

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (C) No. 2077 of 2012

C.G. Dental College & Research Institute, Sundra Rajnandgaon, District
 Rajnandgaon, PS Rajnandgaon, Through its Administrator.

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department of Higher Education, DKS
 Bhawan, Raipur, PS Raipur, 492001
2. Directorate of Medical Education, Raipur Chhattisgarh, Old Nurses Hostel, DKS
 Bhawan Parisar, Raipur PS Raipur 492001
3. Admission and Fee Regulatory Committee, Technical Education Office, Baron
 Bazaar, Raipur, PS Raipur, 492001

---- Respondents

For Petitioner	: Shri Saurabh Dangi, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Prashant Kumar Mishra, Judge

Order on Board

Per Ajay Kumar Tripathi, Chief Justice

14/08/2018

1. Heard counsel for the parties.
2. Chhattisgarh Dental College & Research Institute is a private institution
 imparting education in BDS and MDS course. They have decided to
 challenge the notification dated 15.10.2012 issued by the Admission and
 Fee Regulatory Committee (hereinafter called 'the AFRC') of the State of
 Chattisgarh fixing the tuition fee which an institution can charge from the

students of the MDS course for the academic session 2009-2010, 2010-2011 and 2011-2012.

3. Based on the guidelines and the decision rendered by the Hon'ble Supreme Court in case of **Islamic Academy of Education and Others v. State of Karnataka and Others** {(2003) 6 SCC 697}, every State was required to put in place a mechanism where the fee structure of private professional institutions was required to be worked out and notified. In terms of the above direction of the Apex Court, even for the State of Chhattisgarh, AFRC was constituted.
4. The power of AFRC to fix fee for private professional institutions is not the subject matter of challenge in the present writ application. It is the manner in which they have taken a decision, especially at a belated stage. Because of the delayed decision, the institution may be compelled to refund certain fees already collected by them which was authorized in terms of the so-called Rules issued by the Directorate of Medical Education for admission in Post-Graduate courses in Dental Colleges of Chhattisgarh. The rule in question was notified on 15.05.2010.
5. Counsel for the Petitioner drew attention of this Court to Rule 10.2 of the Chhattisgarh Dental Snatakottar Pravesh Pariksha Niyam, 2010, (hereinafter called 'the Rules') which talks of the kind of fee which the institution in question was entitled to demand or beget and the stand of the counsel for the Petitioner is that the fee has been collected strictly in terms of the notified Rules dated 15.05.2010. Rule 10.2 of the Rules reads as under:

"10.2 After selection, the candidate shall pay all fees payable in the College (**at private Dental Rajnandgaon Tuition Fee 5 Lakh Per year for 3 years & other fee e.g. Hostel fee, Library fee etc. Extra as applicable**). "

6. Submission of the counsel for the Petitioner is that the students were granted admission and the fee in terms of the Rules notified by the Directorate was accepted. But after almost two years thereafter, the AFRC issues a notification contained in Annexure P/1, dated 15.10.2012 wherein they have scaled down the fee which this institution could demand for the sessions 2009-2010, 2010-2011 and 2011-2012 to be only Rs. 3,10,000/-. A stand is taken that even if this notification is accepted to be valid, this can only have prospective effect and not retrospective effect. The fee which have already been accepted and collected now cannot be refunded because the sessions are over long back, the students have completed their courses and gone home. There was obvious delay in taking a decision by the AFRC and the Petitioner-Institution cannot be made to suffer for their indecision or non-decision for a long period of time.
7. The Petitioner also relies on Annexure P/6 which is dated 02.06.2012 which is again an order issued by the Department of Health and Family Welfare, Government of Chhattisgarh, wherein the institutions were allowed to collect certain fee and an undertaking was required to be given by the students that in case, a decision on the quantum of fee payable to them is decided by the AFRC, the students would be liable to pay the difference.
8. Onus is sought to be placed on the AFRC that it is they who did not take a decision for the sessions in question till the year 2012 and by the time they took the decision, the sessions were over, fees were collected and therefore, the clock cannot be put back.
9. On a deeper consideration, it seems that there is no *suo moto* power conferred upon the AFRC to fix the fee for an institution. The institution in

question have to approach the AFRC. Since the parameters based on which such decisions are required to be taken varies from institution to institution therefore, the ball has to be set rolling by the said institution. They have to produce the necessary details based on which the fixation of fee is required to be made. In this regard, observation of a seven Judges Bench of the Hon'ble Supreme Court in case of **P.A.Inamdar v. State of Maharashtra** (2005 AIR SCW 3923) has relevance and in terms of Section 9 of the Act which is the Chhattisgarh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyam Evam Shulk Ka Nirdharan) Act, 2008, the following factors are required to be considered:

