-2012. Hence, we request the AFRC to consider and allow the expenditure of Rs.17,07,762. The details are as given below:

Amount as per VCE (Rs.)	Amount as per AFRC (Rs.)	Disallowed amount (Rs.)	Uploaded data reference	Enclosure No.
1,707,762	0	1,707,762	Appendix I, Page 42,46 Schedule 88, Page 91, 92 of counter affidavit	Annexure 4 page 53-56

24. In the impugned order dated 12.09.2014, the AFRC found that the petitioner did not come with the detailed reasoning earlier. While referring to the same, it is the submission of the learned counsel for the petitioners that the same is contrary to the material on record including the representation dated 09.06.2014. In this context, it may be apt to refer to the remarks of the auditors of AFRC in the worksheet which are as follows:

"

Deferred revenue written off	17,07,762.00	17,07,762.00	17,07,762.00	17,38,093.00	11,88,040.00	Supportings are made available for Rs.11,88,040/. While evaluating the fee earlier considered balance sheet submitted by the college in which the corresponding entry is not found. The management has claimed that earlier the society balancesheet was wrongly considered by AFRC and the balancesheet of institution was not taken into consideration. On verification of available online records, it was found that the balance sheet submitted earlier is related to institution and not society and hence it is not being considered by us.

"

25. It is amply clear from the above that the petitioners herein made the supportings available before the AFRC for an amount of Rs.11,88,040/- and in the absence of any valid reasons for discarding the same and for holding the same as illegal, this Court finds no justification to deny the claim for the figure supported by the material in the absence of any valid and cogent reasons recorded in the impugned orders and to the said effect their claim is allowed.

26. So far as the element of gratuity is concerned- The AFRC initially disallowed a sum of Rs.42,07,413/- and after submission of the representation dated 09.06.2014, the AFRC, by virtue of the impugned order dated 12.09.2014 allowed Rs.16,58,364/- out of Rs.42,07,413/- and disallowed Rs.25,49,049/- i.e., the amount payable to 82 employees and

according to the version of the AFRC such 82 employees are ineligible in view of the provisions of Section 4 (1) of the Gratuity Act. In the impugned order, the AFRC stated that the payment of gratuity arises only after completion of five years of service. In the representation dated 09.06.2014, the petitioners herein offered the following justification for the said claim, at paragraph 9:

"9. **Disallowance as to Gratuity:**

a) As per paragraph 10 (e) of proceedings of AFRC dt.20-7-2013 and paragraph 35 of the Counter Affidavit filed in W.P.21229 of 2013, the AFRC has considered Rs.1,23,13,936 (8.5% of Salaries i.e. Rs.14,48,69,836) towards Gratuity and disallowed Rs.42,07,413. However, as per GO MS.No- (As per rules) 11 dt 4-3-2011 issued by Labour Employment Training and Factories Department, Government of Andhra Pradesh, Gratuity policy has to be taken from life Insurance Corporation of India (copy attached for reference –Annexure 12, Page 75-78). This amount of Rs.1,65,21,349 which was indicated is based on LIC quotation. Hence Rs.1,65,21,349 should be allowed.

b) To summarise, an amount of Rs.42,07,413 under the head "Gratuity' should be allowed."

27. The reasons assigned by the AFRC in the impugned order dated 12.09.2014 are as *infra:*

> " On the scrutiny of the list given by the institution it is found that LIC of India, Hyderabad appraised the gratuity proposals and issued a demand for an amount of Rs.1,65,21,349/-. Against this amount the AFRC had earlier allowed the claim up to Rs.1,13,936/- to settle this claim. The institution has submitted list of 337 employees for whom gratuity liability was appraised by the LIC. However, on the scrutiny of said list, 82 employees are found to be ineligible as they have put in less than 5 years of service in the organisation. According to the 4 (1) Section of Gratuity Act the liability regarding gratuity payment arises only for an employee who has put in 5 years of continuous service and above. The amount payable for 82 ineligible employees comes to Rs.25,49,049/-. Accordingly, this amount is deducted from the claim of Rs.42,07,413/- and the claim is allowed up to Rs.16,58,364/-."

28. While attacking the said refusal of the claim for gratuity, the counsel has vehemently contended that the reasons are untenable and contrary to the provisions of Payment of Gratuity Act and the

A.P. Compulsory Gratuity Insurance Rules, 2011. The findings of the auditors of AFRC in this regard are as follows:

"

Gratuity arrears	42,07,413.00	42,07,413.00	42,07,413.00	3,51,44,740.00		The management submitted a quotation from L I C regarding calculation of gratuity for their employees. As per evaluation there are 82 employees are not eligible to covered under gratuity out of 337 employees. These amount comes to Rs.25,49,049/- which is not being considered by us. The calculation is based on the verification of date of joining.

29. While referring to the said reasons of the auditors and the AFRC orders dated 12.09.2014, petitioners herein offered following justification in paragraphs 52 (A) to 52 (F) of the affidavit filed in support of the WPMP.No.19600 of 2015:

> "52(A). It is submitted that the Auditors of the 2nd Respondent have totally overlooked and ignored the essential factor under the said Act that an employee who completes 5 years of service, is entitled to gratuity at the rate of 15 days wages per year of the past 5 years and that it is payable within 30 days from the completion of 5 years, if he chooses to quit or if services get terminated for other reasons. They have also ignored, if not deliberately, that if an employee dies within 5 years, his legal representatives are automatically entitled for the gratuity even if the said deceased employee's service is less than 5 years, vide the Proviso to Section 4 (1) thereof.
>
> 52(B). The auditors of the 2nd respondent and the 2nd respondent, have also ignored another important aspect that applying the reasoning adopted by them, if any employment completes five years, then the entire amount, which he is entitled towards gratuity for the said completed five years services, will have to be collected from the students joining in the succeeding year of the said 5 years period. In other words, the burden of the students of the said five years have to be borne by the students who take admission in the succeeding year of the 5 years period.

52 (C). The Auditors of the 2nd Respondent and 2nd Respondent have also ignored and overlooked that the list of employees enclosed to the quotation of the "LIC" evidences the date of joining of said 82 employees. Thus, providing information as to the possible completion of 5 years of all those employees, in the period for which the fees fixed, would subsist i.e., from 2013-14 to 2018-19 (6 years). The details thereof are as follows:

"

S.No.	Year	No. of Employees completing 5 years
1.	2014-15	18
2.	2015-16	14
3.	2016-17	19
4.	2017-18	21
5.	2018-19	10
	Total	**82**

"

52 (D). It is submitted that had the Petitioners were put on notice of the above aspect, they could have explained the same and facilitate the 2nd Respondent to come to a just conclusion instead of straight away forwarding the report to the Government for notifying. Though little more enquiry by the auditors of 2nd Respondent or had they called for the said information, they would have come to just conclusion.

52 (E). It is submitted that in fact, leave alone the 2nd Petitioner Institution, or other similar Institutions, but all the Employees necessarily have to factor these costs and expenditure in order to procure the required revenue. In the facts of the present case it is not factored into the fee structure, then it would burden the students who join in future and in fact the LIC has taken care of these eventualities in its quotation.

52 (F). For the above reasons, the said action of the 2nd Respondent in disallowing the claim of Rs.25.42 Lakhs on the

> ground that the said 82 employees have not completed 5 years is arbitrary and contrary to Law."

30. In this context, it may be appropriate to refer to the provisions of Sections 4 and 4A of the Payment of Gratuity Act, 1972 and the same read as follows:

> **4. Payment of Gratuity.-** (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
>
> > (a) on his superannuation, or
> > (b) on his retirement or resignation,
> > (c) on his death or disablement due to accident or disease:
> >
> > Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
> >
> > 1[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].
> >
> > *Explanation.-* For the purposes of this section, disablement means such\ disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
>
> (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:
>
> > Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:
> >
> > Provided further that in the case of 2[an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

> *3[Explanation.*-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed 4[ten lakh rupees].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.
(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (i),- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

> (b) the gratuity payable to an employee 1[may be wholly or partially forfeited].

>> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

>> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment

4A. Compulsory Insurance.-

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1)."

