IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19480 of 2018

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1. Narayan Medical College and Hospital and Anr Son of Gopal Narayan Singh, at P.O.-Jamuhar, P.S.-Dehri, District-Rohtas, Bihar.
2. The Principal, Narayan Medical College and Hospital through, Vinod Kumar , Son of Late Shyam Narayan Prasad, Resident of B-19, P.C. Colony, P.S.-Kankarbagh, District-Patna.

... ... Petitioners

Versus

1. The State Of Bihar through the Principal Secretary, Health and Family Welfare, Government of Bihar, Patna
2. The Shikshan Shuik Nirdharan Samiti, Bihar through its Chairman, 3rd Floor, State health Society, Bihar, Sheikhpura, Patna
3. The Medical Council of India, through its Secretary, Pocket-14, Sector-8, Dwarka, New Delhi.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. P.K.Shahi, Sr. Advocate Mr. Amish Kumar
For the State	:	Mr. Shashi Shekhar Kumar Prasad, AC to Paag2
For MCI	:	Mr. Kumar Brijnandan

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 18-09-2019

The petitioners before this Court raise a complain regarding decision of the Shikshan Shulk Nirdharan Samiti (for short ‘the Samiti’) dated 14.7.2018, whereby and whereunder the annual fee for MBBS course has been fixed at Rs. 8,21,000/- The same is inclusive of development fee.

2 Counsel for the petitioner college submits that various heads of expenditure have not been considered by the Samiti while passing the order in question and therefore fixation of annual fee is onerous for the College. The specific factor, which the petitioners claim were not considered by the Samiti is the complete audit report which is now available with the petitioners. Fee was determined on the basis of incomplete audit report.

3 In order to ascertain the aforesaid fact, this Court had impleaded the Samiti as party respondent and directed for issuance of notice. The petitioners filed the requisite for issuance of notice and have also filed affidavits in support of their contention that Dasti service has been effected on the Samiti. The supplementary affidavit filed by petitioner contains a copy of the notice at Annexure 4. The receiving is dated 29.7.2019. In spite of adjournments thereafter none has appeared on behalf of the Samiti.

4 The Samiti has been constituted and the determination of fee is being done in terms of decision of the Apex Court in the case of ***P. A. Inamdar & ors State of Maharastra & ors.*** reported in ***(2005) 6 SCC 537***. As per judgment of the Apex Court, decision of the Samiti is subject to judicial review. In the circumstances, the scope of the proceeding against determination of fee by Samiti would be only confined to the process of decision making and not the decision (fee determination).

5 Whether the complete audit report was considered by the authorities or not is an issue which cannot be looked into by this Court since none has appeared on behalf of the Samiti in spite of valid service of notice.

6 In this connection, this Court would consider it useful to reproduce paragraphs 145 and 150 of judgment of the Apex Court in the case of P A Inamdar (supra):

> *"**149.** However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticized the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their jobs and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.*

> ***150.*** *We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review."*

7 This Court would also take notice of the submission of the Counsel for the petitioners that students have given undertaking to abide by any redetermined fee, if the same is reconsidered by the Shikshan Shulk Nirdharan Samiti. It is also submitted that if the Samiti after relooking the issue determines a higher fee to be collected annually, the same would be prospective in nature. Determination under order dated 14.7.2018 is for a period of three years in terms of order of the Apex Court. The prospectivity of the determination to be done now would therefore continue for the remaining period of three years till such time the determination of fee is done afresh, and realized only from such students who have given an undertaking in this regard.

8 The matter is therefore remanded to the Samiti to examine the issue whether the fee determined by the Samiti requires any re-determination on account of complete audit report, which is now in possession of the College in question, and which they will place before the authorities within a period of four weeks.

9 If the same is made available, this Court would expect the Samiti to re-examine determination of fee in terms of observations made hereinabove for the remaining period out of the three years w e f 14.07.2018.

10 The earlier determination is not being interferred with as the court is conscious of the fact that upon consideration of the materials which was not considered in the earlier proceeding, if the same is relevant, the fixation has to be done afresh in terms of this order. The order dated 14.8.2018 passed by the Samiti shall not stand in the way of re-determination in light of the order of this Court, which it is expected would be done within eight weeks from submission of the complete audit report.

11 The writ petition is disposed of in terms of the aforesaid direction.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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