

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC NO.3674 of 2011**

Margdarshan Sansthan Shiksha Mahavidyalaya, Baikunthpur, District Korea, through: its Secretary namely Manvendra Pratap Singh S/o. Dr.M.P. Singh, aged about 42 years, R/o. Ring Road, Choprapara, Ambikapur, District Surguja (CG)

----Petitioner**Versus**

1. State of Chhattisgarh, through: Secretary, Department of Technical Education, Manpower Planning, Science & Technology, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. The Admission & Free Regulatory Committee, through: its Chairman, A Statutory Body, having its Head Office at Byron Bazar, Raipur, District Raipur (CG)
3. State Council of Education Research & Training, through its Director, State Council of Education Research & Training, Shankar Nagar, Raipur, District Raipur (CG)
4. Surguja Vishwavidyalaya, Ambikapur, through its Registrar, Surguja Vishwavidyalaya, Ambikapur, District Surguja (CG)
5. National Council for Teacher Education, through its Regional Director, Shyamla Hills, Manas Road, Bhopal, Madhya Pradesh
6. Chhattisgarh Professional Examination Board through its Chairman, Pension Bada, Raipur, District Raipur (CG)

---- Respondents**WPC NO.3679 of 2011**

Sant Harkewal Shishka Mahavidyalaya, Rajmohini Ward, Namnakala, Ambikapur, through its Secretary namely R.P. Sharma, S/o. Santlal Sharma, aged about 60 years, R/o. Chopdapara, Ambikapur, District Surguja (CG)

----Petitioner**Versus**

1. State of Chhattisgarh, through: Secretary, Department of Technical Education, Manpower Planning, Science & Technology, D.K.S. Bhawan, Raipur, District Raipur (CG)

2. The Admission & Free Regulatory Committee, through: its Chairman, A Statutory Body, having its Head Office at Byron Bazar, Raipur, District Raipur (CG)
3. State Council of Education Research & Training, through its Director, State Council of Education Research & Training, Shankar Nagar, Raipur, District Raipur (CG)
4. Surguja Vishwavidyalaya, Ambikapur, through its Registrar, Surguja Vishwavidyalaya, Ambikapur, District Surguja (CG)
5. National Council for Teacher Education, through its Regional Director, Shyamla Hills, Manas Road, Bhopal, Madhya Pradesh
6. Chhattisgarh Professional Examination Board through its Chairman, Pension Bada, Raipur, District Raipur (CG)

---- Respondents

And

WPC NO.3677 of 2011

Dr.R.N.S. College of Education, Moharpara, Manendragarh, District Korea, through its President namely Rajesh Sharma, S/o Late Dr.R.N. Sharma, aged about 38 years, R/o. Ward No.10 Moharpara, Manendragarh, District Korea (CG)

----Petitioner

Versus

1. State of Chhattisgarh, through: Secretary, Department of Technical Education, Manpower Planning, Science & Technology, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. The Admission & Free Regulatory Committee, through: its Chairman, A Statutory Body, having its Head Office at Byron Bazar, Raipur, District Raipur (CG)
3. State Council of Education Research & Training, through its Director, State Council of Education Research & Training, Shankar Nagar, Raipur, District Raipur (CG)
4. Surguja Vishwavidyalaya, Ambikapur, through its Registrar, Surguja Vishwavidyalaya, Ambikapur, District Surguja (CG)
5. National Council for Teacher Education, through its Regional Director, Shyamla Hills, Manas Road, Bhopal, Madhya Pradesh
6. Chhattisgarh Professional Examination Board through its Chairman, Pension Bada, Raipur, District Raipur (CG)

---- Respondents

For Petitioners	:	Mr.Manoj Paranjape, Advocate
For Respondents No.1 to 3	:	Mr.Arun Sao, Dy.A.G.
For Respondent No.5	:	Mr.Bhaskar Payasi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/07/2018

1. Since common question of law and fact is involved in these batch of writ petitions, they are heard together and are being disposed of by this common order.
2. The extraordinary jurisdiction of this Court is invoked by the petitioners' educational institution calling in question legality, validity and correctness of notice dated 3.6.2011 (Annexure P/1 in all writ petitions) passed by respondent No.4 directing the petitioners' institution to refund annual educational fee taken from the students admitted for the year 2010-2011.
3. The petitioners, who are educational institution affiliated with respondent No.4-Surguja University, Ambikapur and having recognition with National Council for Teacher Education for imparting B.Ed. education admitted students for B.Ed. course for the year 2010-2011 as per prospectus/brochure issued by the State Council of Education Research & Training (hereinafter called as "SCERT") and 3rd round of counselling was completed on 30.8.2010 and academic session commenced thereafter. The State Government on 19.11.2010 issued the order accepting recommendation of the Admission & Fee Regulatory Committee (hereinafter called as "AFRC") constituted under the Chhattisgarh Niji Vyavsayik Shikshan

Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Act, 2008 stating that fee for B.Ed. course would be ₹ 24,000/- per year per student effective from the dater of order i.e. 19.11.2010, which was received by the petitioners' institution on 4.12.2010. It is the case of the respondent-University that the petitioners' institution did not refund enhanced amount taken from the students leading to issuance of notice dated 3.6.2011 (Annexure P/1) for refund of fee as the petitioners' institution have taken ₹ 35,600/- per student per year, whereas they ought to have refunded the amount over and above ₹ 24,000/- to each of students. Questioning the notice dated 3.6.2011, this batch of writ petitions have been filed by the petitioners' institution.

4. Return has been filed by the State stating inter-alia that final fee has already been settled by the AFRC on 21.7.2011 and determined the fee as ₹ 24000/-, which was also applicable for the year 2010-2011, as such, the writ petitions deserve to be dismissed.
5. Mr.Manoj Paranjape, learned counsel for the petitioners, would submit that prospectus issued by respondent No.3/SCERT for admission of B.Ed. course for the year 2010-2011 and fee which is to be taken from the students was clearly mentioned in that brochure and students have taken admission for B.Ed. Course on the basis of instruction contained in the said brochure. The respondent-University has charged the fee strictly as prescribed in the said

prospectus/brochure and the said prospectus has a force of law and amount of ad-interim fee determined by the AFRC on 19.11.2010 cannot be made applicable for the academic year 2010-2011 as it would be applicable to the next academic year 2011-2012. Therefore, the impugned notice (Annexure P/1) issued by respondent No.4-University deserves to be quashed.

6. Mr.Arun Sao, learned Deputy Advocate General for respondents No.1 to 3/State, would support the impugned notice. None present for respondent No.4 though served. Mr.Bhaskar Payasi, learned counsel for respondent No.5, would submit that respondent No.5 is formal party.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. In order to admit the students for B.Ed. course by the educational institutions, the SCERT has issued advertisement on 12.7.2010, prospectus has also been issued in which fee for B.Ed. course has been prescribed for candidates of the State is ₹ 35,600/- and for candidates outside of the State is ₹ 60,500/- for the petitioners institution which states as under:-

76	कोरिया	मार्गदर्शन संस्थान शिक्षा महाविद्यालय, बैकुण्ठपुर	100	अशासकिय	छ.ग. के लिए 35600.00	17301
					राज्य के	
					बाहर 60500. 00	

Students were admitted pursuant to counselling held on 30.8.2010 and as per admission fee prescribed and mentioned in the prospectus and thereafter only on 19.11.2010 the AFRC has determined interim fee for B.Ed. course to be ₹ 24,000/- effective from the date of issuance of the order. Submission of Mr.Paranjape, learned counsel, is that prospectus issued by the SCERT has a force of law and therefore, it is binding on the college and students also.

9. At this stage, question would be whether prospectus/brochure issued by the SCERT has a force of law or not. In this regard, the judgment of the Punjab and Haryana High Court in the matter of **Ankit Sharma v. Punjab Technical University, Jalandhar and another**¹, may be noticed profitably in which it has been held that prospectus issued for admission to a course has a force of law and it was not open to alteration. Para 7 of the report states as under:-

‘7. Accordingly, respondents cannot be held liable for any deficiency in service and the petitioner was not entitled for refund in terms of the above Clause of Prospectus. It has time and again been held by six Full Bench decisions of this Court that admission brochure or the prospectus has a force of law which is to be strictly followed. Reference can be made to Amardeep Singh Sahota v. State of Punjab², Raj Singh v. Maharishi Dayanand University³, Sachin Gaur v. Punjabi University⁴, Rahul Prabhakar v. Punjab Technical University, Jalandhar⁵, Indu Gupta

¹ 2016 SCC Online P&H 6474

² 1993 (4) S.C.T. 328

³ 1994 (2) S.C.T. 766

⁴ 1996 (1) S.C.T. 837

⁵ 1997 (3) S.C.T. 526

v. Director of Sports, Punjab⁶ and Rupinder Singh v. The Punjab State Board of Technical Education & Industrial Training, Chandigarh⁷. The relevant observations made in Rahul Prabhakar's case (supra) read as under:-

“7. A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab⁸ had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University⁹ another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjabi University¹⁰, took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No.6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India.”