31. In view of the above provisions of law and the above reasons, this Court finds no justification on the part of the AFRC to refuse the claim under this head Gratuity. Therefore, this claim is allowed.

32. **<u>W.P.No.21246 of 2013</u>**

This writ petition is filed by Sree Educational Society which is running an institution in the name and style of Sreenidhi Institute of Science and Technology, Yamnampet, Ghatkesar Mandal, Ranga Reddy District, Telangana State. Pursuant to the interim orders dated 26.04.2014 passed by this Court and in response to the letter No.1/AFRC/FPC/Court Cass/2014/108 dated 02.06.2014, the petitioner institution submitted representation dated 09.06.2014 along with supporting material.

33. Thereafter, the AFRC issued a notification dated 21.06.2014, fixing the date of hearing for the petitioner as 08.07.2014. Petitioners herein submitted a memo dated 03.07.2014, adopting the memo dated 03.07.2014 submitted by the petitioners in WP.No.21229 of 2013. Thereafter, on 08.07.2014 the petitioner submitted written representations and oral submissions were made on the said date on 08.07.2014 from 3-00 pm to 5-30 PM, on 09.07.2014 from 11-30 AM to
2-00 PM and on 10.07.2014 from 11-30 AM to 2-30 PM and accounts were also verified on 11.07.2014, 14.07.2014, 15.07.2014, 16.07.2014 and 17.07.2014. Subsequently, by way of a memo dated 11.08.2014 the petitioners herein requested the AFRC to furnish a copy of the decision along with reports or data or any other documents which were relied upon by the AFRC in arriving at the decision while referring to para 150 (xii) of the judgment in the case of ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)***.** According to the petitioners, thereafter without communicating the orders dated 12.09.2014, as per para 150 (xi) of the Judgment in ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)***,** the AFRC forwarded the same to the Government and the State of A.P. notified the same under Rule 4 of 2006 Rules vide G.O.Ms.No.55, Higher Education (EC.A2) Department dated 24.11.2014 and no notification has been issued by the Telangana State and the petitioner field W.P.No.41229 of 2014, seeking a direction to the State of Telangana for notifying the same and is pending now.

34. During the course of hearing, it is submitted by the learned counsel for the petitioners Sri M.Ravindranath Reddy that the petitioners are

restricting their claims in the present writ petition only to the amounts under the heads viz., (1) rent and (2) Salary under 6th PRC. Therefore, this Court proposes only to deal with the said aspects.

35. Basing on the material available before the Court, the AFRC issued impugned proceedings dated 12.09.2014. So far as the element of rent rates and taxes, AFRC dealt with the same at paragraph 19.6 of the impugned order dated 12.09.2014. Initially, under this head AFRC disallowed a sum of Rs.2,00,00,000/-. Pursuant to the interim orders of this Court dated 26.04.2014, after the submission of the representation dated 09.06.2014, by virtue of the impugned order dated 12.09.2014, the AFRC disallowed the claim on the ground that the lease deed dated 19.09.2009 filed on behalf of the petitioners cannot be received as evidence in view of the provisions of Section 17 and 49 of the Registration Act. In this context, it may also be relevant to extract the findings of the auditors of AFRC in the worksheets, which read as under:

"

Rent,Rates and Taxes	3,34,46,530.00	2,00,00,000.00	2,00,00,000.00	2,98,50,741,00	2,98,50,741,00	Supportings are made available and unregistered rental agreement, bank payments were also provided for verification, hence a decision may be taken on unregistered lease deed

36. A reading of the above shows that the petitioners filed documents also in support of claim. The only reason, obviously assigned by the AFRC for denying the amounts under this head is the absence of the registration for the lease deed dated 19.09.2009. According to the learned counsel for the petitioners, the said reason is untenable for the present purpose and may be relevant factor in civil Courts for litigation between lessor and lessee and the admissibility of the lease deed is of no significance in the present context. In support of the said contention, counsel for the petitioner relies on the judgment of the Hon'ble Apex Court

in ***M/S MYSORE MINERALS LIMITED*** *(supra 7)* and ***SUNITA INDUSTRIES*** *(Supra 11)*.

37. In the case of ***M/S MYSORE MINERALS LIMITED*** *(supra 7),* the Hon'ble Apex Court at paragraph 14, held as follows:

> "14. In our opinion, the term owned as occurring in Section 32(1) of the Income Tax Act, 1961 must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act etc. "Building owned by the assessee" — the expression as occurring in Section 32(1) of the Income Tax Act means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act etc. but nevertheless is entitled to hold the property to the exclusion of all others."

38. In the case of ***SUNITA INDUSTRIES*** *(Supra 11),* this Court at paragraphs 23, 24 and 25, held as under:

> 23. The settled law as far as the power of the courts under Article 226 of the Constitution of India is concerned, courts exercising such powers are entitled to give such directions as are deemed fit and proper in the facts and circumstances of each case. Repeatedly, if the respondents fail to" act upon the directions of the court and deny the relief of the party who approached the court, we are of the view, the court is entitled to issue a positive direction in a given case if the court is satisfied that no useful purpose would be served by directing the respondents again to consider the case of the party.
>
> 24. In a given case like this, if a positive direction is issued by the court directing the respondents to grant final eligibility certificate to the petitioner, the court cannot be accused of exercising excessive jurisdiction. We also take note of the fact that the petitioner is the most harassed person as is evident from the fact that in the three rounds of earlier litigation petitioner could not get the relief and the present attempt before us is the fourth round of litigation. We are, therefore, of the view, this is a fit case where an appropriate direction has to be issued by us.
>
> 25. Though technical objections have been raised on behalf of

the respondents about non-furnishing the chartered accountant's certificate and other details, as reflected in the representation dated August 4, 1998 filed by the petitioner, the petitioner has furnished all the required relevant documents to the respondents in support of her claim for grant of final eligibility certificate. However, the respondent have failed to take into account the said representation and the documents furnished thereto by the petitioner. The respondents have also not denied this assertion of the petitioner by filing a rejoinder to the reply affidavit filed by the petitioner nor have taken a plea that no such representation is filed by the petitioner. We are, therefore, of the view that the petitioner has filed all the required documents sought for by the respondents but the respondents have failed to act upon them as is evident from the facts of the case. Having regard to the facts and circumstances of the case, we are inclined to hold that the petitioner is entitled for a positive direction from this court.

39. In the case of ***NARSINGDAS SURAJMAL PROPERTIES (P.) LTD*** *(Supra 10),* the High Court of Gauhati held as follows:

"Let us consider whether the Tribunal is justified in holding that merely because the agreement was compulsorily registrable under Section 17 of the Registration Act, it was inadmissible for all practical purposes and could not be looked at in support of the plea that the lessee's position was that of a tenant and that it was paying rent therefor. Section 17 of the Registration Act needs to be considered along with the provisions contained in Section 49 of that Act, as they are supplementary as well as complementary to each other. We quote the relevant extract of Section 49 of the Registration Act:

"No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall-
(a) affect any immovable property comprised therein, or......
(c) be received as evidence of any transaction affecting such property or.........
unless it has been registered :

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence......of any collateral transaction not required to be effected by registered instrument."

In Rana Bidya Bhusan Sing v. Ratiram [1969] UJ (SC) 21 a similar unregistered agreement was put in evidence in support of the plea that the lessee's possession was that of a tenant. The Supreme Court held that notwithstanding non-registration of the document compulsorily registrable under Section 17 of the (Registration) Act, it could be used in support of the plea that the lessee's possession was that of a tenant and the lessee was entitled under Section 49 of the (Registration) Act to rely on the recitals contained in the agreement. It has held that, no doubt, such a document required by law to be registered compulsorily, if unregistered, is inadmissible in evidence of a transaction affecting immovable property "but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property". Therein, their Lordships quoted an extract from Mulla's Indian Registration Act, 1908, 7th edn., p. 189, which is set out hereinbelow :

> "The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir, the former Chief Court of Oudh, the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

Their Lordships relied on an earlier decision of the Supreme Court in Padma Vithoba Chakkayya v. Mohd. Multani MANU/SC/0396/1962 : [1963]3SCR229 . In Padma Vithoba the Supreme Court held that such an unregistered lease was admissible in evidence to show "the character of possession of the lessee" under Section 49 of the (Registration) Act. Non-registration of a compulsorily registrable document is inadmissible as evidence of a transaction affecting immovable property. But it may be admitted and made use of as evidence of collateral facts or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. We are constrained to hold that the document in question was admissible as evidence of collateral facts or for any collateral purpose. It was admissible to prove the nature and character of the lessee's possession as well as to show that he was a tenant in occupation of the land on payment of rent. In this view of the matter, we hold that the learned Tribunal was not justified in rejecting the document as inadmissible for all intents and purposes. It will be for the learned Tribunal to consider the effect of the provision contained in Section 49 of the (Registration) Act, in the light of the observations made above and to decide how far and to what extent the document can be used by the asses-see under Section 49 of the Registration Act.

