HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.7596 of 2017

ORDER:

In this Writ Petition, petitioners challenge the action of the Telangana Admission and Fee Regulatory Committee (2nd respondent) in recommending Rs.97,000/- per annum as tuition fee for the Vasavi College of Engineering (2nd petitioner), which is run by the 1st petitioner-society, for the block period 2016-17 to 2018-19 for the B.E.,/B.Tech., courses in its meeting held on 06-01-2017 and the consequential G.O.Ms.No.3 Higher Education (TE/A2) Department dt.04-02-2017, instead of Rs.1,60,000/- sought by the petitioners.

2. The 1st petitioner is a Society registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 F, the 2nd petitioner is an educational institution imparting education in B.E.,/B.Tech., courses run by the 1st petitioner, and the 3rd petitioner is a Member of the 1st petitioner society.

3. The 1st respondent is the State of Telangana represented by its Principal Secretary, the 2nd respondent is the Telangana Admissions and Fee Regulatory Committee (for short, 'the TAFRC'), the 3rd respondent is the Telangana State Council of Higher Education and the 4th respondent is the Convenor, Telangana Engineering, Agriculture and Medical Common Entrance Test, Jawaharlal Nehru Technological University, Hyderabad.

4. The subject matter of this Writ Petition is the recommendation by the TAFRC of Rs.97,000/- as tuition fee for the B.E.,/B.Tech., courses in the 2nd petitioner institution for the block period 2016-17 to 2018-19 and the consequential G.O.Ms.No.3 dt.04-02-2017 issued by the 1st respondent under Section 9 of the Telangana State Unaided Non-minority/Minority Professional Institution (Regulation of Admissions into Undergraduate and Doctor of Pharmacy Professional Courses through Common Entrance Test) Rules, 2011 as adopted by the State of Telangana notifying the said tuition fee.

THE EARLIER WRIT PETITION AND REMAND TO THE TAFRC

5. The TAFRC made the said recommendation pursuant to an order dt.14-11-2016 in W.P.No.22037 of 2016 whereunder this Court had set aside an earlier recommendation of Rs.86,000/- towards tuition fee for the block period 2016-17 to 2018-19 made by it and which was notified vide G.O.Ms.No.21 Higher Education Department dt.04-07-2016 of the 1st respondent instead of Rs.1,60,000/- sought by the petitioners and remitted the matter back to the TAFRC for reconsideration.

6. In the said order, this Court considered the correctness of the reasons furnished by the TAFRC for the above fixation of Rs.86,000/- contained in its order dt.22-10-2016 (which was furnished after the said W.P. was filed).

7. This Court had considered and followed the judgments of the Supreme Court and this Court in **Cochin University of Science and Technology and another Vs. Thomas P.John**[1], **Consortium of Engineering Colleges Managements Association (CECMA) and others Vs. Government of Andhra Pradesh**[2], **Fee Regulatory Committee Vs. Kalol Institute of Management and others**[3], **P.A.Inamdar Vs. State of Maharashtra**[4] and **Islamic Academy of Education Vs. State of Karnataka**[5].

8. This Court held that the AFRC can analyse the fee proposals submitted by educational institutions to verify whether they incorporate or camouflage any profiteering or capitation fee and to approve, modify or alter the fee structure proposed by each institution, only for the purpose of excising *protanto* any element of profiteering/capitation fee and that if such element does not exist, the AFRC should accept the fee proposal submitted by the institution; if the Chartered Accountant firm or the AFRC entertained any lingering doubt or had noticed deficiencies in the data and documents furnished, it shall call upon the educational institution through a written communication to furnish specified material, or to explain any specific discrepancy noticed or any inadequate data or material required; and that an educational institution must be left to its own devices in the matter of fixation of fee though profiteering or

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[1] (2008) 8 S.C.C. 82
[2] 2012 (3) ALT 686 (DB)
[3] (2011)10 S.C.C. 592
[4] (2005) 6 S.C.C. 537
[5] (2003) 6 S.C.C. 697

imposition or capitation fee is to be ruled out and that some amount towards surplus funds available to an institution must be visualized and permitted. It also held that an educational institution cannot be called upon to explain the receipts and the expenses as before a Chartered Accountant or Income Tax Officer.

9. *Inter alia* this Court noted that the decision of the AFRC is a quasi judicial decision as held in **P.A.Inamdar** (4 supra) and that if the AFRC is found to have exceeded its powers by unduly interfering in the administrative and financial matters of unaided private professional institutions, its decision would be subject to judicial review.

DIRECTIONS ISSUED IN THE EARLIER W.P.NO.22037 OF 2016

10. In para-91 of its order dt.14.11.2016 in W.P.22037 of 2016, this court gave the following directions:

a) The petitioners shall furnish supporting material in respect of items mentioned in para-78,79 and 81 of this order and also in regard to any other aspect they feel is necessary to the TAFRC within one week from the date of receipt of copy of this order;

b) The 2nd respondent TAFRC shall consider the claims for expenditure made by the petitioners which are discussed in this order and also their claim for taking into account the aspect of inflation at 10% per annum for 2017-18, 2018-19, after giving a personal hearing to the petitioners through their counsel, within four (04) weeks from the date of receipt of this order and make a recommendation to the 1st respondent of the *fee structure for B.E./B.Tech courses in the 2nd petitioner college for the Block period 2016-17 to 2018-19 with reasons for such recommendation and also communicate the same to the 2nd petitioner;*

c) Within two weeks of receipt of the recommendation from the TAFRC, the 1st respondent shall notify the same in accordance sub-Rule (v) of Rule 4 of the A.P. Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 adopted by the 1st respondent vide G.O.Ms.No.26 Higher Education (TE/A2) Department dt.22-07-2015;

d) The petitioners shall inform the students admitted to the 2nd petitioner college in the academic year 2016-17 for the B.E/B.Tech courses that they shall obtain a Demand Draft/Bankers cheque for a sum of Rs.74,000/-(representing the difference between Rs.1,60,000/- claimed by the petitioners and Rs.86,000/- for the B.E./B.Tech course recommended by the TAFRC which was notified by the 1st respondent vide G.O.Ms.No.21 dt.04-07-2016) in the name of "the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh" and handover the same under proper acknowledgment to the Principal of the 2nd petitioner college within two (02) weeks from the date of receipt of a copy of this order;

e) within one week of the receipt by him of Demand Drafts/Bankers cheques, the Principal of the 2nd petitioner college shall hand them over to the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh along with a list of students, their addresses and in which course of which year they are studying;

f) the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh shall open a Savings Bank account in the State Bank of Hyderabad, High Court Branch, Hyderabad and deposit the Demand Drafts/Bankers cheques handed over to him by the Principal of the 2nd petitioner college or his representative to the credit of the said account and intimate the same to the 2nd petitioner college;

g) after making such deposit, he shall invest the same in an interest bearing Fixed Deposit/ Term deposit for at least one year;

h) and after the TAFRC had re-determined the fee structure for the B.E/B.Tech courses for the Block period 2016-17 to 2018-19 in respect of the 2nd petitioner college and it is notified by the 1st respondent , the amount representing the fee re-fixed in excess the sum of Rs.91,000/- already paid by the students, shall be transferred by the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to the 2nd petitioner college along with the interest accrued thereon ;

i) the balance, if any, left after such transfer together with interest shall be handed over to the Principal of the 2nd petitioner college or his representative, who shall refund the same proportionately to each of the students who had made the payment of the sum of Rs.91,000/- referred to above with accrued interest within four (04) weeks of receipt by the 2nd petitioner college of the amount from the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

11. This order in the W.P.No.22037 of 2016 was questioned by the TAFRC in W.A.No.225 of 2017, and in W.A.M.P.No.479 of 2017, suspension of the order dt.14-11-2016 was sought by it. The

Division Bench admitted the Writ Appeal but dismissed W.A.M.P.No.479 of 2017. It held that compliance with the order in the Writ Petition by the TAFRC would be subject to the result of the Writ Appeal.

