IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10927 OF 2017

Sucheta Das Das and Ors. ....Petitioners

V/s.

The State of Maharashtra
and Ors. ....Respondents

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Mr. Madhav J. Jamdar a/w. Mr. Kunal Naik, Advocate for the petitioners.

Mr. C.P. Yadav, AGP for respondents no.1.

Mrs. Manisha Jagtap a/w. Mr. Akshay Kapadia i/by. J. Shekhar and Co.,, Advocate for respondent no.2.

Mr. Vineet B. Naik, Senior Advocate a/w. Mr. Vaibhav Sugdare and Mr. Amit Mehta i/by. Mahimtura & Co., Advocate for respondent no.3.

CORAM :- B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :- 29TH NOVEMBER, 2017.

P.C. :-

1. The petitioners have filed the present petition challenging the order passed by respondent no.2, Committee dated 10th March, 2017 vide which the fees payable by the petitioner were accepted for the academic year 2016-17 for M.B.B.S. Course at Rs.5,00,000/- p.a. and by subsequent order dated 4th May, 2017 passed by the same authority fixed the fees at the rate of Rs.7,25,000/- per year.

2. Respondent no.3, Medical College has been established for the first time in the Academic Year 2015-16. The petitioners were admitted in the second batch of the said College i.e. for Academic Year 2016-17. It appears that, at the time of admission, the fees payable by the students of the respondent no.3, College was yet to be determined by respondent no.2 and as such, respondent no.3 had initially asked the students to deposit an amount of Rs.4,09,000/-. However, all the students were put on notice that, the said fees was not final and the fees, as determined by respondent no.2, would have to be paid by

the students. Accordingly, an Undertaking of the students, as well as, their parents on an Affidavit before the Executive Magistrate was also taken on record by respondent no.3, College.

3. It appears that, subsequently respondent no.2, Committee determined the fees payable at the rate of Rs.5,00,000/- per student. However, the respondent no.3, finding that the determination of fees was not taking into consideration various factors, filed an application for review before the respondent no.2. The said review was allowed and the fees payable was determined at the rate of Rs.7,25,000/-. It further appears that the petitioners had also made a complaint to respondent no.2, Committee regarding the erroneous fixation of fees. It was their contention that, the number of faculties as shown were not available. It was their further contention that, expenditure as shown by respondent no.3 was not the actual expenditure.

4. It appears that, accordingly a fact finding

Committee came to be appointed by respondent no.2, consisting of two members of the Committee, as well as, the Joint Director of Medical Education and Research. The fact finding Committee inspected the premises of respondent no.3, College, also inspected its record and came to the conclusion that, there was no substance in the allegations of the petitioners. Being aggrieved by the fixation of fees at the rate of Rs.5,00,000/- initially and thereafter Rs.7,25,000/-, the petitioners have approached this Court.

5. Mr. Jamdar, the Learned Counsel appearing on behalf of the petitioner submits that, when the petitioners were admitted in respondent no.4, College, the impression given to the petitioners was that, they would be required only to pay Rs.4,09,000/-. He submits that, though there was notice on website that, there would be increase of fees, it was informed that the same would be increased only by 10% or so. Mr. Jamdar further submits that, respondent no.2, has not taken into consideration, the

relevant Rules while determining the fees. He submits that, the denominator was erroneously applied. He, therefore submits that, the increase in the fees is liable to be set aside and it needs to be declared, that the fee payable is only at the rate of Rs.4,09,000/-. He submits that, at the time when the petitioners were seeking admission, there were various other Colleges having a better reputation, wherein the petitioners could have taken admission, however, since the fees in the present College were shown in the range of Rs.4,00,000/-, the petitioners preferred to take admission in this College.

6. Ms. Jagtap, Learned Counsel appearing on behalf of respondent no.2, submits that, respondent no.2 which consists of body of experts after taking into consideration all the relevant factors, has determined the fees. She therefore submits that, no interference is warranted in the present petition.