We consider it to be our duty to point out, in exercise of our advisory jurisdiction, that it has been held by the Supreme Court in a very recent decision in CIT v. Piara Singh MANU/SC/0273/1980 : [1980]124ITR40(SC) , that even when an assessee carries on smuggling activities, the loss arising out of confiscation of property in such transaction was admissible deduction under Section 10(1) of the Indian I.T. Act, 1922. If a loss is occasioned in pursuing the business it is "a business loss". As the loss arose directly from the carrying on of the business and was incidental to it, the Supreme Court has held that the deduction must be allowed notwithstanding the plea that

> the transaction itself was illegal. We are of the opinion that in a case of expenditure as well, it matters little whether an expenditure has been incurred on the basis of a valid or invalid document; the only question to be asked and answered is whether the expenditure was incurred in the assessment year. If it was an expenditure actually made for the purpose of the business and if it attracts the provisions of a legitimate deduction permissible under Sections 30 to 37 of the I.T. Act, the assessee shall be entitled to deduction. However, it will be for the learned Tribunal to consider whether the payment of the ground rent falls under Section 30 of the Act or under some other provisions of the Act. …"

40. In view of the above ratio laid down, this Court finds sufficient force in the stand taken by the petitioners that nonregistration of the lease deed is neither fatal nor the same disentitles the petitioners to claim the amount under this head. **Therefore, this is answered in favour of the petitioners and the petitioners are entitled for the amounts under this head.**

41. Coming to the element of salary under 6th PRC- the AFRC dealt with the same under paragraph 20 (a) to (e) of the impugned order dated 12.09.2014. A perusal of the impugned order shows that it was brought to the consideration of the AFRC that as per ***CONSORTIUM OF ENGINEERING COLLEGES MANAGEMENTS ASSOCIATION (CECMA) AND OTHERS ETC. ETC.*** *(supra 1)* the salaries payable to the teaching and non-teaching staff and future balance of the institution should also be taken into consideration with reference to fixation of fee structure and it would be mandatory on the part of the institution to implement the revised pay-scales of 6th pay Commission and the same would fall under the term amounts payable as per the above referred elements. A reading of the said order of the AFRC dated 12.09.2014 further at 20 (c) discloses the following reasons:

> " c) The implementation of VI pay commission scales subject to the norms fixed by the AUICTE has not been done in the educational institutions fully. There was partial implementation of the scale in Srinidhi Institute of Science and Technology which was considered and accepted while fixing the fee structures earlier. The question is whether the expenditure to be met by the implementation of the VIth pay scales shall also be taken into consideration herein. It is to be examined here the ambit of the words "Salaries paid/Payable" as used in the Judgment of High Court. It is to be seen as to whether it is inclusive of such proposals to implement the scheme. The committee is of the opinion that the question of payment of salaries in future arises subject to the actual employment of qualified staff consequently

> on certain pay scales and remained as due or payable. Significantly the policy laid down by the AICTE to implement the VIth pay commission scales was not implemented by good number of professional colleges due to lack of qualified man power or otherwise. It may be that that is the reason why Srinidhi Institute of Science and Technology implemented the scheme only partially. Therefore the further implementation is subject to the availability of qualified man power subject to which only the corresponding salaries would become payable. The factual aspects prevailing shall also be taken into consideration in this context. The Colleges may promise to implement the salaries. It is humanely impossible for the AFRC to check hundreds or thousands of unaided professional colleges in the State with its existing staff and find out the actual implementation the scheme and take necessary action if it is found that the promise to do so is not fulfilled. Allowing the institutions to collect the corresponding expenditure without the actual implementation of the scheme later is likely to lead to disastrous consequences and exploitation of the students to pay unreasonable and exorbitant/unlawful fees."

42**.** The above reasons assigned, in the considered opinion of this Court, cannot be sustained and the complexity in the issues as observed by the AFRC cannot be a ground to get away from the consideration of the issues in view of the law-laid down by the Hon'ble Apex Court in ***C.M. THRI VIKRAMA VARMA V. AVINASH MOHANT*** wherein the Hon'ble Apex Court, at paragraph 26, held as follows:

> "26. In our view, complexity of a decision-making process cannot be a defence when a grievance is made before the Court by a citizen that his fundamental right to equality has been violated. When such a grievance is made before the Court, the authorities have to justify their impugned decision by placing the relevant material before the Court."

43. For denying this claim, the AFRC relied on ***FEE REGULATORY COMMITTEE*** *(Supra 15)* wherein the Hon'ble Supreme Court held that the fee determined for three years shall not be revised till the student goes out of the institution. According to the learned counsel for the petitioners the ratio laid down in the said judgment cannot be made applicable to the present situation since in the said case the revision of pay-scales took place during the currency of the block period and in the instant case by the time of fixation of the fee for the block-period 2013-2014, 2014-2015 and 2015-2016 the 6th PRC had already come into force.

44. Learned counsel in support of his case also relies on ***CHARUTAR AROGYA MANDAL V. JUSTICE R.J. SHAH (R) FEE COMMITTEE***[17] wherein the Hon'ble Supreme Court at paragraphs 1 and 2, held as follows:

"1. Leave granted. These matters relate to fee fixation in the medical and physiotherapy colleges. The question of fixation of fee now stands settled by judgment of this Court in *P.A. Inamdar* v. *State of Maharashtra*[1]. In the light of the said judgment, the impugned judgment[2] of the High Court cannot be sustained and the fee is required to be fixed by the Fee Fixation Committee having regard to the decision in *P.A. Inamdar case*[1]. Accordingly, we set aside the impugned judgment[2] and remit the matter relating to fee fixation for Academic Years 2003-2004, 2004-2005 and 2005-2006 to the Fee Fixation Committee for fresh fixation of fee in the light of the judgment in *P.A. Inamdar case*[1].

2. It would also be open to the colleges to seek appropriate interim directions from the Committee in respect of the amounts for the year 2005-2006. Similarly, it would be open to the students or their representatives/associations to plead before the Committee that the management has not complied with the directions already made and seek appropriate directions in that regard. Both these aspects would be considered by the Committee and appropriate directions issued."

45. In this connection, the counsel also invited attention of this Court to the averments in paragraphs 15 (a) (e) of the affidavit filed in support of the WPMP. 20729 of 2015 in W.P.No.21246 of 2013, which read as under:

"15 (a) The 2nd Respondent has disallowed the claim of Rs.778.00 lakhs, for implementing the 6th PRC for teaching staff, on the ground that it is only a projection or provision and that such claim can be allowed only upon actual payment of the said 6th PRC scales. It has also placed reliance on the judgment of Hon'ble Supreme Court reported in 2011 10 SCC 592 (Fee Regulatory Committee Vs. Kalol Institute of Management). The said reasoning of the 2nd Respondent and consequential rejection of the said claim, is arbitrary and illegal.

15 (b) It is the specific case of the 2nd Petitioner during the hearing before the 2nd Respondent that it is mandatory for the Institution to implement the said scales and therefore, unless, the said expenditure is factored into the fee of the students, who join in the said block period, the same cannot be implemented. It was also specifically contended that if, the said scales are implemented in this block period and consequently, if, the said expenditure is taken into consideration in the next block period of 2016-17 to 2018 -19 as suggested by the 2nd Respondent then, the said liability of students of the bolci period in question would fall on the students who take admission in the next block period of 2016-17 to 2018-19, thus again in away amounting to

cross subsidy.