<u>THE DECISION OF THE TAFRC IN IT'S MEETING HELD ON 6.1.2017</u>

12. In the meantime, the TAFRC in its meeting held on 06-01-2017 determined that the tuition fee for the B.E./B.Tech., courses in the 2nd petitioner institution as Rs.97,000/- per student per annum and G.O.Ms.No.3 dt.04-02-2017 was issued by the 1st respondent notifying the same.

13. A letter Lr. TAFRC/Vasavi/Fee Fixation/2017 dt.17-01-2017 (for short 'letter dt.17-01-2017') was addressed by the Consultant of the TAFRC Prof. V.Rama Rao to the 2nd petitioner institution enclosing a proceeding containing some reasons for its above recommendation.

<u>THE PRESENT WRIT PETITION ASSAILS THE DECISION OF THE TAFRC DT.6.1.2017</u>

14. Assailing the recommendation of Rs.97,000/- made by the TAFRC and the consequent G.O.Ms.No.3 dt.04-02-2017 issued by 1st respondent, the present Writ Petition is filed.

15. I have heard Sri M.Ravindranath Reddy, learned counsel for the petitioners and the learned Additional Advocate General, State of Telangana on behalf of respondent Nos.1 and 2 as well as Sri

A.Sanjeev Kumar, Special Government Pleader and Sri A.Abhishek Reddy, learned counsel for respondent Nos.2 to 4.

CONTENTIONS OF THE WRIT PETITIONERS

16. The learned counsel for the petitioners contended that the determination by the TAFRC of the above amount is contrary to the directions in the earlier judgment, that it is contrary to law, arbitrary and violative of Article 14. He contended that :

(a) that the decision, which was quasi-judicial, was taken by only some of the members of the TAFRC and not the entire ten member TAFRC and this vitiates its order;

(b) that the calculation sheet on the basis of which the TAFRC determined the average expenditure of Rs.70,831/- for each student was not furnished by it along with the proceeding enclosed to the letter dt.17-01-2017 and this amounts to disobedience of the order dt.14-11-2016 in W.P.No.22037 of 2016 which mandated giving of reasons;

(c) the consultant of the TAFRC/ TAFRC advised the students indirectly not to comply with the direction of this Court in clause (d) of para-91 of the order dt.14-11-2016 in W.P.No.22037 of 2016 and this indicates that the TAFRC acted with prejudiced mind and like an adversary towards the petitioners;

(d) the TAFRC failed to determine the number of old fee paying students and the number of students who would be paying the new fees in spite of a specific direction in para-82 of the order in W.P.No.22037 of 2016;

(e) non consideration by the TAFRC of several issues raised by the petitioners; and

(f) adoption of a wrong methodology, different from the earlier methodology, by the TAFRC for determining the expenditure incurred by the 2nd petitioner without putting the petitioners on notice, solely with a view to fix a very low tuition fee.

THE REPLY OF RESPONDENTS

17. Several contentions as well as the defence of the TAFRC to them are contained in the counter affidavit filed by the consultant of the TAFRC on behalf of all respondents. The said contentions and those of the Additional Advocate General, State of Telangana will be referred to in detail and discussed below, while dealing with each of the contentions of the petitioners.

(A) CONTENTION THAT THE DECISION WAS TAKEN ONLY BY SOME OF THE MEMBERS OF THE TAFRC AND NOT THE ENTIRE MEMBERS OF TAFRC.

18. As per G.O.Rt.No.307 Higher Education (TE/A2) Department dt.28-11-2015, the State Government appointed 11 persons including the Chairman and Member Secretary of the TAFRC. If the Academic Expert on Medical Education is excluded, there ought to be 10 members of the TAFRC dealing with fee fixation for the B.E.,/B.Tech., courses.

19. In the counter affidavit filed by the Consultant of the TAFRC, in para 26 it is stated that *'as no quorum was prescribed, most hearings were made by the Chairman and mostly in the presence of the Accounts member; sometimes in presence of other members present, but final decision with regard to the fee fixation has taken place on 6.1.2017 by the relevant Committee constituted to deal with the fee fixation of engineering Courses."*

20. However it is admitted by the Additional Advocate General appearing for the respondents that only 6 members, i.e., (i) the Chairman Justice P.Swaroop Reddy (retd.)., (ii)Professor N.Yadaiah, Registrar, JNTU, Hyderabad (Academic Expert on Technical Education),(iii) Sri G.V.Laxman Rao, Chartered Accountant, Hyderabad (Finance Expert), (iv)Vice Chancellor, JNTU, Hyderabad, (v) D.Ravi Kumar (a representative from Government's Finance Department) and (vi) Professor T.Papi Reddy, the Chairman, Telangana State Council of Higher Education participated in the various meetings and the meeting on 06-01-2017 in which the TAFRC recommended Rs.97,000/- per annum as the tuition fee for the 2nd petitioner-institution.

21. Therefore it is an admitted fact that 4 members, namely, (i) Sri K.Ravinder Reddy, Legal Expert, (ii) Professor Vishnukanth S. Chatpalli, Department of Management and Business Administration (representative of AICTE), (iii) Dr.N.Srinivasa Rao, Secretary, Telangana State Council for Higher Education (Special

Invitee) and (iv) Smt. Ranjeev Acharya, Member Secretary of the TAFRC (Principal Secretary, Higher Education), who were members of the TAFRC, did not participate in the various meetings and the meeting held on 06-01-2017 in which the decision was taken to fix the tuition fee for the BE/B.tech courses in 2nd petitioner @ Rs.97,000/- per student for the Block period 2016-19.

22. In the order dt.14-11-2016 in W.P.No.22037 of 2016, this Court had directed the TAFRC to pass fresh orders *de novo* in the light of directions contained therein.

23. Therefore the fresh orders/recommendations of the TAFRC should be of the full body of the TAFRC and not of only some of its members. It was not open to six members of the TAFRC to make any recommendation to the State Government of the tuition fee without the other four members participating in the meeting held on 06-01-2017.

24. The decision of the TAFRC has been held to be a quasi judicial decision in the judgment of the Supreme Court in **P.A.Inamdar** (4 supra). So the TAFRC is a quasi judicial body. The decision must be a collective decision of all members who also heard submissions of the Counsel for petitioners. Unless all the ten members of the TAFRC apply their mind to the claims of the petitioner, its recommendation in the meeting of 06-01-2017 cannot be treated as the recommendation of the TAFRC on the basis of which the State

Government could issue G.O.Ms.No.3 Higher Education (TE/A2) Department dt.04-02-2017. If only some of them participated in the various hearings conducted by the Chairman, and others join in some meetings, it infringes the rule of 'collective decision of all as a single body' and does not amount in law to a decision of the Committee.

25. A question similar to the one arising here, came to be considered in **U.C.Bank v. Their Workmen**[6] by the Supreme Court**.** There, under Sec.7 of the Industrial Disputes Act, 1947, the Central Government constituted an Industrial Tribunal for adjudication of industrial disputes in Banking Companies consisting of a Chairman and 2 members. Later one member's services ceased to be available and so in his place, it appointed another person 'NC'. Sittings of the Tribunal were held at different places in the country thereafter. In some sittings one or the other member was not present. Later the services of NC became unavailable as they were placed at the disposal of the Ministry of External Affairs. After this, the Chairman and the other member sat and gave certain awards. After some time, NC again rejoined as Member and sat on the hearings of the Tribunal and awards were passed.

