

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**WRIT PETITION NOs.28674, 28852, 28861, 28865, 28866,
28872, 29070, 29088, 29515, 31699, 32477, 33025, 33202,
35942, 38529, 38620 and 38706 of 2016**

WP No.28674 of 2016:

Between:

Kits Minorities Welfare and Educational Society,
r/o 56/289, ITI Circle, Akkayapalli, Kadapa,
YSR Kadapa District, rep.by its Secretary,
S.Ali Akbar and others.

.....Petitioners

and

The State of Andhra Pradesh, rep.by its
Principal Secretary, Higher Education Dept.,
Secretariat Buildings, Hyderabad and another.

.....Respondents

JUDGMENT PRONOUNCED ON : 16.12.2016

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
see fair Copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NOs.28674, 28852, 28861, 28865, 28866, 28872, 29070, 29088, 29515, 31699, 32477, 33025, 33202, 35942, 38529, 38620 and 38706 of 2016

% 16.12.2016

W.P.No. 28674 of 2016:

Kits Minorities Welfare and Educational Society,
r/o 56/289, ITI Circle, Akkayapalli, Kadapa,
YSR Kadapa District, rep.by its Secretary,
S.Ali Akbar and others

.... Petitioners

Vs.

\$ The State of Andhra Pradesh, rep.by its
Principal Secretary, Higher Education Dept.,
Secretariat Buildings, Hyderabad and another.

.... Respondents

!Counsel for the petitioners : Smt. A.Gayatri Devi, counsel for
petitioner in WPN0.29515 of 2016;
Sri D.Kasim Saheb, counsel for
Petitioner in WP No.31699 of 2016;
Sri Sitaram Chaparla, counsel
holding for Sri K.Gani Reddy,
counsel on record for petitioners in
rest of the cases.

Counsel for the Respondents: Govt.Pleader for Higher Education
for respondent No.1; and
Sri C.Sudesh Anand, standing
Counsel for Admission & Fee
Regulatory Committee for
respondent no.2 in all the cases.

<Gist :

>Head Note:

? Cases referred:

1. 2013 (3) ALT 686
2. (2003) 6 SCC 697
3. (2004) 5 SCC 583

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NOs.28674, 28852, 28861, 28865, 28866,
28872, 29070, 29088, 29515, 31699, 32477, 33025, 33202,
35942, 38529, 38620 and 38706 of 2016**

COMMON ORDER:

Heard Smt A.Gayatri Devi, learned counsel for petitioner in W.P.No.29515 of 2016, Sri D.Kasim Saheb, learned counsel for petitioner in W.P.No.31699 of 2016, learned counsel Sri Sitaram Chaparla, holding for Sri K.Gani Reddy, counsel for petitioners on record in rest of cases, learned Government Pleader for Higher Education for respondent no.1, and Sri C.Sudesh Anand, learned standing counsel for Admission & Fee Regulatory Committee for respondent no.2 in all the cases.

2. Petitioners in this batch of writ petitions are running educational institutions imparting Bachelor of Education Course of Study. In these writ petitions, petitioners prayed for declaration of the action of the Telangana State Admission & Fee Regulatory Committee (AFRC) in not fixing the fee for the block period 2016-17 to 2018-19 for B.Ed., Course as arbitrary and discriminatory.

3. Sri Seetaram Chaparla contended that the object of Act, 1983 is to prohibit profiteering by the private unaided educational institutions. The Act does not prohibit charging of fee, but only seeks to regulate the fee chargeable by the private unaided educational institutions. The AFRC is a permanent body. Thus, there cannot be a fixed time frame to determine the fee chargeable by private educational institutions and, therefore, AFRC cannot

reject the request of petitioners to fix the fee on the ground that they did not respond within the fixed schedule.