15 (c) The said contentions and other contentions raised were not considered leave alone they being rejected with reasons and on the contrary, the 2nd Respondent has erroneously placed reliance on the said judgment of Hon'ble Supreme Court reported in 2011 10 SCC 592, which has no application in the case on hand. It is a case where fees was fixed for block period of 2008-09 to 2010-11 and in the midst of the block period the VI PRC itself has come into effect. Consequently, the institutions sought revision of fees already fixed earlier in the midst of the said block period. In these circumstances, the Hon'ble Supreme Court held that since fees were already fixed for the block period, it cannot be revised in the midst and further observed that it has to be collected from the students, who join in the next block period. Whereas, in the present case, the exercise for fixing tee for the block period in question commenced after the PRC came into effect and the institutions have sought the said expenditrure in the proposal submitted pursuant to the notification dated 27.12.2012 of the 2nd Respondent calling for details and information for fixing the fee for the block period in question. Hence, the said judgment has no application and on the contrary, it is in favour of Petitioner's contentions. Hence, the reasoning of the 2nd Respondent that too, a quasi judicial body headed by retired Judge of this Hon'ble Court, is arbitrary and liable to be rejected

15 (d) The 2nd Respondent has also ignored the fallacy in the said argument/reasoning given ink rejecting this claim. It is submitted that fixing of fee for the period, which is yet to start, is nothing but based on projections only and not on actual expenditure and the expenditure of 2012-13 is being taken as a basis or factor to arrive at the possible expenditure for of the said block period of 2013-2014 to 2015 -16.

15 (e) It is submitted that the approach, conduct and the impugned 1st and 2nd Reports of the 2nd Respondent are in deliberate violation of the judgment of Hon'ble Division Bench reported in 2012 (3) ALT 686 (D.B).

46. The above narration clearly and succinctly shows that the reasons assigned by the AFRC for turning down the request of the petitioners cannot stand for twin tests of reasonableness and rationality, and if there is any violation of law, it is always open for the authorities to take action. **In view of the above, this claim is also answered in favour of the petitioners.**

47. **W.P.No.40770 of 2014**

This is a writ petition filed by Siddhartha Academy of General and Technical Education, which is running an institution in the name and style of "Prasad V Potluri Siddhartha Institute of Technology" at Kanuru, Vijayawada, Krishna district. In pursuance of the interim order dated 26.4.2014 passed by this Court, the 2nd petitioner herein submitted a representation dated 23.6.2014 along with supporting material for the disallowed items. Paragraphs 1 to 6 of the said representation reads as under:

> "1. In the proceedings referred to (1) above, tuition fee was fixed for the Block period from 2013-2014 to 2015-16 in respect of our Prasad V Potluri Siddhartha Institute of Technology. While fixing the fees, a worksheet was also enclosed showing, among other things, certain items of expenditure disallowed while fixing the fee for the college. The following are the items of the expenditure disallowed (under 10a & 10b):

Table-I (10a)

Sl.No.	Item of the Expenditure	Amount disallowed
1.	Vehicle maintenance	1,48,584/-
2.	JNTU Affiliation fee	12,75,998/-
3.	Bus charges	3,64,104/-
4.	Repairs & Maintenance of Vehicles	5,13,637/-
5.	Insurance Vehicles	10,340/-
6.	Replacement of Lab equipment and furniture	2,91,86,505/-

Table-II (10b)

Sl.No.	Item of the Expenditure	Amount disallowed
1.	Donations	2,58,514/-
2.	Autonomous Committee meeting expenses	12,96,015/-
3.	Furtherance of Education	1,91,13,828/-
4.	Advertisements	83,170/-
5.	Gratuity Arrears	1,69,11,610/-

> 2. It was further stated that our Institution was not able to

satisfactorily explain the variations and hence proceedings were issued fixing the tuition fee of Rs.66,000/- for the year 2013-14. Aggrieved by the same, the Institution filed a writ petition before the Hon'ble High Court of Andhra Pradesh and the Court was kind enough to grant another opportunity to this institution for submission of our claims before AFRC seeking revision of tuition fee already fixed. We requested for a fresh opportunity to the AFRC in the letter referred to (2) above. Consequently the AFRC was kind enough to send its letter referred to (3) above, and asked us to submit the original record along with copies for the items disallowed previously by it.

3. Accordingly, please find enclosed an Annexure-I containing revised claim along with explanatory notes duly showing those disallowed previously by AFRC. Also please find enclosed a revised worksheet vide Annexure-II by this institution showing the revised fee structure for this College as per the revised worksheet. We have enclosed the original records along with two sets of Xerox copies in respect of above as desired by AFRC.

4. It is further submitted that in Para(8) of your proceedings referred to (1) above, an observation was made that against the required 199 qualified members of teaching Faculty, the College employed 181 qualified Teaching Faculty. Please find enclosed Annexure-III showing the number of qualified Teaching Faculty employed by the Institution and working at present as on 31.5.2014 which is 199. This included 17 Ph.Ds, 179 M.Techs/M.Scs and 3 B.Techs. It is respectfully submitted that the list of 199 Nos. of faculty working at present along with their qualifications is enclosed for favour of kind perusal. It is requested that this fact may also be duly considered along with claims as shown in the annexures and revise the fees accordingly.

5. It is also submitted that in para(13) of your proceedings referred to 1 above, 10% increase was considered to neutralize the inflation and other factors. It is submitted that the annual increments in the revised pay scales, the DA arrears to be sanctioned besides the frequent escalation in revenue expenditure works out to more than 10% of the increase allowed by AFRC and as such it is requested that in respect of our College, it works out to 15% increase over the previous year's tuition fee. Hence, 15% increase may be considered which will only permit us to bear the items of expenditure as explained in this paragraph.

6. We seek the kind favour of the AFRC for favourable consideration of the above as given in this letter along with Annexures and issue proceedings for revision of tuition fee basing on our revised claims".

48. In terms of the interim order dated 26.4.2014, the AFRC fixed the date of hearing and asked the petitioners to appear for the same on 22.7.2014. According to the petitioners, they submitted representation on the even date, reiterating their stand as indicated in the representation

dated 23.6.2014 submitted prior to the said hearing and requested the AFRC to fix the fee at Rs.80,000/- per student for the block period 2013-14, 2014-15 and 2015-16. The stand of the petitioners is that they produced the relevant records also in support of the claims, which were disallowed by the AFRC earlier, but the AFRC failed to consider the said material and fixed an amount of Rs.66,800/- and sent the proposals to the State Government and the State Government by way of a notification vide G.O.Rt.No.465 Higher Education (EC.A2) Department dated 24.11.2014 under Section 7 of the Act and consequent upon which the AFRC passed orders vide proceedings No.1/AFRC/FF-UG-ENGG, disallowing the majority of the claims put-forth by the petitioners.

49. During the course of hearing, it is submitted by the learned counsel for the petitioners that in W.P.Nos.40770 and 40807 of 2014, the petitioners are restricting their claims only for the following disallowed items.

(1) Replacement of lab equipment and furniture.
(2) Autonomous committee meeting expenses.
(3) Gratuity
(4) 10% every year

50. **Claim towards expenditure on equipment and furniture**_ The AFRC dealt with this claim at paragraph 13.1 of the impugned order dated 12.9.2014 and the said paragraph reads as under:

> "An amount of Rs.2,91,86,505 was disallowed under this head. The said expenditure relates to purchase of equipment and furniture. This is not recurring in nature. Further capital expenditure is not being considered, except for the purpose of depreciation and payment of interest on loans. Hence this claim cannot be accepted".