It was contended that when NC's services ceased to be available, the remaining two members had to be re-appointed to constitute a Tribunal and when he again began to sit with the other 2 members, it

[6] AIR 1951 SC 230

was imperative for the Government to issue a fresh notification constituting the Tribunal. These pleas were upheld.

The Court held that the Tribunal as a body should sit together and the award has to be the result of the joint deliberations of all the members of the tribunal acting in a joint capacity; that the Government must notify its decision whether it intended to fill up the vacancy or not and thereupon notify what members were going to constitute the Tribunal; that a Tribunal of three is different from one consisting of two members; and that it is not within the competence of the Government to direct that a few members only of such tribunal can proceed with the adjudication for however short or long time it be. It held:

> "8. *It was argued that although no provision is made in Section 8(1) about what is to happen if the Government did not fill up the vacancy, it is implied that in that event the remaining members can continue the work. We are unable to accept that argument.*
>
> *In the first place, as pointed out above, the object of Section 8 is to provide in what cases vacancies must be filled up and how the proceedings should continue on the vacancy being filled up. It does not deal at all with the situation arising from the not filling up of the vacancy by the Government. In this connection the provisions of Sections 5(4) and 6(3) have been already noted.*
>
> *When the legislature wanted to provide that in spite of the temporary absence or permanent vacancy the remaining members should be authorised to proceed with the work they have made express provision to that effect.*
>
> *If in the case of a Board or Court of Inquiry, neither of which is adjudicating any disputes, such a provision was considered necessary to enable the remaining members to act as a body, we think that the absence of*

> *such provision in respect of the Tribunal, which adjudicates on the disputes and whose quasi-judicial work is admittedly of a joint character and responsibility leads to the irresistible conclusion that in the absence of one or more members the rest are not competent to act as a Tribunal at all."(emphasis supplied)*

It held that when the services of NC ceased to be available and the Government decided that another independent person was not to be appointed to fill the vacancy, there arose the situation when only two members constituted the Tribunal, and for the constitution of such Tribunal no notification under Section 7 of the Act was issued; to enable such a Tribunal of two persons to function, under the provisions of the Act, a notification under Section 7 of the Act, was absolutely essential; and the work of the two members, in the absence of such a notification, cannot be treated as the work of a Tribunal established under the Act; and all their actions were without jurisdiction and all awards made by 2 members after the services of NC ceased to be available, were null and void.

It further held that the act of NC in again resuming work is not an 'appointment' by the Government in the vacancy created after his services ceased to be available, and he could not resume duties without a fresh constitution of a tribunal of three members.

It also held that consent cannot confer jurisdiction if a condition which goes to the root of jurisdiction is not fulfilled or performed.

Though the instant case is not one where any vacancy arose, still here too only some members participated in the hearings conducted by the TAFRC and in it's meeting held on 6.1.2017 while others did not admittedly participate. So the ratio of this decision squarely applies in the instant case and it has to be held that unless all 10 members of the TAFRC hear and decide the claims of petitioners, it's decision is one without jurisdiction, null and void.

26. The stand in the counter that no quorum is prescribed and so it is not necessary for the entire 10 member Committee to hear and decide cannot be accepted. In fact the very absence of a prescription of quorum in the Rules makes it clear that entire 10 member Committee should decide, and not just a few of them.

27. The Additional Advocate General, State of Telangana, sought to contend that as per clause (iv) of rule 3 of the Andhra Pradesh Admission and Fee Regulatory Committee (for professional courses offered in private unaided professional institutions) Rules, 2006 issued vide G.O.Ms.No.6 Higher Education (EC.2) Department dt.08-01-2017, adopted by the State of Telangana *"no act or proceeding 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."*; and that the said provision will apply and save the recommendation of the TAFRC made in its meeting of 06-01-2017.

28. I am unable to agree with the said submission. This is because absence of members at a meeting of the TAFRC is a totally different situation from one where there is a 'vacancy'. When the

State had not appointed any person to a category of member (be it the Finance expert/academic expert on technical education/legal expert etc.) of the TAFRC as mentioned in the G.O, then there would be a 'vacancy'. When members are appointed to each category of the 10 categories, but some of them do not attend a meeting of the TAFRC, it cannot be said that there is a 'vacancy'. It cannot also be said that there is any defect in the original constitution of the committee if some of the members of the TAFRC choose not to attend its later meetings, though appointed. Therefore argument of the respondents placing reliance on the above rule cannot be accepted.

29. I therefore hold that the non-participation of four members of the TAFRC in the final meeting held on 06-01-2017 and admitted non-participation of several members in the other meetings where the petitioners presented their case, is a fatal infirmity rendering its recommendation for tuition fee fixation, as one without jurisdiction and null and void.

<u>**(B)** CONTENTION THAT CALCULATION SHEET FOR DETERMINING THE AVERAGE EXPENDITURE PER STUDENT @ Rs.70,831/- BY THE TAFRC WAS NOT FURNISHED ALONG WITH THE PROCEEDING OF THE CONSULTANT OF THE TAFRC DT.17-01-2017.</u>

30. It is not disputed that arriving at the average expenditure per student is the starting point of the exercise for deciding the tuition fee payable.

31. In the proceeding annexed to the letter dt.17-01-2017 by the consultant of the TAFRC conveying certain reasons for its

recommendation that the tuition fee payable is fixed @ Rs.97,000/- per student, in para-21, it is mentioned that TAFRC determined the average expenditure per student for the block period as Rs.70,831/-. On the basis of this figure, it arrived at the tuition fee of Rs.97,000/-. It has not explained in its proceeding how it arrived at the figure of Rs.70,831/-.

32. In the order dt.14-11-2016 in W.P.No.22037 of 2016, this Court had specifically directed the TAFRC to pass a **reasoned order**. Thus it was obligatory on the part of the TAFRC to furnish the very basis, i.e, calculation sheet for arriving at the figure of Rs.70,831/-. No reason is assigned by the respondents as to why this calculation sheet was not supplied to the petitioners along with the proceeding annexed to the letter dt.17-01-2017 of the consultant of the TAFRC.

33. As stated above, the recommendation of the TAFRC about the tuition fee has been held in **P.A.Inamdar** (1 supra) a quasi judicial decision. It is settled law that every quasi judicial decision should be supported by reasons.

34. In **S.N. Mukherjee v. Union of India**[7], the Supreme Court emphasized the importance of giving reasons by quasi judicial authorities. It explained:

> *"36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the*

[7] (1990) 4 S.C.C. 594

other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

35. It is important to note that even on the earlier occasion when this Court considered in W.P.No.22037 of 2016, the TAFRC's recommendation fixing tuition fee of Rs.86,000/-, the reasons for the fee fixation were furnished on 22-10-2016 by it *after the said Writ Petition was filed* and the Court considered the correctness of the said reasons while deciding the said W.P.

36. In para-24 of the proceeding annexed to the letter dt.17-01-2017 of the Consultant of the TAFRC addressed to the petitioner, it is stated *"the learned counsel during the course of argument raised certain technical aspects like sheet of calculation submitted by the Chartered Accountant being furnished to the institution. As all the claims raised in the order are being allowed, there is no necessity for following this procedure."*

37. From this above passage, it appears that the TAFRC does not believe in transparency and objectivity though it is a quasi judicial body and though it has been directed by the order dt.14-11-2016 in W.P.No.22037 of 2016 to give reasons. The requirement of furnishing calculation memo, which contains the actual basis for it's determination of average expenditure and tuition fee, cannot be termed as a mere 'technical aspect'.