3.1. He submitted that in response to the notification dated 23.09.2015, petitioners have registered on the website of AFRC within the time granted by paying requisite fee. Thereafter, proposals seeking fixation of fee was uploaded by the individual institutions as assessed by them. He would further submit that though the petitioners have registered and uploaded the proposals online by paying requisite fee, due to inadvertent mistake they did not press the freeze button after submission of the data online. Having waited for considerable time, petitioners sought to know from the 2nd respondent the reasons for not calling them for personal hearing and requested the 2nd respondent to fix the date for personal hearing. Petitioners were informed that since they have failed to press the freeze button after submission of the data online, petitioners were not being called for personal hearing.

3.2. The denial to charge fee by private educational institutions would amount to arbitrary exercise of power and illegal denial of the right of private educational institutions to charge fee. He further submitted that only reason for denial is irregularity in uploading the applications. Petitioners institutions have not faced any other disqualification and they have valid affiliation subsisting.

3.3. He would submit that private educational institutions are entitled to charge fee from students. They cannot provide free education. What is regulated by the Act and the Rules is amount of fee that can be charged by an institution and not to completely

deprive charging of fee. If fee cannot be charged, it will have deleterious effect on the managements of these institutions.

4.1. Sri Sudesh Anand appearing for AFRC submitted that in spite of granting sufficient time, petitioners failed to avail the opportunity and issue of fixation of fee having become final and the academic session already commenced, it is not permissible for the petitioners to claim fixation of fee at this stage.

4.2. By referring to the tabulated statement and particulars of time granted for uploading the relevant data, in paragraph-5 of the counter affidavit, he would submit that this discloses that 15 writ petitioners have not complied with the requirements.

4.3. According to learned counsel, on elaborate analysis of the legal position and contentions urged on behalf of the Private Unaided Professional Institutions, the Division Bench of this Court in **Consortium of Engineering Colleges Managements Association (CECMA) and others v. Government of Andhra Pradesh, rep. by its Principal Secretary, Higher Education Department and others**¹ gave declarations on various principles and issued directions. In terms thereof, strict time table is required to be maintained by the AFRC to finalize the fee proposals. These directions are binding on AFRC and the prayers sought by the petitioners, if agreed would amount to disobedience of the said directions and, therefore, their claims cannot be processed at this stage.

¹ 2013 (3) ALT 686

4.4. It is his further case that even though time schedule prescribed was exhausted, as a consequence to the directions issued by this Court in individual cases, the claims were processed. However, in all those cases, the claims were made before finalization of admissions. Once the admissions are finalized and students are admitted, the AFRC cannot undertake exercise of determination of the fee for individual managements. For B.Ed., Courses, admissions were finalized and classes have commenced for the academic year 2016-17.

5. The point for consideration is whether petitioners are entitled to seek fixation of fee chargeable by them for the block period 2016-17 to 2018-19 after the commencement of academic session?

6. As State owned educational institutions are not catering to the growing demand for professional courses, Government allowed the private institutions to start professional courses. However, education is not treated as a commercial activity and profiteering cannot be a concept. But, Private Unaided Professional Educational Institutions were indiscriminately charging the fee from the students in addition to charging of capitation fee. Alarmed by this undesirable practice of private educational institutions, the State legislature has enacted the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983) (for brevity hereinafter referred to as Act, 1983).

7. The primary objective for bringing this enactment is, (1) to curb charging of capitation fee by the private unaided professional

educational institutions; and (2) to regulate the annual fee chargeable by them for the courses of study imparted by them.

7.1. Sections 5 & 7 of the Act, 1983 read as under:

Section 5. Collection of capitation fee prohibited:-

The collection of any capitation fee by any educational institution or by any person who is in-charge of or is responsible for the management of the institution is hereby prohibited.

Section 7: Regulation of fees:

(1) It shall be competent for the Government by 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.

(2) No educational institution shall collect any fees in excess of the fee notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee collected by it.

7.2. Section 5 prohibits collection of capitation fee. Section 7 vests power in the Government to regulate tuition or any other fee that can be levied by an educational institution.