10. Similarly, in the matter of **Sachin Mehta v. State of Rajasthan**¹¹ the Rajasthan High Court has held that the terms and conditions mentioned in a prospectus cannot be altered. It was observed as under:-

⁶ 1999 (4) S.C.T. 113

⁷ 2001 (2) S.C.T. 726

⁸ 1993) 4 SLR 673: 1993 (4) SCT 328 (P&H) (FB)

⁹ 1994 (4) RSJ 289: 1994 (2) SCT 766 (P&H) (FB)

¹⁰ 1996 (1) RSJ 1: 1996 (1) SCT 837 (P&H) (FB)

¹¹ 2013 SCC Online Raj 2921

“36.....Thus, it can safely be inferred that what the Hon’ble Supreme Court has contemplated for determination of fee structure with reference to unaided Private Educational Institutions, is the ‘Fee Regulatory Committee’ constituted by the ‘State’. Once the process of selection of candidates for admission to the MBBS and/or BDS Courses commenced and concluded on the basis of the INFORMATION BOOKLET, with reference to RAJASTHAN PRE-MEDICAL TEST – 2012, no change could, thereafter, be effected by the respondent-University, altering the terms and conditions contained in the INFORMATION BOOKLET, with reference to fee structure specifically stipulating therein i.e. fee as decided by the Fee Regulatory Committee formed by the Government of Rajasthan for private colleges. Thus, if such terms and conditions contained in the INFORMATION BOOKLET, were already in force, they would certainly have a bearing on the admission process, hence, it was not open to the respondent-University to alter the terms and conditions of the admission process.”

11. Likewise, the Andhra Pradesh High Court in the matter of **Consortium of Engineering Colleges Managements Association (CECMA), Hyderabad and others v. Government of Andhra Pradesh and others**¹² has clearly held that AFRC has to fix the fee well in advance. It was observed as under:-

“(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.”

¹² 2011 SCC OnLine AP 924

12. At this stage, pertinent decision of the Supreme Court is also required to be noticed. In the matter of **Islamic Academy of Education v. State of Karnataka**¹³ the Supreme Court has observed as under:-

“161. Fee once fixed should not ordinarily be changed for a period of three years, unless there exists an extraordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/body set up. For this purpose the application should not be filed later than April of the preceding year of the relevant education session. The authority/body shall take the decision as regards fees chargeable latest by October of the year concerned, so that it an form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalized bank. In other words, no employee or any other person employed by the management shall be entitled to take fees in cash from the students concerned directly. The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation.”

13. Reverting to the facts of the present case after noticing the nature of prospectus, it is quite vivid that the petitioners' institution have accepted fee as stated in the prospectus issued by the SCERT duly published in their prospectus and admitted the students up to 30th August, 2010 and only thereafter the AFRC has determined at-interim fee reducing it to ₹ 24,000/- in place of ₹ 35,600/- making it applicable from the date of its order dated 19.11.2010. Even in the

¹³ (2003) 6 SCC 697

notification issued by the State Government vide Annexure P/3 dated 19.11.2010 it has been clearly stated that reduced fee shall be applicable w.e.f. 19.11.2010. Therefore, it would not affect the already concluded admission as per prospectus issued by the SCERT and therefore, the respondent-University could not have directed for refund of fee which the petitioners' institution have collected as per prospectus issued by respondent No.3. Fee recovered by the petitioners' institution is in accordance with the prospectus issued which has a force of law.

14. In the considered opinion of this Court, the impugned notice dated 3.6.2011 (Annexure P/1 in all writ petitions) issued by respondent No.4-University is arbitrary and contrary to law. Resultantly, the notice dated 3.6.2011 (Annexure P/1 in all writ petitions) issued by respondent No.4-University to the petitioners' institution deserves to be and is hereby quashed.
15. The writ petitions are allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No.3674 of 2011

Petitioner

Margdarshan Sansthan Shiksha
Mahavidyalaya

Versus

Respondents

State of Chhattisgarh and others

(Head-note)

(English)

Prospectus issued by the State Council of Education, Research &
Training giving fee structure has a force of law.

(हिन्दी)

शिक्षा, अनुसंधान तथा प्रशिक्षण राज्य परिषद् द्वारा जारी शुल्क संरचना बताने
वाली विवरण पत्रिका (प्रौस्पैक्टस) विधि का प्रभाव रखता है।