38. After this present Writ Petition was listed before me on 20-03-2017, I gave a chance to the office of the Additional Advocate General to furnish the calculation sheet on the basis of which the TAFRC had arrived at the figure of Rs.70,831/- as the average expenditure per student for the 2nd petitioner institution and posted the matter to 24-03-2017. Only on that day, the calculation sheet was furnished to the Court as well as to the counsel for the petitioners.

39. Non-furnishing of the calculation sheet along with the proceeding annexed to the letter dt.17-01-2017 of the consultant of the

TAFRC is a violation of this court's earlier order and vitiates the recommendation of the TAFRC.

<u>**(C)** CONTENTION THAT THE CONSULTANT OF THE TAFRC/TAFRC ADVISED STUDENTS INDIRECTLY NOT TO COMPLY WITH THE DIRECTION CONTAINED IN CLAUSE (d) IN PARA 91 OF THE ORDER DT.14-11-2016 IN W.P.No22037 of 2016</u>

40. Clause (d) of Para-91 of the order dt.14-11-2016 in W.P.No.22037 of 2016 states as under:

> *"The petitioners shall inform the students admitted to the 2nd petitioner college in the academic year 2016-17 for the B.E/B.Tech courses that they shall obtain a Demand Draft/Bankers cheque for a sum of Rs.74,000/-(representing the difference between Rs.1,60,000/- claimed by the petitioners and Rs.86,000/- for the B.E./B.Tech course recommended by the TAFRC which was notified by the 1st respondent vide G.O.Ms.No.21 dt.04-07-2016) in the name of "the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh" and handover the same under proper acknowledgment to the Principal of the 2nd petitioner college within two (02) weeks from the date of receipt of a copy of this order"*

41. A counter affidavit has been filed by the Consultant of the TAFRC in C.C.No.436 of 2017 (filed by the petitioners alleging disobedience of the order dt.14-11-2016 in W.P.No.22037 of 2016) that the parents of a student whose father was one S.S.Murthy, addressed an *e mail* dt.28-11-2016 to the TAFRC stating:

> *"My daughter studying engineering in one of the colleges in Hyderabad; while admitting we paid the fees. Now the college is insisting to pay the additional amount of fees on interim Court order.. Please suggest that shall we pay fee or authority is going further. The college is insisting to pay the fees."*

42. The Consultant of the TAFRC admitted that he replied to the said mail stating: *"Dear Sir, TAFRC is going in appeal against the judgment, please wait."*

43. It is also admitted by the Consultant to the TAFRC in his above counter that several other emails were received by the TAFRC on the same lines as the one from S.S.Murthy and that the committee replied to them as under: *"Committee is going to file appeal. You need not worry."*

44. In view of these communications by the consultant of the TAFRC/TAFRC, very few students complied with the above Court order. This is not denied by the respondents.

45. Admittedly the W.A.No.225 of 2017 filed by the TAFRC came to be listed on 06-03-2017 (2 months after these communications were addressed by the consultant/TAFRC) before the Division Bench, when the suspension petition W.A.M.P.No.479 of 2017 in W.A.No.225 of 2017 was dismissed. The Division Bench even noted in it's order in the WAMP, that in the Writ Petition No.22037 of 2016, the Court had adequately safeguarded the interest of the appellant in directing that the amount be deposited in the High Court till a fresh exercise is undertaken. But by that date, the disobedience by most students of the direction in clause (d) of para-91 was ensured by the TAFRC and it's Consultant, by their emails and gratuitous legal advise. It is clear that, but for the communication

from the consultant and the TAFRC referred to above, this Court's order would have been complied with by the students.

46. No student had filed any Writ Appeal or questioned by way of review any direction in the order in W.P.No.22037 of 2016. In what capacity, the TAFRC or its Consultant gave advice to students about not complying with the Court order is not known.

47. While the Consultant in his counter filed in the CC stated that his email contained only his personal opinion, it is not in dispute that vide proceedings. TAFRC/AO/2017 dt.02-01-2017, the Chairman of the TAFRC had appointed the Consultant of the TAFRC as full additional charge of the post of Administrative Officer, TAFRC and directed him to supervise the office administration/*correspondence*, routing files and also authorized him to sign all the correspondence with all the departments/colleges and affidavits to be filed before Courts and Tribunals on behalf of the TAFRC.

48. In fact, the counter affidavit in the Writ Petition has been filed by the Consultant on behalf of the TAFRC and curiously, also on behalf of the 1st respondent (which is State of Telangana represented by its Principal Secretary, Higher Education Department). The Consultant of the TAFRC could not have filed a Counter affidavit on behalf of 1st respondent, the State.

49. Also it was the Consultant Prof. V.Rama Rao, and not the Member Secretary of the TAFRC, who was addressing petitioners as

can be seen from letters dt.03-12-2016, 06-12-2016, 19-12-2016. In the letter dt.23-12-2016 addressed by the Consultant to the petitioners, he stated that eight claims earlier disallowed by the TAFRC would be allowed subject to the result of the Writ Appeal. He stated that other claims made by the institution in the written submissions as well as question of profiteering and capitation fee would be discussed at the next meeting of the TAFRC. How the Consultant could have stated about allowing of claims even before the TAFRC met, is not explained. Thus even prior to the proceedings of the Chairman dt.02-01-2017, the Consultant assumed the role of the TAFRC. He is also the one who gave the proceeding enclosed to the letter dt.17-01-2017 to the petitioners.

50. All these statements of the Consultant suggest that he appears to be acting as the *de-facto* TAFRC including taking of decisions in advance of the meetings of the TAFRC.

51. The various G.Os. constituting the TAFRC contemplate only administrative assistance to be given to it by the State Council of Higher Education (clause 5 (iv) of G.O.Ms.No.6 dt.08-01-2007)). How Professor V.Rama Rao came to be employed as a consultant for the TAFRC and how the Chairman could appoint him as Full Additional Charge of the post of Administrative Officer, TAFRC on 02-01-2017 even though he is not an employee of the State Council of Higher Education, and allow him to take decisions for the Committee, is not explained. It is not known whether the other members of the

TAFRC were consulted by the Chairman and they also concurred with the consultant's appointment as Full Additional charge of post of Administrative Officer of the TAFRC.

52. How the Member Secretary of the TAFRC (who is also the Principal Secretary, Higher Education Department of State of Telangana) came to be excluded from any role in the decision of the TAFRC, is equally baffling. In fact one would expect the Member Secretary of the TAFRC to correspond with the petitioners and also file counter affidavit on its behalf, but it is the Consultant who filed the Counter affidavit for the TAFRC.

53. In my considered opinion, the Consultant had acted on behalf of the TAFRC and as per his counter in the C.C.No.436 of 2017, both he, as well as TAFRC, impliedly assured the students, probably even before the Writ Appeal was filed, that '*they need not worry*' since they were going to file an appeal against the order in W.P.No.22037 of 2016.

54. This conduct on behalf of both the Consultant and the TAFRC in advising students not to comply with the orders of this Court is not bonafide, and indicates that the TAFRC is acting as an adversary to the petitioners instead of acting as an impartial quasi judicial body.

(D) <u>THE TAFRC DID NOT DECIDE THE NUMBER OF OLD FEE PAYING STUDENTS</u>

55. Petitioners' stand is that old fee paying students are 4320 and new fee paying students would be 3960 and that the TAFRC in the earlier round erroneously took the old fee paying students as 3960 and the new fee paying students as 4320.

56. In para-82 of the order dt.14-11-2016 in W.P.No.22037 of 2016, this Court had held that there is a dispute as to whether the number of old fee paying students is 4320 or 3960. So, it directed the TAFRC to ascertain the correct strength of students paying the old fee and those paying the new fee and proceed to then determine whether the sum of Rs.1,60,000/- per student claimed by the 2nd petitioner to be fixed as tuition fee, is correct or not.