7.3. In exercise of power vested in the Government under Section 15 of the Act, 1983, Government formulated "The A.P. Admission and Fee Regulation Committee (for Professional Courses offered in Private Unaided Professional Institutions) Rules, 2006" (Rules, 2006) and notified vide G.O.Ms.No.6 Higher Education Department, dated 08.01.2007. For the purpose of assessment of fee chargeable by those educational institutions, the Government constituted AFRC. The Rules, 2006 prescribe detailed procedure to fix fee by the AFRC. Based on the parameters fixed in the Rules, for block period of three years, the AFRC requires determining the fee chargeable by the educational institutions. Fee chargeable shall be revised after the interval of every three years, after observing due procedures. Based on the recommendations of AFRC, the State notifies the fee determined and once such notification is issued,

the concerned college managements are entitled to charge only the fee as determined for the next block period of three years.

8. Petitioners are unaided private educational institutions. The annual fee and other fees charged by the petitioners on the students shall form the corpus for running the institutions, which include maintenance of buildings, teaching faculty, non-teaching staff, provision of amenities to the students and provision of infrastructure and maintenance thereof.

9. On completion of earlier block period, the determination of fee for the block period from 2016-17 to 2018-19 is due. The process is set in motion by the AFRC by issuing notification on 23.09.2015, calling upon all the professional educational institutions to submit relevant data relating to the year 2014-15 together with their Audited Financial Statements for the years 2013-14 and 2014-15. Petitioners' applications were not processed on the ground that they did not furnish the required information in spite of granting sufficient time. Since assessment of fee chargeable by petitioners was not made by AFRC on the ground that petitioners have not responded to the notification as per the required parameters for such assessment, fee chargeable by them is not notified under Section 7 of the Act, 1983. As fee chargeable is not determined under Section 7 of the Act, 1983, petitioners are not entitled to charge any fee for the entire block period.

10. The only objection by the AFRC to accept the request of the petitioners for determination of fee for the block period from 2016-17 to 2018-19 is that AFRC is bound by the directions issued by the Division Bench of this Court in **Consortium of Engineering**

Colleges Managements Association and in view of declarations and directions of the Division Bench, it is not permissible to accept the claim for fixation of fee after the academic session has commenced.

11.1. Batch of cases were filed before this Court challenging the provisions of Act, 1983, Rules 2006, Regulations, Government Orders and the fee structure notification issued by the Government for private unaided educational institutions for the academic year 2010-11 and 2012-13. Petitioners sought fixation of uniform fee for all seats without discriminating the categories 'A', & 'B'; to permit the petitioners to collect fee as proposed by them and to direct the respondents to approve the fee structure proposed by each of them. The Division Bench extensively considered the various issues concerning regulation of fee chargeable by the private unaided educational institutions by the State and on detailed analysis of the precedent decisions and various statutory provisions, upheld the Act, 1983 and gave several declarations and directions.

11.2. The primary challenge in the batch of writ petitions considered by the Division Bench was, the competence of Government to determine and fix the fee chargeable by the private educational institutions, contending that such determination trenches upon the independence of private unaided educational institutions and curtailing their right to charge appropriate fee from the students. This challenge was repelled and directions were issued.

11.3. The declarations and directions contained in para-150 of the judgment, to the extent relevant, read as under:

“(i) Section-7 of the Capitation Fee Act (insofar as Regulations issued thereunder pertain to private unaided educational institutions - whether minority or non-minority), enables issue of Regulation of fee structure proposed by an educational institution, only insofar as modification or alteration of the proposed fee structure is to ensure that the institution does not indulge in profiteering or collection of capitation fee. Section - 7 does not enable the State itself to fix and notify a fee structure; that would impermissibly trench upon the operational autonomy of self-financing educational institution/s;

(ii) Section-7 enacts a power coupled with a corresponding obligation on the State. Therefore, appropriate Regulations must be issued and executed to ensure oversight and excision of profiteering or collection of capitation fee by every private unaided educational institution. Consequently, neither the State nor its instrumentality - the AFRC, may recommend or notify a fee structure or permit collection of fee by any unaided private educational institution that does not submit its fee proposals together with the relevant data (of income and expenditure, developmental needs and audited books of accounts, for verification and scrutiny;