51. It is significant to note in this context that at the time of hearing, by way of representation dated 22.7.2014, the petitioners herein brought to the notice of AFRC the regulations called "All India Council for Technical Education (norms and guidelines for fees and guidelines for admissions in professional colleges) Regulations 1994" framed by All India Council for Technical Education (AICTE) in exercise of the powers conferred under clauses (j) and (o) of Section 10 read with Section 23 of the AICTE Act, 1987. Regulation 7(1) of the said regulations deals with "Fee", which

stipulates that tuition and other fee for professional colleges shall be taken by a State Level Committee. Annexure to the said regulations indicates the items to be taken into account for determining the tuition fee and other items that can be charged by a professional college and item 7 of the said annexure specifically includes replacement, modernization and addition of instruments and equipments, cars and buses etc. It is not the case of the respondents that the petitioners did not file necessary supporting material and on the other hand the material on record discloses that the petitioners filed invoices in support of the same. Therefore, this Court on the face of the conclusions arrived at by the AFRC, finds complete lack of justification in denying this claim of Rs.2,91,86,505/-. **Therefore, this claim is allowed.**

52. **Amount claimed under the Head of Autonomous Committee Meeting Expenses_** Under this head, previously the AFRC disallowed a sum of Rs.12,96,015/-and pursuant to the interim orders dated 26.4.2014 passed by this Court, petitioners appeared before AFRC and produced vouchers and bills and also produced audited financial statement for the year 2012-13. The AFRC dealt with this claim and found the following at paragraph 14.2 of the impugned order dated 12.9.2014.

> "Autonomous Committee Meeting Expenses: An amount of Rs.12,96,015 was disallowed under this head. According to the audited financial statement for the year 2012-13, this expenditure comes to Rs.4,25,134. The Institution has provided supporting evidence, such as vouchers and bills for Rs.26,756 only. As such the claim is allowed to the extent of Rs.26,756."

53. Since the AFRC took into consideration the supporting material, such as, bills and vouchers and allowed the claim covered by the same, this Court finds no reason to meddle with the said finding of fact recorded by AFRC.

54. **Gratuity Arrears of Previous Years_** Under this head, the AFRC earlier disallowed a sum of Rs.1,69,11,610/- and at the time of hearing on 22.7.2014 conducted by AFRC, in terms of the interim order passed by this Court on 26.4.2014, the petitioners submitted a representation on the even date and offered the following justification at paragraphs 7, 8 and 9 of the

said representation, which reads as under:

> "7. The provision for payment of gratuity arrears amounting to Rs.1.69 crore was disallowed stating that the arrears pertain to previous years and it cannot be a burden to the present students. The college arrived at Rs.1.69 crore being the liability on account of gratuity as per the Amendment Act, 2009 of the Government of India effective from 3.4.1997.
>
> 8. Gratuity is a retirement benefit and has to be paid as and when claimed for the service rendered in each completed year till the date of resignation or superannuation. The Government of India has made the Payment of Gratuity (Amendment) Act, 2009 by virtue of which teachers were also covered under the provisions of Gratuity Act retrospectively from 3.4.1997. Having come to know about this new amendment and by virtue of the same, the College is bound to honour any claim due to retirement or resignation of all categories of staff with effect from 3.4.1997 as provided under the rules. As this act was made with retrospective effect, the College has no choice except to make provision for gratuity arrears.
>
> 9. It is submitted that in case the AFRC is of the opinion that the present students have to bear only current year's liability of gratuity, it may kindly be noted that the liability on account of gratuity, whenever claimed, is inclusive of the past service and not only the year for which fee is received from students. Hence, it is just and necessary that when the Government of India made this welfare legislation, the AFRC has to give serious thought to assess the impact of this latest legislation on Private Unaided Engineering Colleges and the fee has to be worked out duly incorporating the entire liability on account of gratuity either in full or in parts spread over a reasonable period of time on the same lines as worked out by AFRC the impact of revision of pay scales to the staff basing on the dicta of Hon'ble Supreme Court in S.L.P.No.34050 and 34080 of 2011 dated 9.5.2012 referred to by AFRC in its order dated 10.8.2013 (paras 16 & 17). It is respectfully submitted that the AFRC may kindly consider this important item of expenditure after giving due consideration because the statutory rules of AICTE as stated above have also provided for extension of all benefits in addition to the salary and allowances to the staff working in Private Technical Institutions."

55. The AFRC, while dealing with the claim, pertaining to Gratuity Arrears at paragraph 14.4 of the impugned order dated 12.9.2014 held as under:

> "Gratuity Arrears of previous years: An amount of Rs.1,69,11,610/- is shown as gratuity arrears for the previous year and this was disallowed. In the audited financial statement for the year 2012-13 the corresponding expenditure was not shown and further no supporting evidence, such as bills, vouchers are furnished. The AFRC had earlier decided that gratuity arrears of previous years should not be

burdened on the students who would be joining the institution in the block period 2013-14, 2014-15 and 2015-16 being unreasonable. Accordingly, this claim is rejected".

56. The material available on record shows that obviously the only reason assigned by the AFRC for disallowing this claim is that the students joining in the block period 2013-14, 2014-15 and 2015-16 should not be burdened with arrears.

57. It is significant to note that it is absolutely not the case of the respondents that the said claim pertaining to gratuity involves the element of profiteering and capitation fee and on the other hand the said claim is towards compliance of a welfare legislation brought by the Union of India, in the interest of employees. Therefore, the reason assigned by the AFRC for disallowing this claim is not sustainable in the eye of law in the absence of element of profiteering. **Therefore, the claim made by the petitioners under this head is liable to be allowed.**

58. **Inflation**_ This claim is neither argued nor the AFRC had occasion to consider the same, as such, this Court is not inclined to go into this aspect.

59. **W.P.No.40807 of 2014**

This is a writ petition filed by Siddhartha Academy of General and Technical Education, which is running an institution in the name and style of "Velagapudi Ramakrishna Siddhartha College" at Kanuru, Krishna District.

60. The factual situation in the present case and the claims advanced by the petitioners are similar to the claims in W.P.No.40770 of 2014. The findings on various claims as already recorded supra in W.P.No.40770 of 2014 hold good for this writ petition also. **Therefore, the disallowed claims of Rs.1,25,63,829/- towards equipment and furniture and gratuity arrears of Rs.4,72,71,910/- are allowed and other claims are rejected.**

61. **W.P.No.38209 of 2014**

This is a writ petition filed by M/s Parameshwara Educational

Academy, which is running an institution in the name and style of "Rajeev Gandhi Memorial College of Engineering and Technology" at Nandyal, Kurnool district. Pursuant to the interim orders granted by this Court on 26.4.2014, the petitioners herein submitted a representation dated 5.6.2014, setting out their justifications on the claims which were earlier disallowed by the AFRC. The petitioners herein were asked to appear for hearing in terms of the interim orders of this Court by the AFRC and a representative of the petitioners appeared before the AFRC and a representation dated 2.7.2014 was also submitted, furnishing the following additional information:

> 1. The AFRC while fixing the fees the following factors also must take into consideration.
>
> (i) The institution's expenditure for financial year 2012-13 ought to have been taken as @ Rs.17,66,93,136/-, instead of Rs.16,48,87,491/-, since the institution has implemented VI pay scales from 1.1.2013 to 31.3.2013.
>
> (ii) The AFRC has taken into account only the expenditure increased on Vth Pay Scales, instead of VIth Pay Scales, consequent to implementation of VI Pay Scales, the salary expenditure alone will be increased to an extent of 1,18,05,645/-.
>
> (iii) The institution's intake of students is increased from the academic years 2011-12 to 2013-14 from 780 to 840, 840 to 900 and 900 respectively. AFRC ought to have considered the impact of salaries for increased intake for the academic years of 2013-14, 2014-15 and 2015-16 while arriving at the expenditure of the institution for fixing fees. Consequent to overlooking the actual expenditure to be incurred due to increase in intake towards salary component has led to fixing at lower level than our eligibility.
>
> (iv) The AFRC ought to have considered the increments in salaries of employee of institution at 3% per annum, which is a statutory regulation, while arriving at the expenditure of the institution for fixing of Tuition fees.
>
> (v) The AFRC considered inflation @ 10% only for the academic year 2013-14 and failed to consider the inflation, for 2014-15 and 2015-16. It is relevant to bring it to the notice of AFRC that the DA of employees will be increased twice in a year i.e. in the month of January and July at the rate of around 10%. They must also be taken into account while fixing the Tuition fee.
>
> We therefore request to consider all the above mentioned facts and re-fix the Tuition Fee at Rs.1,33,000/- for coming 3 years block period".