57. Having referred to above direction in para-18 of the proceeding annexed to the letter dt.17-01-2017, the TAFRC observes in para-19:

> *"It is wrongly inferred as total students paying old fee as 3960, but calculations clearly indicate 4320 was taken as the fee paid by old students."*

58. No attempt appears to have been done by the TAFRC to determine the number of old fee paying students and the number of students who would be required to pay the 'new fee', in spite of the specific direction of this Court. Why it has not conducted such exercise is not explained by the respondents.

59. On the contrary, in para 50 of the Counter affidavit, the Consultant states that this allegation made by the petitioners is *objectionable.* This defence is untenable.

60. Let us examine the work sheet furnished by the TAFRC to the Court showing how it arrived at the average expenditure per student to be Rs.70,831/-. It is clear that it has taken the new fee paying students to be 4320 (720+1440+2160) and the old fee paying students to be 3960 (2040+1320+600). Thus its calculation sheet does not corroborate its finding in para-19 of the proceeding annexed to the letter dt.17-01-2017 of the consultant of the TAFRC.

61. Without determining the number of old fee paying students and the number of students who would be paying the new fees to be fixed by the TAFRC, any recommendation made by the TAFRC as to the tuition fee payable, cannot be sustained.

(E) NON CONSIDERATION OF SOME ISSUES RAISED BY THE PETITIONERS BEFORE THE TAFRC

62. Petitioners had raised before the TAFRC, certain claims which were not subject matter of the order dt.22-10-2016 passed by the TAFRC which was set aside in W.P.No.22037 of 2016.

63. These claims are set out in annexure-III of the Memorandum dt.22-12-2016 submitted by the petitioners to the TAFRC.

64. The TAFRC declined to entertain these claims on the ground that they were not raised before this Court earlier and were not

discussed in the order dt.14-11-2016 in W.P.No.22037 of 2016. In the counter affidavit filed by the consultant, this stand is reiterated.

65. Now there is no dispute that this Court directed in its order dt.14-11-2016 in W.P.No.22037 of 2016, to *re-do* the exercise of determination of tuition fee. So the TAFRC is expected to do a *de novo* determination of tuition fee. This is clear from paras 83 and 84 of the said order where this Court set aside the recommendation dt.02-07-2016 as well as G.O.Ms.No.21 dt.04-07-2016 of the 1st respondent and directed the TAFRC to *re do* the exercise keeping in view the said order.

66. Also in para-74 of the said order, the Court stated that it was only dealing with *some* of the items mentioned in a table in the order dt.22-10-2016 of the TAFRC which was subject matter of the said Writ Petition. This Court also criticized the rejection of certain claims mentioned in para-81 of the order on the ground that the TAFRC was acting like a Chartered Accountant by asking the petitioners to explain the receipts and expenses with mathematical precision, and that this was impermissible.

67. Also in clause (a) in para-91 of the order dt.14-11-2016 in W.P.No.22037 of 2016, this Court directed petitioners to furnish to the Committee supporting material in respect of items mentioned in paras 78,79 and 81 and *also in regard to any other aspect they feel is necessary to the TAFRC.*

68. Thus there is no doubt that the petitioners were entitled to not only urge claims already made earlier but also *any new claims which they wished to make,* since the entire exercise was being ***re-done*** by the TAFRC and they were permitted to raise other issues necessary.

69. However the Additional Advocate General, State of Telangana, contended that in clause (b) of para-91, this Court had directed consideration of claims *discussed in the order;* therefore *only* those claims which were discussed in the order were considered again and fresh claims such as that mentioned in annexure-III to the Memorandum dt.22-11-2016 submitted by the petitioners i.e. (i) deduction of receipts under various heads from the expenditure of 2015-16 and taking the same uniformly for the entire block period of 2016-17 to 2018-19 and (ii) allowing of inflation and furtherance on the gross expenditure instead of net expenditure etc.,, were not considered.

70. I am unable to agree with the said submission. The order passed by this Court on 14-11-2016 in W.P.No.22037 of 2016 has to be read as a whole. It has to be read along with para 91(a) and the direction to *re-do* the enquiry.

71. Even clause (b) of para-91 has *not* stated that claims discussed in the order *only* were to be considered and nothing else. In the absence of any such restriction in clause (b) of para-91 and in the

light of the later part of clause (a) of para-91 which permitted petitioners to furnish material even with regard to *any other aspect,* it was incumbent on the part of the TAFRC to also consider claims not covered by the order in WP.No.22037 of 2016. If the TAFRC entertained any doubt in this regard, it could have sought a clarification from this Court, but it did not do so before making recommendation for Rs.97,000/- as tuition fee in its meeting of 06-01-2017.

72. On this ground also, its recommendation cannot be sustained.

(F) <u>NEW METHODOLOGY ADOPTED BY THE TAFRC- AFTER REMAND- MOTIVE</u>

73. It is not in dispute that while dealing with claims for expenditure of the petitioners in the earlier round (i.e., when the tuition fee was fixed at Rs.86,000/- and which was subject matter of in W.P.No.22037 of 2016), a calculation sheet was filed along with the counter on 28-07-2016 in W.P.No.22037 of 2016 (this is again filed at page-536 in this Writ Petition (annexure P-70)).

74. If this is looked into, the TAFRC deducted from the total expenditure of Rs.29,45,44,014/-, the disallowed expenditure of Rs.7,63,08,303/-, and on the balance expenditure of Rs.21,82,35,711/- per year, it gave furtherance of 15% and inflation of 10% (though only for one year instead of 10% for each year of the 3 year block period) and arrived at the figure of Rs.27,27,94,639/-. *Thereafter*

income received in the form of tuition fee from old students was deducted form this figure for each of the 3 block years (Rs. 27,27,94,639/- minus Rs.23,54,16,000/-; Rs. 27,27,94,639/- minus Rs.15,23,28,000/- and Rs.27,27,94,639/- minus Rs.6,92,40,000/-). The petitioners had no grievance about this and accepted it.

75. However a departure has been made by it in it's recommendation made on 6.1.2017. This is clear from the work sheet provided by it fixing the average expenditure per student as Rs.70,831/-.

76. In that worksheet, from the total expenditure claimed by petitioners of Rs.29,96,80,014/-, disallowed expenditure of Rs.4,53,54,741/- was deducted to arrive at net expenditure of Rs.25,43,25,273/- per year. *Then* for each year of the 3 block years, the income in the nature of fee from old students was *first* deducted. (Rs.25,43,25,273/- minus Rs.23,54,16,000/-; Rs.25,43,25,273/- minus Rs.15,23,28,000/-; and Rs.25,43,25,273/- minus Rs.6,92,40,000/-.) Only thereafter, furtherance and inflation were calculated (this part is indicated in para 21 of the proceeding annexed to the letter dt.17.1.2017).

77. According to the petitioners, by this method, the TAFRC ensured that inflation at 10% and furtherance at 15% get calculated only *on part* of the expenditure to be incurred by the 2nd petitioner-institution and not on the total expenditure. To illustrate, they contend

that the expenditure, after taking into account all heads of disallowed items allowed by it now, is Rs.76.29 crores; on the said expenditure, the TAFRC has deducted Rs.45.70 crores being received from old students (admitted in the previous block) and arrived at Rs.30.60 crores; this amount is divided among 4320 students to arrive at the figure of Rs.70,831/- per student; and on this figure, inflation and furtherance are calculated to arrive at Rs.97,000/- as tuition fee per student. According to them, the TAFRAC managed to reduce 60% of the total expenditure of Rs.76.29 crores i.e. Rs.45.69 crores to ensure that the average expenditure per student is kept at a very low figure of Rs.70,831/-.

