

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT APPEAL Nos.224 and 225 of 2017

Common Judgment : *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

These appeals are filed by the Telangana Admissions and Fee Regulatory Committee challenging the orders of the learned Single Judge interfering with its decision.

2. The Admissions and Fee Regulatory Committee, "AFRC", for short; was constituted by the Government of Andhra Pradesh as per GO Ms. No. 6 dated 8.1.2007 in exercise of powers conferred by Section 15 read with Sections 3 and 7 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983; hereinafter referred to as "the Act"; for regulating the admissions, fixation of fee to be charged from candidates seeking admission into Private, Un-aided, Minority and Non-Minority Professional institutions. The appeals are levied against the orders of the learned Single Judge interfering with a decision rendered by the AFRC. The writ petitioners challenge the Notifications issued by the Government on the basis of recommendations made by AFRC regarding fee structure for B.E./B.Tech., and other courses for the relevant period. The challenge levied by the writ petitioners was fundamentally on the procedure adopted by AFRC and the conclusions arrived at by it. The writ petitions were opposed justifying the decision of AFRC on the basis of facts, figures and other details referable to the transactions touching the admissions, payment of fee etc. The

Government, which was the first respondent in the writ petitions, adopted the contentions of AFRC and stood by its Government Order issued on the basis of recommendations of AFRC. The learned Single Judge formulated the points for consideration, which included the question as to what is the scope of enquiry by AFRC under G.O.Ms.No.6, in regard to the fee proposals submitted by the Private Unaided Professional Institutions. The learned Single Judge also went into the question as to the correctness of the decision of AFRC and its recommendations. Referring to decisions of the Hon'ble Supreme Court and of this Court, the learned Single Judge held, *inter alia*, that the State Government and AFRC have to act without deviating from the principles laid down in **Consortium of Engineering Colleges Managements Association (CECMA) and others vs. Government of Andhra Pradesh, rep. by its Principal Secretary, Higher Educational Department and others**¹. The writ petitions were allowed and directions were issued requiring AFRC to reconsider certain aspects inconformity with the directions issued through the impugned order of the learned Single Judge.

3. These appeals are filed by AFRC. There is no appeal by the State Government.

4. At the threshold, we deem it appropriate to consider whether the AFRC has the eligibility to sustain the Writ Appeals and challenge the verdict of the learned Single Judge interfering with the decision of the AFRC.

¹ 2012 (3) ALT 686 (DB)

5. We have heard the learned Special Government Pleader, Sri A. Sanjeev Kumar, representing Sri A. Abhishek Reddy, learned counsel for the appellant, and Sri M. Ravindranath Reddy, learned counsel for respondents - educational institutions on the aforesaid issue.

6. Any institution, by whatever name called, managed by private body, carrying on the activity of imparting education herein, is an 'educational institution' as defined in Section 2(c) of the Act. Section 3 of the Act provides for regulation of admission to educational institutions. Section 3-A provides the special provision in respect of unaided private educational institutions. Section 7 of the Act provides for regulation of fees. Sub-section (1) of that Section provides that it shall be competent for the Government to regulate the tuition fee or any other fee, that may be levied and collected by educational institutions in respect of each class of students. This has to be through a notification as provided for in that Section. Sub-section (2) of that Section prohibits every educational institution from collecting any fee in excess of the fee notified under sub-section (1) and sub-section (3) makes it obligatory for every educational institution to issue an official receipt for the fee collected by it. Section 15 of the Act provides the power to make rules.

7. The Government of Andhra Pradesh issued GO Ms. No.6 dated 8.1.2007, in exercise of power under Section 15, read with Sections 3 and 7 of the Act, thereby making and issuing the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private, Un-aided, Professional Institutions) Rules, 2006;

hereinafter referred to as “the Rules”; those Rules *inter alia* enjoin the constitution, composition, disqualification etc, in relation to that AFRC. The procedure to be followed for fee fixation is delineated in Rule 4 of those Rules. That particular rule ends with Clause (vii) which shows that the fee so determined by the AFRC shall be applicable to candidate who is admitted to an institution in that academic year and shall not be altered till the completion of his course in the Institution in which he was originally admitted. Clause (v) of Rule 4(1) enjoins that the AFRC shall communicate the fee structure, as determined by it, to the Government for notification.