62. The AFRC, by virtue of impugned order dated 9.12.2014 once again rejected all the claims, except the claim towards examination expenses and affiliation. This Court deems it apt and apposite to deal with the said

claims item wise.

63. **Claim towards maintenance and repairs**_ The AFRC dealt with this claim at paragraph 12.1 of the impugned order dated 12.9.2014, which reads as under:

> "Repairs and Maintenance of Vehicles: An amount of Rs.1,28,75,667/- was disallowed under this head. In the audited financial statement for the year 2012-13, an amount of Rs.1,70,23,862/- is shown under this head. The Institution has provided supporting evidence for Rs.27,15,942/- and internally generated vouchers for Rs.83,690/-. The representatives of the institution have stated that the Institution is not collecting any charges from the students and as such requested for allowing this expenditure. Further, the bills produced cover B.Tech, M.Tech, MBA and MCA courses. However, the institution has to collect charges from the students and staff for using the bus facility and cannot burden the students who are not using the bus facility and as such the claim is rejected".

64. According to the learned counsel for the petitioners, the said reasoning is illegal, unreasonable and contrary to Regulation 7(5) of AICTE (norms and guidelines for fees and guidelines for admissions in professional colleges) Regulations 1994. Regulation 7(5) of the said Regulations reads as under:

> "The fees chargeable in professional colleges shall be determined on the basis of estimation of expenditure of the professional college for its efficient functioning. The Committee shall take the items specified in the Annexure to these regulations, into account while determining the tuition fee and other fees to be charged by a professional college. The Committee may in its discretion take into consideration a reasonable return on Capital Investment with reference to the investment made and determine the fees accordingly. While calculating the fees, the estimates of recurring expenditure shall be based on atleast the last two years audited figures of recurring expenditure of the college and projected requirement for next three years".

65. In the considered opinion of this Court, the reasoning assigned by the AFRC for disallowing this claim cannot be said to be unreasonable. It is also to be noted that the petitioners herein also included the bills covering M.Tech, MCA and MBA courses.

66. **Insurance_** The AFRC dealt with this claim at paragraph 12.5 of the impugned order as follows:

> "An amount of Rs.9,14,649/- was disallowed under this head. According to the audited financial statement for the year 2012-13, an amount of Rs.85,118/- is shown under this head. However, no connected supporting evidence, such as bills and vouchers is provided. Hence, the claim is rejected".

67. In the absence of any supporting evidence, the AFRC is perfectly justified in rejecting this claim.

68. **Claim towards Advertisements_** The AFRC is dealt with this claim at paragraph 14.1 of the impugned order dated 12.9.2014 and the same reads as under:

> "<u>Advertisements:</u> An amount of Rs.14,06,965/- was disallowed under this head. According to the audited financial statement for the year 2012-13, an amount of Rs.38,83,400/- is shown under this head. Further, the AFRC earlier allowed an amount of Rs.10 lakhs under this head based on the need as well as considering the expenditures of well established institutions. It can further be seen that most of the advertisements are taken up to promote the Institutions and also to fill up the B-Category seats and as such this expenditure cannot be burdened on all the students getting admission into the Institutions. The Institution has provided bills for Rs.36,17,799/- and internally generated vouchers for Rs.10,500/-. Tin the circumstances, this claim is rejected".

69. The justification offered by the petitioners college in their representation dated 5.6.2014 is as follows:

> "Since college is offering B.Tech, M.Tech, MBA & MCA courses, we have to release so many advertisements relating to admissions, recruitment of faculty/staff, placement drives, consultancy etc., Ceiling on the Audited expenditure without framing any guidelines before submission of accounts to AFRC is not fair. All the expenditure incurred are Certified by the Chartered Accountant. Hence the expenditure is genuine and to be allowed".

70. Since the AFRC had already allowed Rs.10.00 lakhs under this head, this Court does not find any justification to meddle with the findings arrived at by the AFRC on this claim.

71. **Association Fee_** The AFRC dealt with this claim at paragraph

14.2 of the impugned order dated 12.9.2014 and the said paragraph reads as follows:

> "An amount of Rs.5,54,063/- was disallowed under this head. According to the audited financial statement for the year 2012-13, an amount of Rs.6,25,000/- is show under this head. However, the Institution has not furnished supporting evidence, such as vouchers, bills etc., as such this claim is rejected".

72. The justification offered by the petitioners institution in their representation dated 5.6.2014 is that the association is working for the college developments and representing all the students. By any stretch of imagination, the reasons offered by the institution cannot be said to be a reasonable one and this head cannot form the element of fee payable by the students.

73. **Incentives_** The AFRC at paragraph 14.3 of the impugned order dated 12.9.2014 dealt with this claim in the following manner.

> "An amount of Rs.13,84,979/- was disallowed under this head. According to the audited financial statement for the year 2012-13, an amount of Rs.20,26,100/- is show under this head. According to the representatives of the Institution, this expenditure is incurred by virtue of scholarships and refund of tuition fee pertaining to some students. No details are furnished by the Institution to justify the claim. However, this amount is spent from out of the receipts received through their agencies. As such few students have got the benefit. Hence, other students cannot be burdened with this expenditure. Hence, this claim is rejected".

74. The justification offered by the Institution in their representation dated 5.6.2014 is as follows:

> "RGMCET has a unique policy of encouraging the meritorious students by giving scholarships and by refund of tuition fee etc. The policy is open to all students and who become eligible as per the norms of the institution are being paid incentives. The college refunds the entire tuition fee of one academic year, if any student scores 90% and above marks in one academic year without any limit to the number of students to encourage the meritorious student and to keep the students alert in their studies. The college also gives an incentive of Rs.50,000/- to any faculty, who obtains Doctoral Degree to encourage others to pursue Ph.D. program as it is the need of the hour and to fulfill the dearth of available Ph.D. Degree holders to meet the requirements.
>
> The different incentives offered by the college were very

well appreciated by the World Bank team in joint review meetings during the first phase of TEQIP. It is not fair to say that few students are benefited. It is very clear that only merit students will be rewarded and awarded. Even Universities are also awarding gold medals only to meritorious students which do not mean that very few students are benefited. Hence the expenditure is genuine and to be allowed".

75. Having regard to the nature of claim and encouragement to the student community, this Court finds no justification to deny this claim, when this claim is supported by audited financial statement. The reasons assigned by the AFRC, in the definite opinion of this Court, are not sound. **Hence this claim is liable to be allowed.**

76. **Gardening_** The AFRC dealt with this aspect at paragraph 14.4 of the impugned order dated 12.9.2014, which reads as under:

> "An amount of Rs.10,81,255/- was disallowed under this head. According to the audited financial statement for the year 2012-13, an amount of Rs.16,56,769/- is shown under this head. The Institution has provided supporting evidence, such as bills and vouchers for Rs.1,68,965/- and internally generated vouchers for Rs.14,87,804/-. Internally generated vouchers cannot be considered as proper evidence. Further, the AFRC earlier had allowed an amount of Rs.3.00 lakhs under this head based on the need as well as considering the expenditure of well established institutions. Hence this claim is rejected."

77. The justification offered by the petitioners in their representation dated 5.6.2014 reads as under:

> "As per recent norms of AICTE the land required is only 10 acres, but RGMCET was established in 1995 in an area of 32.04 acres. As per UGC norms, a University requires only 25.0 acres of land. But most of the universities were established in hundreds of Acres of land and incurring huge expenditure in laying roads, gardening, landscaping, construction and maintenance of building etc. Hence the expenditure is genuine and to be allowed".

78. Since the AFRC already allowed an amount of Rs.3.00 lakhs. The reasons assigned by the petitioners in their representation dated 5.6.2014, in the considered opinion of this Court, in the absence of proper evidence and supporting material produced before the AFRC are not tenable this Court does not find any reason to disturb the conclusion arrived at by the AFRC in the impugned order.

79. **Seminars_** The AFRC dealt with this aspect at paragraph 14.5 of the impugned order dated 12.9.2014, which reads as under:

> "An amount of Rs.22,48,168/- was disallowed under this head. However, there is no corresponding entry in the audited financial statement for the year 2012-13 under this head. The Institution has also not provided supporting evidence, such as bills and vouchers. Further, the AFRC earlier had allowed an amount of Rs.10 lakhs under this head based on the need as well as considering the expenditure of well established institutions. Hence this claim is rejected."