78. According to the calculation sheet provided by the Additional Advocate General also, expenditure for the three years in the block period comes to Rs.76,29,75,819/-(Rs.25,43,25,273/- x 3) (Rs.76.29 crores) out of which Rs.45,69,84,000/- (Rs.23,54,16,000/- + Rs.15,23,28,000/- + rs.6,92,40,000/-) i.e Rs.45.69 crores was deducted to arrive at the net expenditure of Rs.30.60 crores. This was divided by 4320 new students, to arrive at the average expenditure per student of Rs.70,831/-.

79. Thus expenditure of Rs.76.29 crores was deliberately reduced to Rs.30.60 crores by setting it off against the income of Rs.45.69 crores so as to arrive at a very low figure of average expenditure per student and consequently, the tuition fee.

80. It is the contention of the petitioners that for all other engineering colleges also, the earlier method of calculation as mentioned in para-74 was followed.

81. Petitioners allege that the 2nd respondent from the very inception has been following one method of calculation, which they have been furnishing to all the institutions including the 2nd petitioner institution in various similar exercises done by the 2nd respondent with respect to various Block periods earlier; and that the 2nd respondent followed the same method of calculation in the earlier round which was filed along with its counter dt.28-07-2016 in W.P.No.22037 of 2016.

82. In the counter affidavit, the plea of the respondent in para-46 is "*As the institution wanted a different way of calculation for giving inflation, calculation was made differently and it is submitted that there was no direction from the Hon'ble Court to follow any particular method of calculation…*".

83. This defence is untenable because no notice or opportunity was afforded to the petitioners as to the new method of calculation adopted by the TAFRC, giving a go-by to the method followed for all institutions earlier. Also no material is placed by the TAFRC that the methodology adopted on 6.1.2017 was applied to other engineering colleges also by it. The question of the petitioners insisting on different way of calculation does not arise since the

petitioners' request was only to comply with the order dt.14-11-2016 in W.P.No.22037 of 2016 in letter and spirit. Thus no valid reason has been furnished by the TAFRC justifying its change of calculation methodology after remand by this Court *only* for the petitioners.

84. It is contended that by the Additional Advocate General that the method of calculation was not subject matter of W.P.No.22037 of 2016. This is correct. No contention had been raised by petitioners in W.P.No.22037 of 2016 in this regard obviously because they were satisfied with the methodology adopted in para 74.

85. If the TAFRC intended to change the methodology, it was incumbent on it to put the petitioners on notice of its intentions and explain reasons why it wanted to change the methodology.

86. What then can be the reasonable inference? It appears that the change in methodology was adopted by the TAFRC only to reduce tuition fee payable to the bare minimum because old methodology would otherwise benefit the petitioners.

87. Having regard to my findings on points No.(A) to (E) above, I am of the opinion that the TAFRC has not acted as a quasi judicial body, but has acted as an adversary, arbitrarily, without *bona fides* and with a prejudiced mind towards the petitioners and has also violated the orders passed by this Court in W.P.No22037 of 2016. It is also one made without jurisdiction. It has practically rendered the

functioning of the 2nd petitioner institution impossible by fixing abysmally low tuition fee and acted insensitively to realities. Therefore, it's decision falls within the parameters for judicial review

THE FINDING OF THE COURT

88. Therefore the recommendation of the TAFRC that the tuition fee per annum for B.E.,/B.Tech., students in 2nd petitioner-institution for the block period 2016-17 to 2018-19 @ Rs.97,000/- per annum in its meeting held on 06-01-2017 as well as the consequential G.O.Ms.No.3 Higher Education (TE/A2) Department dt.04-02-2017 is declared as without jurisdiction and void for not acting as a body. Even otherwise, the decision is liable to be set aside as being contrary to law and the directions issued in the order dt.14-11-2016 in W.P.No.22037 of 2016 as well as on the ground that it is arbitrary, made with prejudiced mind and not *bona fide* and is accordingly set aside.

FURTHER DIRECTION TO BE NOW ISSUED

89. In this scenario, what should be course of action to be adopted by the Court, is to be considered. Should the Court again remand the matter back to the TAFRC or should it itself arrive at the tuition fee payable by new students?

90. In situations of this nature the Supreme Court has taken the view that where a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it, or has exercised

such discretion *mala fide* or on irrelevant considerations or by ignoring relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion, it can issue not only a Writ of Mandamus or a Writ in the nature of Mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the public authority, *it may also in a proper case*, in order to prevent injustice resulting to the concerned parties, *itself pass an order or give directions which the public authority should have passed or given had it properly and lawfully exercised its discretion.* (see **Comptroller and Auditor General of India Vs. K.S.Jagannathan**[8], **Badrinath Vs. Government of T.N.**[9] and **RBF Rig Corporation Vs. Commissioner of Customs (Imports)**[10].

91. Earlier challenges made for the block period 2006-07 to 2008-09, 2009-10 were dismissed as infructuous as the matters dragged on and petitioners never got relief for those years.

92. For the block period 2010-11 to 2012-13, while the petitioners sought tuition fixation of Rs.1,24,500/-, the respondents notified only Rs.98,700/-; this was questioned in W.P.No.16457 of 2010 and batch through the Consortium of Engineering Colleges Management Association and others; it was allowed on 29-10-2011 and is reported in 2012 (3) ALT 686 (DB); but in the SLPs, the

[8] (1986) 2 S.C.C. 679
[9] (2000) 8 S.C.C. 395
[10] (2011) 3 S.C.C. 573

Supreme Court directed reconsideration only for one year 2012-13; thereafter only Rs.3,000/- was enhanced by the TAFRC which is challenged in W.P.No.26673 of 2012; though the Writ Petition is pending, it is practically infructuous since the students of that batch have passed out and no recovery is possible at this stage.

93. For the block period 2013-14 to 2015-16, while the petitioners sought Rs.1,40,000/- as the tuition fee, the respondents notified only Rs.1,09,300/-. By virtue of order dt.26-04-2014 in W.P.No.21229 of 2013, some disallowed claims were reconsidered and a meager enhancement of Rs.6,100/- was given by the AFRC through proceedings dt.12-09-2014. However notification was not given and this is being collected pursuant to interim orders dt.18-06-2015 in W.P.No.41293 of 2014. W.P.No.21229 of 2013 was allowed on 10-03-2016 but it is not yet implemented by the TAFRC.

94. Though normally, this Court would not itself embark on the exercise to fix tuition fee, it is compelled to do so, for the following reasons:

(i) One year of the block period is already over;

(ii) the TAFRC's earlier determination for this block period vide order dt.22-10-2016 and G.O.Ms.No.21 dt.04-07-2016 were once set aside by order dt.14-11-2016 in W.P.No.22037 of 2016; when the matter was directed to be reconsidered *de novo* by the TAFRC in the light of the directions contained in the said order, it has not done so; and it has exhibited an adversarial, prejudiced, arbitrary and non-transparent attitude which cannot be adopted by a quasi judicial body;

(iii) the fate of the 6 earlier exercises under taken by the petitioners for tuition fee fixation for various block periods, and

(iv) a further remand is most likely to lead to another round of litigation before the Courts which could even make tuition fee recovery for this period to be lost.

So this Court has come to the conclusion that leaving the matter again to the TAFRC to decide would cause great injustice to the petitioners and has decided to itself do the exercise of fixation of tuition fee payable by the students studying B.E./B.Tech., courses in the 2nd petitioner institution for the block period 2016-17 to 2018-19 based on the judgments of the Supreme Court referred to above.

THE TUITION FEE DETERMINATION FOR THE BLOCK PERIOD 2016-17 TO 2018-19.

(I) DETERMINATION OF NUMBER OF OLD FEE PAYING STUDENTS AND NEW FEE PAYING STUDENTS

95. Before commencing this exercise, it needs to be decided as to how many are old fee paying students and how many are new fee paying students.