7. Mr. Naik, Learned Senior Counsel also supports the decision of the Committee. He submits that, on the

contrary, the fees determined is on a lesser side, in as much as, the allowances for the deficit of hospital expenses has been disallowed by the Committee.

8. The scope of interference, while exercising the powers of judicial review under Article 226 of the Constitution of India, is very limited. Unless it is found that, the view taken by the Tribunal is by taking into consideration irrelevant material and by ignoring the relevant material and unless it is found that the order suffers from irrationality, arbitrariness or malafide exercise of powers, it would not be permissible for this Court to interfere with the same. A reliance on this aspect can be placed on the judgment of the Apex Court in the case of **Tata Cellular v/s. Union of India, reported in 1994 (6) SCC page 651**.

9. The respondent no.2, Committee has been established under the provisions of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015

(hereinafter referred to as "the said Act"). The purpose of establishing the said Committee is to ensure that the private Management does not resort to charging exorbitant fees from the students and indulging into undue profitary. The Fees Regulating Authority is constituted under Sub-Section 3 of Section 11 of the said Act. It would relevant to refer to sub-section 3 of Section 11 of the said Act, which reads thus :-

"(3) The Authority shall consist of,-

(a)	A retired Judge of High Court or retired officer of the Government of the rank of Chief Secretary	.. Chairperson
(b)	An eminent educationist who has worked as Vice-Chancellor of University	.. Member
(c)	A Chartered Accountant of repute who is a Member of the Institute of Chartered Accountants of India, for a period of not less than ten years	.. Member
(d)	A Cost Accountant of repute who is a Member of the Institute of Cost and Works Accountants of India for a period of not less than ten years, or a financial expert of repute	.. Member
(e)	An expert of repute from the field of Professional Education	.. Member
(f)	The Registrar, Maharashtra University of Health Sciences, Nashik	.. Member

(g)	The Director of Technical Education	.. Member
(h)	The Director of Higher Education	.. Member
(i)	The Member-Secretary of the Maharashtra Council of Agricultural Education and Research	.. Member
(j)	An Officer of the State Government not below the rank of Joint Secretary	.. Secretary

10. It could thus be seen that, respondent no.2 consists of a Retired Judge of this Court or an Retired Officer of the Government of the rank of Chief Secretary, an eminent educationist who has worked as Vice-Chancellor of University, a Chartered Accountant of repute who is a Member of the Institute of Chartered Accountants of India, a Cost Accountant of repute who is a Member of the Institute of Cost and Works Accountants of India, an expert of repute from the field of Professional Education, the Registrar, Maharashtra University of Health Sciences, Nashik, the Director of Technical Education and the Director of Higher Education, Member-Secretary of the Maharashtra Council of Agricultural Education and Research, and an officer of the State

Government not below the rank of Joint Secretary. It is not in dispute that, respondent no.2 at the moment is chaired by a Retired Judge of this Court. It would also be relevant to refer to Section 15 of the said Act, which reads thus :

> "15. The Fees Regulating Authority shall determine the reasonableness of the fee structure proposed by every unaided institution, in respect of each professional course or group of courses, considering the following factors :-
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> (i)the location (Urban or Rural) of the institution;
> (ii)the cost of land and building;
> (iii)minimum mandatorily required infrastructure or facilities, as specified by the appropriate authority;
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> (iv)the expenditure proposed or incurred on the facilities and amenities that are not mandatory as per the guidelines of the appropriate authority.
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> (v)available number of qualified regularly appointed teaching and non-teaching staff as per the prescribed norms of the appropriate authority ;
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> (vi)expenses on the prescribed salaries of the teaching and non-teaching staff;
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> (vii)the expenditure on administration and the maintenance;
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> (viii)the reasonable revenue surplus required for growth and development of the institution with

particular reference to the professional course conducted by it, which shall not be more than fifteen per cent of educational revenue in the respective professional course or group of courses;