(viii) The AFRC shall specify in the notification to be issued (calling for fee proposals from private unaided educational institutions) that an institution which is unresponsive or does not submit statements of income and expenditure, audited balance sheets, and requirements for developmental needs for the immediately preceding year; particulars of expenditure incurred on salaries and infrastructure and other particulars as may be specified (with supporting bills, vouchers or receipts, etc.), shall not be permitted to collect any fee. While notifying a fee structure, exercising power under Section - 7 of the Capitation Fee Act, the State shall record a similar stipulation;

(ix) The AFRC is required to recommend and the State Government notify institution-specific fee structure and for the generic variety of institutions offering different courses of study. Therefore, the AFRC shall issue notification(s) calling for fee proposals well-in-advance of commencement of the academic year (whether for fixing block fee structure, applicable for three academic years or revising fee structure already notified for any particular academic year), by the first week of December preceding the relevant academic year for which the fee structure notification or revision is to be issued by the State Government;

(xiv) The State Government shall issue the fee structure notifications by the 1st week of March, preceding the academic year or block of academic years, as the case may be, for which the fee structure notifications are intended to apply;

(xvi) For the academic years 2010-11, 2011-12 & 2012-13, the AFRC shall now consider afresh the fee structure proposals submitted by those private educational institutions which have responded (to its notification dated 27-04-2010) and forwarded fee structure proposals together with the particulars spelt out by the AFRC in the annexure to the said notification (either wholly or substantially) and shall verify the same for identifying whether the proposals incorporate elements of profiteering

or capitation fee (institution and course-wise). If any further particulars, documents, registers or data are required, the AFRC may issue a written notice to the concerned educational institution to furnish the specified particulars, documents, registers or data required by it. After scrutiny and verification of the material available, the AFRC shall draw-up a report containing its recommendations on the fee structure for each course of study in respect of each responsive institution; duly incorporating in its report the seat-wise cost in respect of each course of study in specific institutions; recommending a uniform fee for 'A' & 'B' category students. The AFRC may however recommend a higher fee for 15% of the sanctioned intake earmarked for NRI/NRI category students. This exercise shall be in accordance with the observations and directions in this judgment.

(xvii) ***The State shall notify fee structure proposals afresh for the academic years 2010-11, 2011-12 & 2012-13 after due consideration of the recommendations of the AFRC and in the light of the principles and directions contained in this judgment.***

11.4. The declarations and directions issued by the Division Bench have to be understood in the light of the contentions urged in the batch of writ petitions and issues considered by the Division Bench. In order to regulate the determination of fee, Division Bench desired that the process for such determination should be commenced well in advance and be completed before the commencement of the academic year and, therefore, directed the AFRC to issue notification by first week of December and to complete the process expeditiously. The Government was also directed to issue notification by first week of March. These directions are issued so that students would know the fee charged by the respective private educational institutions by the time the counseling process is taken up and, therefore, depending on their capacity and viability, they can opt to respective educational institutions. Not adhering to the said schedule would mean that the students are deprived of knowing the fee structure when the counseling for admissions takes place.

11.5. A cumulative reading of the directions issued by the Division Bench would clearly show that Division Bench was only dealing with competence of State to determine fee chargeable by the private unaided educational institutions. The Division Bench ordained AFRC to follow time discipline to determine the fee chargeable by the private unaided educational institutions, so that students would know the fee payable by them if admission is secured in a particular institute. However, the time schedule prescribed is not water tight so as to exclude any claim for determination after a particular event, as sought to be projected by AFRC.

11.6. It is also pertinent to note that in the cases before Division Bench also, one of the issues was determination of fee for the block period 2010-11 to 2012-13. The judgment was rendered on 29.10.2011. The Division Bench directed determination of fee for the said block period by giving AFRC three months time, which would mean completion of exercise by end of January, 2012, by which time one academic year was already over and second academic year was in the middle of the session.