96. It is not in dispute that 120 diploma holders are admitted by way of lateral entry in the II year of the B.E.,/B.Tech., course every year.

97. At the commencement of the academic year 2016-17, there would be in the first year of the academic year 2016-17, students who pay the new fee are only 600, though the number of students taking admission in that academic year of 2016-17 is 720 (600+120 diploma holders admitted into second year of 2016-17 by way of lateral entry). These lateral entry students of 120 pay the fee which is being paid by students in the second year i.e. the fee fixed for the previous block period. Thus the number of old fee paying students would be 4320 and the number of students paying new fee would be 3960 as shown in the table hereunder:

STUDENTS PAYING OLD FEE

	2016-17		2017-18		2018-19		Grand total
	Regular	Lateral	Regular	Lateral	Regular	Lateral	
1st Year							0
2nd Year	600	120					720
3rd Year	600	120	600	120			1440
4th Year	600	120	600	120	600	120	2160
Total	1800	360	1200	240	600	120	4320
	2160		**1440**		**720**		**4320**

STUDENTS PAYING NEW FEE

	2016-17		2017-18		2018-19		Grand total
	Regular	Lateral	Regular	Lateral	Regular	Lateral	
1st Year	600		600		600		1800
2nd Year			600	120	600	120	1440
3rd Year					600	120	720
4th Year							0
Total	600	0	1200	120	1800	240	3960
	600		**1320**		**2040**		**3960**

98. I have already pointed out that the Consultant in para-19 of the proceeding annexed to his letter dt.17-01-2017 also admitted that the old fee paying students were 4320, but in the work sheet furnished showing the average expenditure per student as Rs.70,831/-, the TAFRC had in fact taken the old fee paying students as only 3960 and the new fee paying students as 4320.

99. Therefore it is held that the TAFRC had incorrectly calculated the old fee paying students strength as 3960 instead of 4320 and the students paying new fee to be 4320 instead of 3960.

100. I agree with the contention of the counsel for the petitioners as per the tables mentioned above, that the students paying old fee in the 2nd petitioner for the block period 2016-17 to 2018-19 are 4320 and the students who would pay the new fee are 3960.

<u>(II) CLAIMS NOT COVERED BY ORDER DT.14-11-2016 IN W.P.No.22037 of 2016</u>

101. There is no dispute that six claims were made in annexure-III to the Memorandum dt.22-11-2016 consisting of (a) security charges, (b) maintenance campus (c) maintenance house keeping, (d) deduction of receipts under various heads uniformly for the entire block period instead of different amount of receipts for each block year, (e) allowing of inflation and furtherance on the expenditure and (f) X P.R.C. scales for non-teaching staff.

102. It may be noted that though in its proceeding annexed to the letter dt.17-01-2017, it stated that items (d) and (f) cannot be

allowed, in fact, Rs.51.36 lakhs towards (f) as well as items (a) to (c) were allowed as per the worksheet submitted by the TAFRC. In the counter the plea is taken by TAFRC that allowing of Rs.51.36 lakhs towards X PRC pay scales for non-teaching staff by it, is a mistake.

Therefore I will consider now only (d), (e) and (f) as under.

(i) CLAIM OF RS.51,36,000/- TOWARDS X PAY REVISION COMMISSION FOR NON-TEACHING STAFF

103. It is not in dispute that the TAFRC allowed the expenditure claim of Rs.51,36,000/- towards X Pay Revision Commission for non-teaching staff, but in its counter affidavit says that this is a arithmetical/mathematical mistake committed by it.

104. According to the TAFRC, guidelines contained in the notification given by it mentioned that the fixation was to be done on the basis of accounts of 2015-16 (projected only) and that the petitioner erroneously included the above amount as expenditure in the audit report of 2015-16 financial year.

105. It is not in dispute that the 2nd petitioner had implemented the X P.R.C. Scales for the non-teaching staff in 2015-16 from October 2015. The impact of this, according to the petitioners, is Rs.51.36 lakhs for six months in that academic year and for the other two academic years in the same block, it would be Rs.102.72 lakhs each year.

106. Colleges have to implement Pay Commission Recommendations for revision of salaries and it is necessary to

balance the interest of the staff on the one hand and the interest of students.

107. The TAFRC cannot, by any stretch of reasoning, say that this expenditure cannot be taken into in calculating the estimated expenditure for the block period 2016-17 to 2018-19.

108. Therefore I hold that the TAFRC had rightly included the amount of Rs.51,36,000/- payable towards X P.R.C. for non-teaching staff (which was earlier disallowed) because of which it had rightly taken the total expenditure to be Rs.29,96,80,014/- instead of Rs.29,45,44,014/- taken earlier.

(ii) DEDUCTION OF RECEIPTS UNDER VARIOUS HEADS FOR THE EXPENDITURE OF 2015-16 AND TAKING THE SAME UNIFORMLY FOR THE ENTIRE BLOCK PERIOD OF 2016-17 TO 2018-19 BY THE TAFRC IS INCORRECT

109. According to the petitioners, their projected receipts for the year 2016-17 is Rs.4,18,00,000/-; for 2017-18 is Rs.3,97,00,000/- and for 2018-19 is Rs.3,26,00,000/- and that the TAFRC had wrongly taken the “other receipts” uniformly as Rs.4,53,54,741/- for all the three block years individually and this procedure is incorrect.

110. According to them, the reason for the difference in the receipts in each of the three years of the block period is that (i) Accrual of the accreditation fee of Rs.42,77,000/- expired in September 2015 and this income stopped in 2015 itself; (ii) prior period income of Rs.3,27,376/- was also proposed to be deducted as it

is assumed that it will not accrue in the ensuing years; (iii) an amount of Rs.3,09,152/- which had come by way of revenue grant in the base year 2015-16, would not accrue in the ensuing three years of the block period.

111. The sole reason assigned by the TAFRC for not considering this contention of the petitioners was that it was not raised before the High Court in the W.P.No.22037 of 2016 and batch.

112. I have already held that the TAFRC cannot decline to entertain any contention on the ground that it was not specifically raised at the time of hearing of the said Writ Petition and was not considered by this Court therein. The enquiry was *de novo* and the petitioners were permitted to raise *other issues*.

113. Therefore I hold that the TAFRC ought to have taken under the head "income related expenditure", for the year 2016-17, the amount Rs.4,18,00,000/-; for 2017-18, the amount Rs.3,97,00,000/- and for 2018-19, the amount Rs.3,26,00,000/- and that it had wrongly taken the "other receipts" uniformly as Rs.4,53,54,741/- for all the three block years individually.

(iii) INFLATION AND FURTHERANCE OUGHT TO BE CALCULATED ON THE EXPENDITURE WITHOUT DEDUCTING THE TUITION FEE BEING COLLECTED FROM THE OLD STUDENTS

114. I have already held that the TAFRC had been calculating the inflation and furtherance on the expenditure arrived at without deducting the tuition fee being collected from the old students, that it

had done so previously in the worksheet submitted along with its counter affidavit filed in July 2016 in W.P.No.22037 of 2016 and also for other institutions. For the first time, it deviated from this procedure in it's recommendation made on 6.1.2017 without assigning any valid reason and without putting the petitioners on notice. This conduct of the TAFRC is clearly arbitrary.