(ix)facilities provided by the Government, such as lease of land at concessional rates and use of the infrastructure, for the conduct of the professional courses;

(x) depreciation or contribution for asset replacement fund;

(xi) rent of building or usage charges;

(xii) incentives for equality of enhancement, such as-

(a)faculty strength with Ph.D qualifications and Research publications in International Journals and Patent filed by the institution;

(b)faculty training and placement of students;

(c)accreditation of eligible programmes or the Institute such as NBA, NABET, NAAC, etc;

(xiii) rate of inflation;

(xiv) any other relevant factor, a may be determined by the Fees Regulating Authority."

11. It could thus be seen that, while determining the fees, various factors are required to be taken into

consideration by the Committee and it is not left to the sweet will of the Committee as to what should be the fees determined.

12. We had, vide our order dated 9th November, 2017 directed respondent no.2, to file an Affidavit explaining as to what principles were applied while determining the fees structure. Accordingly, an Affidavit is filed on behalf of respondent no.2, Committee, of Shri. Anil Shrikrishna Andhare. It would be relevant to refer to the following part of the Affidavit filed by Shri. Andhare;

> "6. I say that to determine the reasonableness of the fees for the proposed academic year, the audited accounts i.e. income and expenditure account and the balance sheet for the financial year i.e. commencing from 1st of April and ending with 31st March is required to be considered."
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> 7. I say that to ascertain the fees amount the formula which is required to be applied is the numerator as total expenditure consisting of variable and fixed costs as per the norms and dividing it by denominator which is equal to the sanctioned capacity of the students and thereafter the actual amount of fees per student is worked out.
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> 8. I say that the total expenditure consisting

of variable and fixed costs is based upon the financial year being audited income and expenditure and balance sheet of the course. The denominator of number of students, in order to arrive at per student fees would have to be total number of students during the financial year only. If number of students strength is taken at a figure of possible students after two years would give totally incorrect picture.

9. I say and submit that the audited statements being income and expenditure and balance sheet before Respondent no.2, was in respect of the financial year 2015-2016, which commenced from 1st April, 2015 to 31st March, 2016. The numerator was considered of the total expenditure consisting of variable and fixed cost of the financial year 2015-2016 and the denominator was considered to be total sanctioned strength of the students studying in the college during the financial year 2015-2016. Based on the numerator and denominator of number of students during financial year 2015-2016, per student fees would have to be ascertained. The fees determined based on the financial year would only be relevant and have to be co-related to the subsequent academic years to determine reasonable fees for the subsequent academic years.

10. I say that Respondent no.3 started its first academic year in the year 2015-2016 with a sanctioned capacity of 100 students. On 10th March, 2017 the Respondent no.2 determined the reasonable fees for the academic year 2016-17, by taking into consideration the expenditure of Rs.16,10,00,174 approved for the financial year 2015-2016 (first year of the college) and dividing the same by the strength of students. In the

financial 2015-2016, the Respondent no.3 were having 100 students, being the first year after coming into existence. However Respondent no.2 inadvertently, divided the expenditure by 300 students instead of considering the actual capacity of 100 students.

11. I say and submit that thereafter Respondent no.3 filed review against the order dated 10th March, 2017 pointing out that there was an error in choosing denominator. It was contended that in the financial year 2015-2016 students capacity was 100 and for the Academic year 2016-2017 it was 200. The respondent no.2 keeping in view larger interest of students applied denominator of 200, although, the actual strength of student in the academic year 2015-2016 was 100.

12. I say that the expenditure determined by the Respondent no.2 were Rs.16,10,00174/- whch is the numerator for the financial year 2015-2016 and the same was divided amongst 200 students and accordingly arrived at approximately Rs.800,000/- per student. However, it was reduced to RS.7,75,000 for the academic year 2017-18 and Rs.7,25,000 for the academic year 2016-17.