80. The justification offered by the petitioners in their representation dated 5.6.2014 reads as under:

> "Since the College is offering B.Tech., M.Tech., MBA and MCA courses and having an intake of 1146 (900-B.Tech, 126-M.Tech., 60-MBA and 60-MCA), we organize number of Seminars, Workshops, Conferences and Training programs for the benefit of students, faculty and staff. If the same amount is permitted commonly to all the colleges which our less intake is nothing but discouraging the colleges to provide latest developments of technology and provide an opportunity to upgrade the skills of the students, faculty and staff of the college. All the expenditures incurred is audited and certified by the Chartered Accountant and permitted by Income Tax authorities. Hence the expenditure is genuine and to be allowed".

81. To the extent of Seminars earlier, the AFRC allowed Rs.10.00 lakhs based on the need as well as considering the expenditure in well established institutions. In the absence of any evidence, such as audited financial statement, bills and vouchers, the findings of the AFRC on this claim cannot be faulted. Hence this claim is rejected.

82. **<u>WP.No.38046 of 29014</u>**

In the present writ petition, challenge is to the order passed by the AFRC/first respondent herein vide Proceedings No.1/AFRC/FF/-UG-ENGG/2013-16 (35), dated 12.09.2014, fixing the fees structure for BE/Btech Courses for the block period 2013-2014, 2014-2015 and 2015-2016 in respect of the second petitioner @ Rs.61,200/- per student and the further action of the first respondent in addressing Lr.No.1/AFRC/FFC/2013-14/173, dated 25.08.2014, to the second respondent/State Government to notify the said fees structure.

83. Earlier, the petitioners herein field WP.No.19726 of 2013, questioning the fixation of fee @ Rs.61,200/- per student as notified vide G.O.Ms.No.57, dated 06.07.2013, and pursuant to the common interim orders passed by this Court on 26.04.2014, the AFRC/first respondent vide letter dated 02.06.2014 asked the second petitioner college to furnish the relevant information. In response to the same, on 09.06.2014, second petitioner herein furnished information in support of the claim. According to the petitioners, they submitted a brief note also along with the same, explaining the annexures and pointing out the mistakes committed by the first respondent in calculating 10% inflation and 15% furtherance. Subsequently, vide Lr.No.1/AFRC/FFC/Court Case/PH/2014/125, dated 21.06.2014, the first respondent asked the petitioners to attend for personal hearing on 03.07.2014 and as per the petitioners, they furnished all the information relevant, but the first respondent, without considering the same, in a mechanical manner issued Lr.No.1/AFRC/FFC/2013-14/173, dated 25.08.2014 and thereafter, the first respondent/AFRC issued the impugned order vide Proceedings No.1/AFRC/FF-UG-ENGG/2013-16(68), dated 12.09.2014, turning down the request of the petitioners for increase in tuition fees for the block period 2013-2014 to 2015-2016. In the above background, challenging the said proceedings dated 12.09.2014 and 25.08.2014, the present writ petition came to be filed.

84. It is the contention of the learned Senior Counsel that the first respondent did not consider various aspects raised by the petitioners in the note submitted on 09.06.2014. Eventually, it is suggested by the learned counsel for the petitioners to remand the matter for fresh consideration in a pragmatic manner by the respondent authorities.

85. On the contrary, it is submitted by the learned counsel for the AFRC Sri Abisekh Reddy that, only after duly considering the entire material available, the first respondent turned down the request of the petitioners and no case is made out by the petitioners for judicial review under Article 226 of the Constitution of India.

86. In order to consider the said aspects, this Court feels it appropriate to

refer to the note prepared and submitted by the petitioners on 09.06.2014 along with the supporting material. The said note submitted on 09.06.2014 by the petitioners before the first respondent reads as under:

> "In the working statements provided by AFRC it has been shown that expenditure per student for the 2012-13 year was Rs.53586/-, i.e. Rs.143397989/2676. Instead of adding 10% inflation and 15% furtherance on the expenditure per student, it has been done on the total expenditure, thus disallowing per student expenditure.
>
> For the 2013-2014 year, instead of the expenditure per student going up on account of inflation and furtherance to Rs.66983/- (25% addition to Rs.53586) It has been shown only at Rs.60231/-, i.e., only a 12.4% increase and not the 25% shown. Rs.60231 is obtained by dividing Rs.179247486 by no. of students 2976.
>
> The expenditure per student according to the AFRC working statement still goes down for the next two years i.e., Rs.55323/- for the 2014-15 year and Rs.53347/- for the 2015-16 year. These are obtained simply by dividing total expenditure by the no. of students.
>
> This brings us to one very basic question – to maintain and improve quality in engineering education, how can expenditure per student go down instead of going up.
>
> We are suggesting two schemes to correct this problem – Scheme 1 and 2 in the Annexures 1 and 2 respectively.
>
> In Scheme 1, what should actually been have done by AFRC is that total expenditure is to be calculated based on the expenditure per student. For the 2013-14 academic year the expenditure per student come to Rs.66983/- i.e., 25% over the expenditure per student in the preceding year on account of inflation and furtherance. Also, AFRC has taken inflation of 10% only for the first year of the block period instead of every year. The DA increase is only 20% every year and since salaries are close to 2/3rds of the total expenditure, the DA increase itself contributes to about 13.34% increase in total expenditure every year.
>
> Based on the 10% inflation every year, the expenditure per student comes to Rs.73681/- for the 2014-15 year and Rs.81049/- for the 2015-16.
>
> The difference in expenditure i.e. Rs.20095010/-. Rs.59481229/- and Rs.93080085/- for the three years is thus disallowed in the working statement leading to ta total Rs.172656327/- disallowance. If you look at the Scheme 1, this brings the total to Rs.481335700/- (A = X+Y+Z) instead of the

> figure Rs.308679377/- shown in the working statement. Thus the fee for the incoming students for the block period should be Rs.95503/-.
>
> In scheme 2, even if we go by the AFRC inflation rate of 10% for the entire block period, then the expenditure per student will remain the same for the three years in the block period i.e. at Rs.66983/-. Using this, as shown in Scheme 2, the total disallowed expenditure is Rs.103690250/-. The total shown should be Rs.412369626/- (A=X+Y+Z) instead of Rs.308679377/-. Thus the fee for the incoming students for the block period should be Rs.81819/-.
>
> We can explain further on this in the hearing."

87. A perusal of the order impugned passed by the first respondent vividly discloses that the first respondent herein did not consider at all the contents of the above note submitted by the petitioners on 09.06.2014.

88. The non-consideration of the points raised by the petitioners in the aforesaid note by the first respondent herein cannot be approved by this Court as the hearing given to the petitioners pursuant to the interim orders of this Court cannot be treated as a merely formality. Though, in furtherance of the contentions of the learned Senior Counsel, the grounds mentioned at paragraphs 21(a) to 21(f) have been brought to the consideration of this Court, having regard to the existence of various aspects, touching the technical issues, this Court deems it appropriate to remand this matter for consideration afresh by the first respondent herein by setting aside the impugned order.

89. For the aforesaid reasons, the writ petition is allowed, and the orders impugned dated 12.09.2014, issued by the AFRC/first respondent herein vide Proceedings No.1/AFRC/FF/-UG-ENGG/2013-16 (35) and Lr.No.1/AFRC/FFC/2013-14/173, dated 25.08.2014, are hereby set aside and the matter is remanded to the first respondent for fresh consideration and for passing the orders afresh after giving notice and opportunity of being heard to the petitioners. Petitioners herein are also entitled to furnish additional information, if any. This entire exercise shall be completed within a period of one month from the date of receipt of this order.