12. Though heavy reliance is placed on the directions issued by Division Bench to contend that the AFRC is bound by the said directions and, therefore, the question of acceptance of fee chargeable by the petitioners would be violating the said order, but the AFRC observed the schedule more in breach. No notification was issued by the Government fixing the fee by first week of March, 2016 and in fact, the issue for determination continued till August, 2016. Though the AFRC admits the claims made in

August, 2016 were also considered, it sought to introduce classification on consideration of delayed claims, as claims processed prior to completion of admission process as one class and the claims of institutions which were not processed by the time admissions are finalized as second class. Even with reference to first class, the defense taken by the AFRC for considering belated claims in August, 2016 is that they were considered in compliance of the directions issued by the High Court. In other words, according to the AFRC, ordinarily the AFRC is bound by the directions issued by the Division Bench in **Consortium of Engineering Colleges Managements Association**, but is accepting the request for determination of fee based on further directions issued by the Court in individual cases. They sought to justify such consideration also on the ground that admission process was not completed.

13. Private educational institutions are entitled to levy fee from the students enrolled with them. Imparting of education in private unaided educational institutions is not free. However, they can neither collect capitation fee nor collect fee more than the fee fixed by Government. The object of the Act, 1983 is to prohibit charging of capitation fee. Any fee collected in excess of fee prescribed under Section 7, would amount to capitation fee. In other words, as defined in Section 2(b) of the Act, what is prohibited is collection of fee in excess of fee prescribed under Section 7 of the Act. Section 7, as noticed above, vests power in the Government to regulate the tuition fee or any other fee that may be levied and collected by the educational institutions.

14. In order to arrive at correct fee that can be charged by these private unaided educational institutions, which established various professional colleges, such as, engineering, medical, agriculture, education etc., the AFRC undertakes detailed exercise and on due consideration of the requisition by the respective educational institutions, based on the parameters already fixed, determines the fee chargeable by them and recommends to the Government accordingly. Based on the satisfaction of the AFRC on various parameters, AFRC can recommend increase in the fee that is charged in the earlier block period or may reduce, if the concerned institution does not meet the parameters. Based on the said recommendations, Government notifies the fee chargeable by the private educational institutions.

15. What is regulated by the government is quantum of fee chargeable by unaided private professional Educational institutions. They have to charge fee as fixed by the Government, and no discretion is vested in them to charge fee as they desire. It is thus deducible from the scheme of the Act, 1983, Rules, 2006 and the functioning of AFRC that, it intends only to regulate the determination of fee chargeable by the private unaided professional educational institutions, but there is no prohibition on charging the fee. It is nobody's case that private educational institutions can be compelled to offer courses without charging fee.

16. The only issue is, whether time schedule fixed by AFRC is so inflexible that once a private unaided educational institution has not participated in the fee determination process in pursuance to the notification issued by the AFRC calling for participation in fee

determination process, it cannot seek for such fixation and has to offer course of study free of charge and forfeits its right to seek fee determination for the entire block period. Though it is not specifically contended by the AFRC, it is appropriate to notice and deal with Rule 3 (vii) & (viii) of Rules, 2013. Rule 3(vii) vests power in the AFRC to determine its own procedure. Rule 3(viii) vests power in the AFRC to require private unaided professional educational institutions to furnish information by a prescribed date. However, these provisions do not hold that after a particular date, private unaided professional educational institutions cannot request for fee determination. These provisions have to be understood in the overall context of the statutory scheme. The statutory scheme is to prohibit capitation fee and impose cap on charge of fee from students, while preserving right of private unaided professional educational institutions to charge fee from students admitted to their institutions. On cumulative reading of the provisions of the Act, 1983, the Rules, 2006 and the decision of Division Bench of this court in **Consortium of Engineering Colleges Managements Association**, I am of the considered opinion that in the statutory framework, there is no express or implied bar against request to determine fee chargeable even after admission process is over and academic session commenced.

17. At this stage, it is pertinent to note that Division Bench extensively considered the decisions of Supreme Court in **Islamic Academy of Education and another v. State of Karnataka and others** [(2003) 6 SCC 697] and **Modern School v. Union of India and others** [(2004) 5 SCC 583], in addition to several other decisions, where Supreme Court discussed the scope of autonomy

of private unaided educational institutions, and recorded its conclusions in paragraph 146.