"8. Section 9 of the Act prescribes factors required for fixation of fee and those factors are as below:

1. the location of the private unaided professional educational institution;
2. the nature of professional course;
3. the cost of land and building;
4. the available infrastructure, teaching, non-teaching staff and equipments;
5. the expenditure on administration and maintenance;
6. a reasonable surplus required for growth and development of the professional institution;
7. any other relevant factor"

10. The AFRC considered the fixation of fee of the private institutions including the Petitioner and their decision has been brought on record as a part of the additional return filed on behalf of the State as Annexure R/1. From perusal of the same, it seems that the Institution *i.e.* the Petitioner chose not to approach the said Regulatory Committee in time and it was because of the delay on their part that decision could not be taken earlier, as to the quantum of fee they were entitled to charge from the students. In fact, what also emerges from reading of the said decision dated 01.08.2012 is that while on one hand, the institution was engaging the

AFRC by raising various objections and providing materials selectively, on the other hand, they approached the State Government, specially the Department of Health stating that the said authority has failed in its duty to fix the fee and therefore, some stop-gap arrangement is required to be made. It was in this background and for this purported reason that the notification was issued by the State Government on 15.05.2010, which facilitated collection of a much higher fee by the Petitioner-Institution. In fact, to pre-empt, may be fixation of a more modest or reasonable fee by AFRC, which the institution could demand or accept, this modality was worked out in league with some State official.

11. The stand of the State, in their return, does not seriously contest the mechanism which is supposed to be in place and the power and the authority vested in the AFRC to fix tuition fees for each and every institution. But, instead of explaining as to how and under what authority or power could the Department of Health issue a notification fixing a fee, no clear answer or explanation is coming from them. They decide to maintain a discrete silence on this aspect of the matter. In fact, the counsel for the State submits that the facts are before the Court and they would not like to submit anything over and above the same.
12. Even if for the sake of argument that a notification was issued by the State, which facilitated collection of fee of higher order by the Petitioner, such notification was issued without any authority or power vested in them. The body which had been constituted and was very much in place *i.e.* the AFRC is the only authority having the necessary power to fix fees for such institutions. Obviously, the concerned authorities of the State, in connivance with the institution or institutions, issued a notification which facilitated making a kill by charging a much higher fee from the students for the sessions in question. In fact, the institutions have rewarded

themselves by their own inaction and not setting in motion the mechanism for fixation of the fee, well in time. Delay, if any, was caused by them and they cannot be allowed to retain the unjust enrichment which they have made by collecting excess fee from the students in connivance with some State functionary.

13. A feeble kind of effort was also made to argue that may be a similar kind of matter had already been dealt with and decided by a Division Bench in Writ Petition No. 5393/2005 (*Smita Jangde & Others v. State of Chhattisgarh & Others*), on 06.04.2010 and in a Special Leave Petition against the said decision is pending before the Hon'ble Supreme Court.
14. We are not inclined to keep the matter pending awaiting the position which may emerge in relation to the said case. But so far as the issues and question of law are concerned, we are satisfied that the institution in question i.e. the Petitioner cannot be permitted to take advantage of an otherwise illegal notification issued by the State by usurping authority or power not vested in them. The statutory body i.e. AFRC is the only body which can fix fee for different institutions and since we are satisfied that the institution or the institutions including the Petitioner themselves have manipulated things and delayed the decision making, therefore, the notification issued by the AFRC on 15.10.2012 will relate back to the sessions and the period for which the fees have to be collected. The argument that the notification has to be prospective, is fit to be rejected because the deliberations and the notifications are the result of an exercise done in relation to the sessions in question and since no decision earlier was allowed to be taken, for whatever reasons, including the conduct of the Petitioner, therefore, they cannot be allowed to wriggle out for the sessions 2009-2010, 2010-2011 and 2011-2012.

15. The writ application, therefore, has to fail and is fit to be dismissed because the notification dated 15.10.2012 has to be enforced as a statutory notification based on a decision taken by a statutory body. Since no infirmity in the said decision making as such is the subject matter of challenge, but only its applicability, we hold that the notification is a valid piece of notification and the fee which has been fixed by the statutory body can only be charged from the students and nothing more. The notification of the State cannot be used to retain the excess fee which has been charged by the Petitioner-Institution. The notification of the State which surprisingly limits itself to the Petitioner's College alone would be *non-est* as it is *dehors* the power of the State. It is only the notification issued by the competent body *i.e.* AFRC that will be applicable and permissible.
16. The writ application stands dismissed, in view of the above.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Prashant Kumar Mishra)
JUDGE