<u>SECOND SET OF WRIT PETITIONS:</u>

W.P.Nos.19604, 19718, 19879, 20626, 2025, 19613, 19614, 19616, 19621, 19629, 19634, 19669, 19679, 19684, 19686, 19694, 19708, 19722, 19729, 19730, 19745, 19751, 19757, 19760, 19761, 19763, 19768, 19770, 19791, 19795, 19813, 19833, 19835, 19857, 19877, 19889, 19900, 19908, 19914, 19920, 19927, 19928, 19930, 19931, 19934, 19936, 19938, 19940, 19941, 19950, 19956, 19959, 19960, 19968, 19973, 19981, 20002, 20010, 20029, 20048, 20080, 20092, 20101, 20105, 20108, 20112, 20114, 20143, 20153, 20154, 20169, 20186, 20198, 20199, 20212, 20245, 20246, 20249, 20333, 20338, 20339, 20341, 20358, 20375, 20396, 20459, 20463, 20464, 29469, 20471, 20524, 20652, 20681, 20706, 20741, 20791, 20792, 20794, 20795, 20796, 20866, 20873, 20980, 21293, 21303, 21636, 21645, 21656, 21686, 21822, 21829, 21833, 21994, 22023, 22208, 22224, 22232, 22256, 22320, 22323, 22329, 22333, 22351, 22360, 22508, 22733, 22942, 23033, 23035, 23036, 23180, 23188, 23400, 23478, 23487 23565, 23963, 24095, 24291, 24361, 24427, 24592, 24924 and 29686 of 2013.

91. In this batch of writ petitions, the orders of the AFRC vide proceedings dated 02.07.2013 fixing the fee as notified by the State Government vide G.O.Ms.No.57, Higher Education (EC.A2) Department dated 06.07.2013, are under challenge. This Court, on 26.04.2014, passed the following order:

> "However, the fact remains that for what reasons some of the components contained in the statements furnished by the colleges have been turned down have not been put across for the respective colleges to have a chance or an opportunity to explain to the satisfaction of the AFRC. The decision of the AFRC in that regard, to the extent of denying certain amounts of expenditure perhaps each college can be said to have suffered a handicap. If a proper hearing is accorded to the writ petition colleges, in whose cases some of the claims made by them have been turned down by the AFRC, they would be in a better position to appreciate the reasons behind the claim and then the decision taken thereafter will have a full fledged reflection of proper consideration in respect thereof. Therefore, while putting off the further date of hearing of these cases to 10.07.2014, I direct the AFRC to provide a brief hearing of not exceeding two hours duration to those colleges who make a request to provide such a specific and brief hearing to satisfy the AFRC that the claims, which have not been found favour by the AFRC are legitimate and can be explained to the satisfaction of the AFRC. Therefore, all such colleges/writ petitioners (confined only to the writ petitioners) are provide one week time from today to inform the AFRC either online or through communication sent by registered post that they are desirous of seeking a brief hearing. Upon receipt of such information, a

schedule of hearing may be drawn and communicate it online and also by post to the respective colleges.

Sri C. Sudesh Anand would submit that entire information relating to each of the colleges has been displayed on the website of the AFRC and hence, each of the colleges which are desirous of seeking a brief hearing, can consult the material that is available on the website of the AFRC and then participate in the hearing.

The AFRC would in the meantime, put on their websites the reports made available by the agencies such as Chartered Accountants consulted by it and the expert advice secured from "pay scale consultants" on their domain, if already done.

Accordingly, the AFRC will take appropriate decision and announce the said decision by publishing it on their website and also make the same available along with reports/affidavits to be brought on record of this case file latest by 10.07.2014.

Post on 10.07.2014 for further hearing."

92. In pursuance of the above said orders and in response to the notices issued by the AFRC as many as 93 colleges appeared before the AFRC and subsequently the AFRC passed the orders on 12.09.2014, allowing and disallowing certain claims and out of 93 colleges so appeared only 6 colleges who are the petitioners in W.P.Nos.21229 and 21246 of 2013 and 20770, 38046, 38209 and 40807 of 2014 are before this Court assailing the subsequent orders passed by the AFRC on 12.09.2014. Rest of the colleges have not filed any applications to amend the prayer nor fresh writ petitions, questioning the subsequent orders passed by the AFRC. In the absence of any challenge to the said orders passed by the AFRC, this Court is not inclined to go into the merits and demerits in the present writ petitions.

93. **FIRST SET OF WRIT PETITIONS:**

In the result, W.P.Nos.21229 and 21246 of 2013 and 40770, 38209 and 40807 of 2014 are partly allowed to the extent indicated above and W.P.No.38046 of 2014 is allowed and remanded as indicated above. Miscellaneous petitions, pending if any, shall stand disposed of. There shall be no order as to costs.

94. **SECOND SET OF WRIT PETITIONS**

For the aforesaid reasons, W.P.Nos.19604, 19718, 19879, 20626, 2025, 19613, 19614, 19616, 19621, 19629, 19634, 19669, 19679, 19684, 19686, 19694, 19708, 19722, 19729, 19730, 19745, 19751, 19757, 19760, 19761, 19763, 19768, 19770, 19791, 19795, 19813, 19833, 19835, 19857, 19877, 19889, 19900, 19908, 19914, 19920, 19927, 19928, 19930, 19931, 19934, 19936, 19938, 19940, 19941, 19950, 19956, 19959, 19960, 19968, 19973, 19981, 20002, 20010, 20029, 20048, 20080, 20092, 20101, 20105, 20108, 20112, 20114, 20143, 20153, 20154, 20169, 20186, 20198, 20199, 20212, 20245, 20246, 20249, 20333, 20338, 20339, 20341, 20358, 20375, 20396, 20459, 20463, 20464, 29469, 20471, 20524, 20652, 20681, 20706, 20741, 20791, 20792, 20794, 20795, 20796, 20866, 20873, 20980, 21293, 21303, 21636, 21645, 21656, 21686, 21822, 21829, 21833, 21994, 22023, 22208, 22224, 22232, 22256, 22320, 22323, 22329, 22333, 22351, 22360, 22508, 22733, 22942, 23033, 23035, 23036, 23180, 23188, 23400, 23478, 23487 23565, 23963, 24095, 24291, 24361, 24427, 24592, 24924 and 29686 of 2013 are dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 10.3.2016
grk+da

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.19604, 19718, 19879, 20626, 21229, 21246, 2025, 19613, 19614, 19616, 19621, 19629, 19634, 19669, 19679, 19684, 19686, 19694, 19708, 19722, 19729, 19730, 19745, 19751, 19757, 19760, 19761, 19763, 19768, 19770, 19791, 19795, 19813, 19833, 19835, 19857, 19877, 19889, 19900, 19908, 19914, 19920, 19927, 19928, 19930, 19931, 19934, 19936, 19938, 19940, 19941, 19950, 19956, 19959, 19960, 19968, 19973, 19981, 20002, 20010, 20029, 20048, 20080, 20092, 20101, 20105, 20108, 20112, 20114, 20143, 20153, 20154, 20169, 20186, 20198, 20199, 20212, 20245, 20246, 20249, 20333, 20338, 20339, 20341, 20358, 20375, 20396, 20459, 20463, 20464, 29469, 20471, 20524, 20652, 20681, 20706, 20741, 20791, 20792, 20794, 20795, 20796, 20866, 20873, 20980, 21293, 21303, 21636, 21645, 21656, 21686, 21822, 21829, 21833, 21994, 22023, 22208, 22224, 22232, 22256, 22320, 22323, 22329, 22333, 22351, 22360, 22508, 22733, 22942, 23033, 23035, 23036, 23180, 23188, 23400, 23478, 23487 23565, 23963, 24095, 24291, 24361, 24427, 24592, 24924 and 29686 of 2013 **&** 40770, 38046, 38209 and 40807 of 2014.

Dated: 10-03-2016

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[1] 2012 (3) ALT 686

[2] (2002) 8 SCC 481

[3] (2003) 6 SCC 697

[4] (2005) 6 SCC 537

[5] AIR 1980 SC 1170

[6] AIR 1990 SC 1984

[7] AIR 1999 SC 3185

[8] (2011) 7 SCC 385

[9] (1986) 2 SCC 679

[10] 1981 127 ITR 221(Gauhati)

[11] 2002 (3) ALT 377

[12] 1996 (4) ALD 513

[13] 2002 (5) ALT 15

[14] (2008) 8 SCC 82

[15] (2011) 10 SCC 592

[16] (2011 (7) SCC 179

[17] (2010) 15 SCC 514