17.1. The relevant paragraphs in **Consortium of Engineering Colleges Managements Association** read as under:

19. On the issue : whether educational institutions are entitled to fix their own fee structure and the contours of this freedom, the **Islamic Academy of Education's** case (supra), majority declared:

A) No rigid fee structure can be fixed by the Government. Each institution must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate a surplus which must be for the betterment and growth of that institution. The decision on the fee to be charged must necessarily be left to the private educational institutions that do not seek and are not dependent upon any funds from the Government. Each institution could have its own fee structure. The fee structure for each institution must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc.,

20. The architecture of the operational autonomy of un-aided private educational institutions in the matter of fee structure and the permissible degree of regulation thereupon again came to be considered in **Modern School v. Union of India and others 2004(4) ALD 50 (SC) = (2004) 5 SCC 583**. In **Modern School's** case (supra), the Supreme Court:

(a) reiterated the governing principles and contours of academic and managerial autonomy of unaided private educational institutions including as regards the fee structure, as set out in TMA PAI Foundation's case (supra) and Islamic Academy of Education's case (supra) .

146. In the light of the principles evolving from **TMA Pai Foundation's** case (supra) to **PA Inamdar's** case (supra) and to sustain the provisions of Section – 7 and Rule – 4, we consider it appropriate to read down these provisions; (i) as enabling the AFRC to consider institution specific fee proposals, course-wise on the bases of the parameters indicated in clauses (a) to (e) and (g) of sub-rule – (iv) of Rule – 4; (ii) to analyze fee proposals to verify whether they incorporate or camouflage any profiteering or capitation fee; and (iii) to approve, modify or alter the fee structure proposed by each institution, only for the purpose of excising pro tanto any element of profiteering/capitation fee. If fee proposals of an institution, duly substantiated by relevant data, audited accounts and balance sheets, do not incorporate elements of profiteering or capitation fee (on analyses of the proposals within the contours of the guidelines in Rule-4), the AFRC must accept the same. **The AFRC cannot transgress the law declared in TMA Pai Foundation's case (supra), Islamic Academy of Education's case (supra) and PA Inamdar's case (supra) (that every institution enjoys the operational autonomy to devise its own fee structure) by resorting to a misconceived mission, of formulating a common fee structure for private unaided educational institutions.** (emphasis supplied)

18. In the long line of precedent decisions, Supreme Court mandated that education should not become a commercial activity and unscrupulous private managements do not exploit students by charging high annual fee and capitation fee. Thus, while preserving the right of private unaided educational institutions to fix their fee, power to impose a cap on fee chargeable by them is conceded to the State. The aim and objective is to ensure that private managements do not indulge in profiteering. The Act, 1983 and the Rules, 2006 intend to give effect to this mandamus of the Supreme Court. The Division Bench has also emphasized the need to regulate fee chargeable by private unaided educational institutions, while recognizing their right to charge fee. The Division Bench has not ruled that after a deadline, no private educational institution is permitted to seek determination of fee by AFRC and they should impart course of study free of cost, as sought to be projected by AFRC.

19. In the instant case, since the petitioners applications were not processed and fee is not determined, petitioners cannot charge fee from the students even though the students are admitted and course of study is imparted to them and no such fee can be charged by them for the block period. This would mean that the private unaided educational institutions have to administer the B.Ed., course without charging fee. This is not the intendment of the Act, 1983 and Rules, 2006. Neither the Supreme Court nor this Court ruled in the manner in which AFRC understood and applied the fee fixation system so far. It is not in dispute that the only source for these private unaided educational institutions to run the

institutions is from out of money collected from the students as fee. Their right to collect fee is recognized in **Islamic Academy of Education** and in later decisions. If fee is not collected by these institutions, they cannot fulfill the financial obligations towards various expenditure required to be incurred by them, such as, pay and allowances to the teaching and non-teaching staff, other administrative expenses and further development of infrastructure. Such a course may choke the private professional educational institutions. That is not the dicta in the long line of precedents.