115. In the worksheet provided by it fixing the average expenditure per student as Rs.70,831/-., from the total expenditure claimed by petitioners of Rs.29,96,80,014/-, disallowed expenditure of Rs.4,53,54,741/- was deducted to arrive at net expenditure of Rs.25,43,25,273/- per year. *Then* for each year of the 3 block years, the income in the nature of fee from old students was *first* deducted. (Rs.25,43,25,273/- minus Rs.23,54,16,000/; Rs.25,43,25,273/- minus Rs.15,23,28,000/-; and Rs.25,43,25,273/- minus Rs.6,92,40,000/-.) Only thereafter, furtherance and inflation were calculated (this part is indicated in para 21 of the proceeding annexed to the letter dt.17.1.2017).

116. According to the calculation sheet provided by the Additional Advocate General, expenditure for the three years comes to Rs.76,29,75,819/-(Rs.25,43,25,273/- x 3) (Rs.76.29 crores) out of which Rs.45,69,84,000/- (Rs.23,54,16,000/- + Rs.15,23,28,000/- + Rs.6,92,40,000/-) i.e Rs.45.69 crores was deducted to arrive at the net expenditure of Rs.30.60 crores. This was divided by 4320 new

students, to arrive at the average expenditure per student of Rs.70,831/-.

117. Thus expenditure of Rs.76.29 crores was deliberately reduced to Rs.30.60 crores by setting it off against the income of Rs.45.69 crores so as to arrive at a very low figure of average expenditure per student and consequently, the tuition fee.

118. The object of giving inflation and furtherance is thus defeated by this new method of calculation and it does not reflect the true picture/status of the expenditure to be incurred by the institution.

119. The above contention was specifically raised before the TAFRC by the petitioners in annexure-III of the Memorandum dt.22-11-2016. It declined to consider it on the sole ground that this point was not urged when W.P.No.22037 of 2016 was decided.

120. This issue did not arise for consideration in the said W.P. because at that time, the TAFRC was following the earlier different methodology and was calculating the inflation and furtherance on the expenditure arrived at first and thereafter deducting the tuition fee being collected from the old students.

121. It is not open to the TAFRC to say that in W.P.No.22037 of 2016 this Court had not fixed the methodology for calculation and it can follow any method it feels like. In the interest of transparency, it should declare what methodology it intends to adopt before it starts the process of receiving information from educational institutions for

fixation of tuition fee so that they are aware of the method as well as the process. In my view, it has failed to give any valid justification for the change in methodology and its action has resulted in grave prejudice to the petitioners since it appears to have been done only to arrive at a very low tuition fee.

122. The plea in the counter affidavit at para-52 that the TAFRC had fixed 36% more than the fee fixed earlier cannot be accepted because for block period 2013-16, the fee fixed was Rs.1,15,400/- and the fee fixed now is Rs.97,000/- . Also according to para-21 of the proceeding furnished along with the letter dt.17-01-2017, the TAFRC had only granted 10% inflation for each year of the block period and 15% furtherance only and nothing more.

123. Keeping in mind the above findings, the tuition fees for the block period 2016-17 to 2018-19 for the students in the 2nd petitioner institution can be fixed as follows:

<u>WORK SHEET FOR EVALUATION OF TUITION FEE FOR THE BLOCK PERIOD 2016-17 TO 2018-19 FOR THE VASAVI COLLEGE OF ENGINEERING.</u>

<u>2015-16</u>

Expenditure of the Institution incurred for 2015-16 (This includes Rs.51.36 lakhs towards part of X PRC pay scales paid to non-teaching staff during 2015-16)	: Rs.29,96,80,014/-
Other receipts (projected)	: Rs.4,53,54,741/-

2016-17

Expenditure of the institution	: Rs.29,96,80,014/-
Add: Inflation @ 10%	: Rs.2,99,68,001/-
Total	: Rs.32,96,48,015/-
Add: Furtherance @ 15%	: Rs.4,49,52,002/-
Total	: Rs.37,46,00,017/-
Deduct: Other receipts (Projected)	: Rs.4,18,00,000/-
Net expenditure	: Rs.33,28,00,017/-
Deduct income from students paying Old tuition fee @ Rs.1,15,400/- (No. of students paying old tuition fee Including lateral entry students in the 2nd, 3rd and 4th year of B.E., is 2160)	: Rs.24,92,64,000/-
Deficit to be borne by 600 new students	: Rs.8,35,36,017/-

2017-18

Expenditure of the institution	: Rs. 32,96,48,015/-
Add: Inflation @ 10%	: Rs.3,29,64,802/-
Total	: Rs.36,26,12,817/-
Add: Furtherance @ 15%	: Rs.4,94,47,202/-
Total	: Rs.41,20,60,019/-
Deduct: Other receipts (Projected)	: Rs.3,97,00,000/-
Net expenditure	: Rs.37,23,60,019/-
Deduct income from students paying Old tuition fee @ Rs.1,15,400/- (No. of students paying old tuition fee Including lateral entry students in the 2nd, 3rd and 4th year of B.E., is 1440)	: Rs.16,61,76,000/-
Deficit to be borne by 1320 new students	: Rs.20,61,84,019/-

2018-19

Expenditure of the institution	: Rs. 36,26,12,817/-
Add: Inflation @ 10%	: Rs.3,62,61,282/-
Total	: Rs.39,88,74,099/-
Add: Furtherance @ 15%	: Rs.5,43,91,923/-
Total	: Rs.45,32,66,022/-
Deduct: Other receipts (Projected)	: Rs.3,26,00,000/-
Net expenditure	: Rs.42,06,66,022/-
Deduct income from students paying Old tuition fee @ Rs.1,15,400/- (No. of students paying old tuition fee Including lateral entry students in the 2nd, 3rd and 4th year of B.E., is 720)	: Rs.8,30,88,000/-
Deficit to be borne by 2040 new students	: Rs.33,75,78,022/-

FOR TOTAL THREE YEARS

Expenditure = 29,96,80,014 + 32,96,48,015 + 36,26,12,817= 99,19,40,846	…Rs.99,19,40,846/-
Add: Inflation @ 10% = 2,99,68,001+ 3,29,64,802+3,62,61,282	…Rs.9,91,94,085/-
Total	… Rs.109,11,34,931/-
Add: Furtherance @ 15% on expenditure	…. Rs.14,87,91,127/-
Total	… Rs.1,23,99,26,058/-
Deduct: Other receipts (projected) 4,18,00,000 + 3,97,00,000 + 3,26,00,000	… Rs.11,41,00,000/-
Net expenditure	…. Rs.112,58,26,058/-
Deduct: Income from students paying old tuition fee @ Rs.1,15,400/- X 4320 (No. of students paying old tuition fee = 2160+1440+720 = 4320)	… Rs.49,85,28,000/-
Deficit to be borne by new students	…. Rs.62,72,98,058/-

No. of students to pay the new fee 600+1320+2040 = 3960

Tuition fee payable for the block period of
Three years … Rs.62,72,98,058/ 3960…. Rs.1,58,409/-

Tuition fee requested by the petitioners … **Rs.1,60,000/-**
Per student for the three block years

124. Therefore I hold that the tuition fee of Rs.1,60,000/- per student per year for the Block period 2016-19 claimed by the 2nd petitioner institution from the TAFRC is just and proper.

125. In the result, the Writ Petition is allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by the 2nd respondent; the action of the 2nd respondent in recommending Rs.97,000/- per annum as tuition fee for the 2nd petitioner institution for the block period 2016-17 to 2018-19 for the B.E., course in its meeting held on 06-01-2017 and the consequential G.O.Ms.No.3 Higher Education (TE/A2) Department dt.04-02-2017 is declared without jurisdiction, void, illegal, arbitrary and violative of Article 14 as well as the order dt.14-12-2016 in W.P.No.22037 of 2016; and the tuition fee is fixed at Rs.1,60,000/- per student for the above block period for the 2nd petitioner institution; and the 1st respondent is directed to notify the same within two weeks from the date of receipt of a copy of this order.

126. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-06-2017
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