8. The decision making process at the hands of the AFRC is essentially to consider the fee structure that would be proposed by the educational institutions. The AFRC has the power to accept the said proposal or reject it or modify it and grant the fee structure with such modifications as it finds necessary. The statutory duty that is taken upon by the Government in terms of Rule 4(1)(v) is that the Government would notify the decision of the AFRC.

9. These appeals in hand, arise from two Writ Petitions instituted challenging the fee structure, as finalized by the AFRC. The students are not in appeal before us. The educational establishments are not in appeal. The Government is not in appeal. The Convener representing the Telangana Engineering, Agricultural and Medical Common Entrance Test is also not in appeal. The authority which took the decision as regards the fee structure, namely, the AFRC is in appeal.

10. Sri M. Ravindranath Reddy, learned counsel for the educational institutions, would rely upon the decision of the Apex Court in **P.A. Inamdar vs. State of Maharashtra and Others**², to contend that the decision of the AFRC is quasi judicial in nature. On the other hand, learned Special Government Pleader appearing for the appellant made reference to the decision of the Apex Court in **Fee Regulatory Committee vs. Kalol Institute of Management and Others**³ to argue that the Supreme Court had entertained the appeals at the instance of the Fee Regulatory Committee. We are of the view that the Judgment relied on by the learned Special Government Pleader was not rendered on the question of maintainability or eligibility of the AFRC to appeal against the verdict of a Writ Court. As no such issue arises for decision in that case, we would not be justified to apply that as a precedent on the question of maintainability of these Writ Appeals.

11. One who has made a judicial or quasi judicial decision is not entitled to challenge the interference with that decision by a duly constituted judicial authority, including by the Writ Court under Article 226 of the Constitution of India. The spread of judicial authorities would go to show that the decision taken by a judicial or quasi judicial authority, when subjected to judicial review at the hands of a competent superior judicial authority, it fundamentally results in the operation of the doctrine of merger, thereby rendering the first decision subservient to the superior decision given by the judicial review authority. The authority which issued the decision, which thus merges in the decision of the superior judicial authority,

² [2005] 6 SCC 537

³ [2011] 10 SCC 592

is not entitled to challenge that judicial authority's order by recourse to any mode of challenge against that such superior judicial order. It is also the recognized principle that an authority – judicial or quasi judicial, whose decision is being subjected to judicial review cannot seek to support one's own order in the judicial review proceedings except to the extent where the maker of the order under challenge is charged with personal malice and *mala fides*. If one were to seek support of one's own judicial or quasi judicial order, in the course of judicial review of that order, such exercise would itself tantamount to evidence *mala fide* exercise of power. Such interest would be liable to be criticized as personal prejudice even if it is subject matter prejudice. **Syed Yakoob vs. K.S. Radhakrishnan and Others**⁴ is one of the earliest authorities in India, which indicates that a maker of such an order is not even entitled to support the said order in cases where judicial review is sought for, without levying any challenge to the maker on grounds of *malice* or personal *mala fides* etc. See also, **District Executive Officer vs. State of Kerala**⁵.

12. The aforesaid salutary proposition of law, supported by different judicial precedents and legal principles categorically shows that the AFRC which decided on the fee structure after entering on a decision making process based on the proposal by the educational institutions is not, by itself, entitled to levy a challenge to the decision rendered in Writ jurisdiction interfering with the said decision of the AFRC.

⁴ AIR 1964 SC 477

⁵ LAWS (KER) 1990 12 36

13. For the aforesaid reasons, we hold that these Writ Appeals are not maintainable and they are accordingly dismissed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 18.7.2018

Note: LR copy be marked.
(By order)

Pnb/va/pln