20. In the instant case, even according to AFRC, relevant data was not uploaded /though uploaded the relevant data within the time granted by paying requisite fee, but there were some deficiencies in uploading the data and as required by the website, after the data was uploaded individual institutions did not press the freeze button. Further, objection of AFRC is that in spite of granting sufficient time and requiring these institutions to upload the data, they did not avail the same and, therefore, at this stage they cannot be permitted to determine the fee, more so when the academic session already commenced.

21. As noticed herein above, on a close reading of the scheme of the Rules, it is apparent that no time limit is imposed on request for fee determination. Rules only require commencement of process. Equity and justice also ordain that institutions must be afforded opportunity to seek fixation of fee. I am of the considered opinion that petitioner institutions are entitled to request AFRC to determine fee that they can charge from students admitted to their institutions even after the commencement of academic session.

22. However, at the same time, it is necessary to take into consideration the interest of students, who have joined in these institutions. There is no gain saying that petitioners are all established institutions and are conscious of the schedule followed by the AFRC, but did not properly respond in spite of granting sufficient opportunity. Present situation is thrust upon them by their own conduct and they have to blame themselves for this imbroglio. It is seen that in spite of giving sufficient opportunity, petitioners have not furnished the relevant information as required by the AFRC, whereas several other institutions have responded and got the fee fixed. It is not in dispute that petitioners were not vigilant when the issue of fee determination was under active consideration of AFRC, allowed admission process to be completed and academic session commenced. The basic idea in completing exercise of fee determination prior to commencement of admission process is to enable the students to know which institution is charging what fees, so that, in a given situation depending on his financial viability, a student may choose a particular institution or may opt out of an institution.

23. The fee fixation is for each institution depending on various parameters stipulated in the Rules and the precedent decisions. The AFRC already fixed the fee applicable to B.Ed., course imparted by various private unaided educational institutions. The students admitted to petitioner institutions were not aware as to what fee was payable by them. Now if these institutions are allowed fixation of fee as claimed by them, which may be higher compared to other institutions, certainly hardship would be caused

to these students. Thus, while directing AFRC to determine the fee to all the petitioner institutions for the block period 2016-17 to 2018-19, these institutions have to be suitably penalized and interest of students need to be protected. There is a need to balance competing interests.

24. In the peculiar facts of these cases and having regard to the above discussion, while disposing of the writ petitions, to meet the ends of justice, following directions are issued:

(i) The institutions shall submit their proposals to AFRC for fixation of fee for the block period 2016-17 to 2018-19 within a period of two weeks from the date of receipt of copy of this order;

(ii) AFRC shall consider their request subject to compliance of all statutory requirements as prescribed in Rules, 2006 and guidelines formulated by the AFRC;

(iii) On such compliance, if fee determined by AFRC is higher than the minimum fee fixed to any other institution imparting B.Ed. Course in the academic year 2016-17, these petitioners shall collect only the said fee or the fee collected by them in the previous academic year, whichever is less;

(iv) It is permissible for the AFRC to levy penalty on the petitioners for not complying with the earlier directions and requesting fee fixation after the commencement of academic session;

(v) AFRC shall indicate the penalty that can be imposed on petitioners after the proposals are received from the petitioners and while processing the proposals;

(vi) However, along with their applications, each of the petitioners shall pay an amount of Rs.50,000/- (Rupees fifty thousand only) in addition to processing fee payable and this amount shall be adjusted once the AFRC determines the penalty that can be imposed on the petitioners;

(vii) After the fee fixation is finalized and AFRC determines the fee and approved by the Government, sufficient time should be afforded to the students to pay their fee. Students should be given at least three installments for payment of fee for the academic year 2016-17; and

(viii) The payment of annual fee shall not be linked to appearance of students in the examinations conducted by the University and students should be permitted to write exams subject to their eligibility as determined by the University.

Miscellaneous petitions if any pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 16.12.2016
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HON'BLE SRI JUSTICE P.NAVEEN RAO



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