13. Incidentally I say and submit that while review application was being heard and it was noticed that entire amount towards hospital deficit was disallowed. Admittedly, the management had shown hospital deficit of Rs.3,42,34,606/-. This was disallowed since year of establishment of the hospital was shown as 1995. As per norms after 8 years of establishment of the hospital, no such deficit is allowed. Except 'ipse dixit' of the

representative of the management there was no proof to show that hospital was newly constructed. For this reason and as fees calculated was reasonable, and hence the Respondent no.2 did not consider it necessary to probe in to this aspect. I say and submit that the Respondent no.2 considers it necessary to bring to the notice of this Hon'ble Court that on the representation of students of the said college particularly, belonging to 2016-17 batch fact finding committee was appointed. The committee consisting of two Members of the Respondent no.2 and Dr. Wakode Joint Director Medical Education visited the college. According to them 500 bedded hospital as per IMC norms was recently established."

13. It could thus be seen that, respondent no.2, Committee which consists of various experts, upon taking into consideration the various factors which are required to be taken into consideration in view of Section 15 of the said Act, has determined the fees. The perusal of the Affidavit would reveal that, it cannot be said that the procedure as prescribed by the Committee was not in accordance with the provisions of the Statute.

14. Not only that, but acting on the complaint of some of the parents, respondent no.2 had also constituted a Committee consisting of two members, as well as, the

Joint Director of Medical Education and Research to consider the allegations that the number of faculties shown was not correct, that the expenditure shown was not correct etc. The fact finding Committee has visited the College and also inspected the records. The Committee vide its report dated 2nd August, 2017 has found no substance in the allegations of the petitioner. The perusal of the Affidavit filed by Anil Shrikrishna Andhare would further reveal that, though the expenditure arrived at by the Members of the Committee would entitle, respondent no.3, College to charge the fees at Rs.8,00,000/- p.a. per student, but Committee has determined the same at the rate of Rs.7,75,000/- for the Academic year 2017-18 and Rs.7,25,000/- for the Academic year 2016-17. It would further be relevant to note that the entire amount towards hospital deficit i.e. Rs.3,42,34,606/- was disallowed by the Committee. It could thus be seen that, the procedure adopted by the Committee cannot be faulted with.

15. By now, it is a settled position of law that the scope of judicial review while examining the order of the Tribunal is very limited. Unless, the view taken by the Learned Tribunal is found to be perverse or totally erroneous, it would not be permissible for this Court to interfere with the same. As already discussed hereinabove, it cannot be said that the decision of the Committee is vitiated by taking into consideration irrelevant material and by ignoring the relevant material. The decision has been taken on the basis of the relevant material. The other ground on which, the order could have been challenged was the malafide exercise of powers. However, there are no allegations with regard to the same made in the petition. No doubt the grievance of the petitioner that, they would be required to pay Rs.7,25,000/- as against Rs.4,09,000/- which they were required to pay at the time of admission cannot be said to be totally without substance. However, the petitioners were well aware that, the final fees would be determined

by respondent no.2 and they would be required to pay the fees as determined by respondent no.2. Not only that, but the students and their parents have also given an Undertaking on an Affidavit to that effect. If the petitioners have chosen to take a risk that cannot be a ground for setting aside the order, that is otherwise found to be valid in law.

16. In that view of the matter, we do not find that a case is made out for interference under the extra-ordinary jurisdiction of this Court. The petition is found to be without substance and is thus dismissed.

17. Taking into consideration the interest of the students and the fact that the students were required to pay the fees by 30th November, 2017 and further that the petitioner were bonafidely litigating before this Court, we find that, it would be appropriate to direct respondent no.3 to permit the petitioners to deposit their fees upto 30th December, 2017. It is further directed that, no coercive steps be taken against any of the student on

account of non-payment of balance fees till 30th December, 2017.

(SANDEEP K. SHINDE, J) **(B.R. GAVAI, J)**