IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 6629 OF 2005
WITH
CIVIL APPLICATION NO. 12615 OF 2017
WITH
CIVIL APPLICATION NO. 965 OF 2016

Smt. Sharadchandrika Suresh Patil,
College of Pharmacy, Chopda,
Dist. Jalgaon.
Through it's Principal,
Shri. Dr. Suhas Narayan Sakarkar,
Age 34 years, Occu. Service,
R/o. Chopda, Dist. Jalgaon. **....Petitioner.**

Versus

1. The State of Maharashtra
(Through, Secretary, Technical
Education, Mantralaya),
Mumbai - 32.

2. Shikshan Shulka Samiti,
Through it's Chairperson
Room No. 305, 3rd Floor,
Govt Polytechnic Building,
49, Kherwadi, Ali Yawar Jung Marg,
Bandra (E), Mumbai - 51.

3. The Director of Technical Education,
Maharashtra State,
3, Mahapalika Marg, Mumbai - 1. **....Respondents.**

Mr. B. R. Warma, Advocate for petitioner.

Mrs. D.S. Jape, A.G.P. for respondent No. 1/State.

Mr. M.V. Deshpande, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
RESERVED ON : 22/01/2018
DECIDED ON : 21/02/2018

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The petition is filed for writ of certiorari and/or direction in the like nature in respect of decision dated 6.9.2005 given by respondent No. 2 - Shikshan Shulka Samiti. The petitioner is conducting B. Pharmacy course and the decision was in respect of fee structure of this course of college of the petitioner. As per the decision of respondent No. 2, for academic year 2003-04 on the date of petition, the petitioner was allowed to collect Rs. 21,100/- as a fee from each student for each year. This fee was fixed as Rs. 23,000/- for academic year 2004-05. It is the case of petitioner that it was necessary to fix the fee as Rs. 40,000/- per student per year. The civil application is filed for seeking amendment in the petition as during the pendency of the petition, this court had directed respondent No. 2 to reconsider the claims of petitioner and accordingly, respondent No. 2 has fixed the fees which is increased. As the fee is not increased as per the expectation of petitioner, the amendment application is filed and new prayers are made. Both the sides are heard.

2) The petitioner is conducting the course since the year 1992 at village Chopda, District Jalgaon. It is non aided private college. Respondent No. 2, the Samiti, the Committee is constituted as per the directions given by Supreme Court in the case reported as

2003 (6) SCC 697 [Islamic Academy Education and Anr. Vs. State of Karnataka and Ors.]. The Apex Court has given directions in this case to see that effect is given to the judgment delivered by the Apex Court in the case reported as **(2002) 8 SCC 481 [T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors.].** The procedure which is required to be followed by respondent No. 2 is given in **Islamic Academy Education's** case cited *supra* by the Apex Court and it is as under :-

> "Each educational institute must place before this Committee well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant document and books of accounts must also be produced before the Committee for their scrutiny. The committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which the institute would be at liberty to apply for revision."

3) Respondent No. 2 evolved procedure and ascertained the matters which need to be considered for fixation of fees. Accordingly, initially the fee was fixed for the year 2003-04. Many institutions

were feeling aggrieved by the fee so fixed and they had approached this Court. This Court then gave direction to respondent No. 2 to consider all the objections and give proper hearing to the institutions. This decision was taken up to Supreme Court, but Supreme Court directed to follow the decision given by this Court. The objections of various institutions including the institution of petitioner were heard. The matters which can be considered are quoted after hearing the objections and they are as follows :-

> "We have already quoted the directions of the Apex Court in earlier paragraph-1. If the emphasized portion is carefully read and considered, then it would be quite clear that each Education Institute is bound to place before this Committee, its proposed fee structure along with all relevant documents and Accounts on the scrutiny of the same, the Committee is to find out as to whether the proposed fee is justified or amounts to profiteering or charging capitation and Committee will be at liberty to approve the fee structure or to propose to some other fee structure. The approval could be given only in case the Committee comes to the conclusion that the proposed fee will not do profiteering will not be charging capitation fees."

4) Respondent No. 2 has prepared the methodology for fixing the fee structure. Many institutions like petitioner had in advance quoted more fees than the fees fixed by respondent No. 2

for the year 2003-04. By letter dated 17.11.2004, the Joint Director of Technical Education issued directions to the institutions to see that the fee which was recovered in excess is adjusted against the fee for the year 2004-05. It can be said that the petitioner had collected excess fee, Rs. 35,000/- when initially respondent No. 2 had fixed the fees as Rs.15,600/-. As per the directions given by this Court in the past, this fee was revised and increased to make it Rs.21,100/-. As per the procedure quoted above, this fee was to remain in existence for the period of three years. The decision was given after hearing objections by Committee on 6.9.2005, but the petitioner had still grievance about the fee fixed.

5) The petitioner has contended that following things were not considered by respondent No. 2 while fixing fees for the year 2003-04 :-

(a) Salary of teachers/staff for 15 months. According to the petitioner, as per the procedure laid down, salary of 15 months needs to be considered, but respondent No. 2 considered salary of only 12 months.

(b) It is the contention of the petitioner that petitioner is entitled to 7% inflation charges in the fees, but that amount is not considered.

(c) It is the case of petitioner that every institution is required to develop the institution by adding amenities and also for complying the conditions given by Apex Body AICTE and for that, it is entitled to recover more amount, and

(d) The strength of students which needs to be considered is 90% of sanctioned strength, but the Committee considered full strength when in the year 2003-04 the actual strength was 205.

For both the aforesaid years, similar points are raised by the petitioner institution. For the subsequent year, the strength of the student is given as 239.

6) This Court had given stay in the present matter in favour of petitioner, subject to condition of depositing the excess fee already recovered by the petitioner. While advancing arguments, the learned counsel for petitioner made a statement that entire excess fees collected by the petitioner is deposited in this Court.

7) It appears that due to the aforesaid contentions, this Court by order dated 22.8.2017 directed respondent No. 2 to reconsider the contentions of the petitioner. Thus, for petitioner one more opportunity was given by this Court, even when in the past the Committee had heard the petitioner two times and the fee was

increased as mentioned above. The record produced shows that in the meeting dated 7.9.2017 respondent No. 2 resolved to fix the fees of the petitioner institution as follows :-

(a) For the year 2003-04 Rs.30,000/- in place of Rs.21,100/-, and

(b) For the year 2004-05 Rs.33,500/- in place of Rs.23,000/-.

The relevant portion of the decision of respondent No. 2 is as under :-

> "The Petitioner's contention, of allowing 15 times monthly salary as total salary expenditure being not in conformity with norms specified, cannot be accepted. Actual amount paid towards salary for the year 2003-04 and 2004-05 is allowed. All other contentions of petitioner are accepted. Revised fees based on the then existing methodology for the year **2003-04 and 2004-05 works out to Rs.30,000/- and 33,500/- respectively.**"

8) The learned counsel for petitioner submitted that the petitioner is not yet satisfied with the decision and so, amendment needs to be allowed as mentioned in Civil Application No. 12615/2017. By making amendment, the petitioner wants to get relief like fixation of the fees as Rs.35,000/- for the year 2003-04 and Rs.38,000/- for the year 2004-05.

9) In view of the nature of contentions of the petitioner and the orders made by this Court, this Court holds that petitioner needs to be allowed to make the amendment as sought in Civil Application No. 12615/2017. So, the civil application is allowed. However, in view of the aforesaid relevant circumstances and directions given by the Apex Court, it can be said that when particular procedure was evolved for fixing the fees and the fees was not to be changed for particular period, the institutions like petitioner do not get right to get such reviews of the fees. Already one such direction was given in favour of all the institutions including the petitioner and fee was increased by respondent No. 2. If so many such reviews are allowed, the process will be never ending and the object of creation of such authority will be defeated. The circumstance like the petitioner has already collected higher fees than the fees fixed in the previous years needs to be kept in mind by the Courts as such modus operandi is ordinarily used by the institutions.

10) It can be said that in view of the purpose behind the creation of the Committee like respondent No. 2, this Court is not expected to change the fees. In ordinary course, the Court would have denied such one more review which was allowed during the pendency of the present matter. However, the Committee,

respondent No. 2 has changed the fees and so, this circumstance also cannot be ignored. This Court holds that though this Court is taking into consideration the new decision taken by respondent No. 2, this decision will not act as precedent to enable the other institutions to come for review again and again. This Court is not expected to interfere in the decisions given by such expert committee, unless the Court finds that the decision is against the students, against public interest. The report needs to be considered by the Court as report of expert committee. In view of the peculiar circumstances of the present matter, this Court holds that some benefit can be given to the petitioner as per the new fees fixed by respondent No. 2. If respondent No. 2 had held that fees fixed already was correct fees, this Court would not have interfered in the matter. In the result, following order.

O R D E R

(1) Civil Application No. 12615/2017 is allowed. Amendment in writ petition is to be carried out immediately.

(2) The Writ petition is partly allowed in following terms :

(a) The petitioner is entitled to collect the fees as fixed by Committee, Rs.30,000/- (Rupees thirty thousand) per year per student for the year 2003-04 and Rs.33,500/- (Rupees thirty three thousand five hundred) per year per student for the year 2004-05. This amount is subject to deductions which are to be made from the excess fee already deposited in the Court as per further directions given by this Court in clause (d) and (f) of this order.

(b) Office of this Court is to calculate the entitlement of the petitioner and return the amount deposited by the petitioner. The petitioner will get interest also which must have accrued on the amount if it is kept in the bank.

(c) The remaining amount which is fees of the students is to be returned to the students with interest which must have accrued on it if the amount is kept in bank. Before making payment of the amount to the petitioner, the petitioner is to submit the list of those students with their addresses to the office of this Court.

(d) The office of the Court is to send post cards on the addresses given by the petitioner to the students and also to publish a notice in newspaper to inform the students that they can collect the amount from the office of this Court. The cost of sending post cards and publishing notice is also to be born by the petitioner and for that amount is to be recovered from the amount to which the petitioner is held to be entitled under clause (a) of the operative part of the order.

(e) If within one month from publishing notice in newspaper, students do not turn up with proper identification record, the amount of such students is to be credited with the Government.

(f) The cost of this proceeding is to be paid by the petitioner and it is also to be deducted from the amount which is to be ascertained as ordered in clause (a) of the operative order.

(3) Civil Application No. 965/2016 is also disposed of accordingly.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.] **[T.V. NALAWADE, J.]**

ssc/