

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K. LAKSHMAN**

WRIT PETITION NO.23908 OF 2018

ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

1. The petitioner is a minor represented by her guardian. She applied in May 2018 online by paying application and counseling fee for 'A' category seat for MBBS/BDS course commencing in the academic year 2019-20. She filed this Writ Petition in July, 2018.

2. She has assailed in this Writ Petition the action of the Kaloji Narayanarao University of Health Sciences, Warangal, State of Telangana and Dr. NTR University of Health Sciences, Vijayawada, State of A.P. in (a) conducting admissions into MBBS/BDS courses through separate applications for A, B and C category students by charging separate and exorbitant application fee for each category instead of following single window method through common application for all three categories and (b) the action of the State of Telangana, represented by its Principal Secretary, Medical and Family Welfare (C1) Department, Hyderabad in issuing G.O.Ms.No.120 dt.20.07.2017 and the corresponding G.O.Ms.No.30 dt.17.04.2015 issued by the State of Andhra Pradesh through its Principal Secretary, Higher Education Department, Velagapudi, Amaravati, Andhra Pradesh enabling collection of annual tuition fee prescribed for this above courses for **five** academic years while the period of study for the said courses is only **four and half academic years.**

3. However, we are considering only the latter prayer regarding collection of tuition fee for **MBBS course** only in relation to the **State of Telangana** only and not the former prayer as it was not pursued by the counsel for the petitioner. We are also not dealing with the State of Andhra Pradesh or courses other than the MBBS course.

The Medical Council of India Regulations of 1997

4. Under the Indian Medical Council Act, 1956, statutory regulations titled “Medical Council of India Regulations on Graduate Medical Education, 1997” were framed by the Medical Council of India. These have been amended from time to time and the latest version amended up to May, 2018 has been filed as Annexure P-14 by the petitioner.

5. Regulation 7 deals with “training period and time distribution” for the MBBS course and states in Clause (1) as under:

*“(1) Every student shall undergo a **period of certified study** extending over **4 ½ academic years** divided into 9 semesters, (i.e., of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of the examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours each college working time, including one hour of lunch.”*

6. The period of 4 ½ years was to be divided into three phases as per Clause (2) of Regulation 7.

7. Thus, the duration of the MBBS course of study is only 4 ½ years as per the above Regulations.

8. It is not in dispute that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an Expert Body to control the minimum standards of Medical Education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into Medical Institutions. It is settled law that the regulations framed by the Medical Council of India are binding on all State Governments and private unaided professional managements as held in **Preeti Srivatsava v. State of M.P.**¹ and that the scheme of the Indian Medical Council Act, 1956 does not give any option to the Universities/Medical Institutions to follow or not to follow the standards laid down by it.

The Admission and Fee Regulatory Committee Regime

9. Vide G.O.Ms.No.6, Higher Education (EC.2) Department, dt.08.01.2007, the then Government of Andhra Pradesh, invoking its power under Section 15 read with Sections 3 and 7 of the A.P.Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 constituted the Andhra Pradesh Admission and Fee Regulatory Committee for professional courses in private unaided professional institutions in the State and also framed the Andhra Pradesh Admission and Fee Regulatory Committee (for Professional Courses offered in Private Unaided Professional Institutions) Rules, 2006.

¹ (1999) 7 SCC 120

10. Under Rule 4, the Admissions and Fee Regulatory Committee (AFRC) was empowered to invite applications from institutions for fee structure fixation and consider whether the fee proposed by an institution is justified and does not amount to profiteering or charging of capitation fee. This was to ensure that managements of private unaided professional institutions in the spheres of Engineering and Medicine etc., do not arbitrarily charge fee from students who get admissions in the said institutions and the fee charged by the said institutions is commensurate with their expenditure on administration and maintenance, cost of available infrastructure, making provision for reasonable surplus and other factors mentioned in Rule 4(iv) of the said Rules. As per Rule 4(vi), the fee determined by the AFRC would be valid for *three years*.

The action of the Telangana Admission and Fee Regulatory Committee

11. On 27.08.2016, the Telangana Admission and Fee Regulatory Committee met and held preliminary discussions with regard to the fee to be fixed for each medical college in private unaided professional institutions on the basis of details of income and expenditure submitted by them. On 02.09.2016, it communicated to the Principal Secretary, Health, Medical and Family Welfare Department its recommendation of fee for MBBS courses for non-minority and minority medical colleges as under:

NON MINORITY MEDICAL COLLEGES

Annexure-(I)

Sl.No.	Name of the Institutions	Course	No.of Seats	Average fee	TOTAL FEES
				Rs.	
1	Apollo Institute of Medical Sciences and Research, Jubilee Hills Hyderabad.	M.B.B.S.	100	800,000	80,000,000
2	Bhaskar Medical College, Moinabad R.R. Dist.	M.B.B.S.	150	700,000	105,000,000
3	Chalmada Anand Rao Institute of Medical Sciences	M.B.B.S.	150	450,000	67,500,000
4	Kamineni Academy of Medical Sciences and Research Centre, L.B.Nagar	M.B.B.S.	150	610,000	91,500,000
5	Kamineni Institute of Medical Sciences, Nalgonda	M.B.B.S.	100	400,000	40,000,000
6	Malla Reddy Institute of Medical Sciences, Jeddimetla	M.B.B.S.	150	800,000	120,000,000
7	Malla Reddy Medical College for Women, Jeddimetla	M.B.B.S.	150	700,000	105,000,000
8	Mamatha Medical College, Khammam	M.B.B.S.	100	601,000	60,100,000
9	Mediciti Institute of Medical Sciences	M.B.B.S.	150	650,000	97,500,000
10	M.N.R.Medical College and Hospital	M.B.B.S.	100	650,600	65,060,000
11	Prathima Institute of Medical Sciences	M.B.B.S.	150	600,000	90,000,000
12	S.V.S.Medical College, Mahaboobnagar	M.B.B.S.	100	610,000	61,000,000
	TOTAL		1,550		982,660,000

Total Average Fees per Seat	633,974
Apportionment of Fee for “A, B, & C” categories proposed is as follows :	
A	60,000
B	1,100,000
“C” upto maximum of 2 Times of “B”	2,200,000

Minority MEDICAL colleges Annexure-II

Sl.No.	Name of the Institutions	Course	No.of Seats	Average fee	TOTAL FEES
				Rs.	Rs.
1	Deccan College of Medical	M.B.B.S	150	750,000	112,500,000
2	Dr.V.R.K. Womens Medical College	M.B.B.S	100	588,000	58,800,000
3	Shaadan Institute of Medical Sciences	M.B.B.S	150	610,000	91,500,000
	TOTAL		400		262,800,000

Total Average fee per Seat		657,000
Apportionment of Fee for “A, B, & C” categories proposed is as follows:		
A		60,000
B		14,00,000
“C” upto maximum of 2 times of “B”		28,00,000

12. In its minutes of meeting, it was decided that *the fee will be in force till the completion of course for students now admitted i.e., for five (5) years.*

The Acceptance by the Government of Telangana of the TAFRC recommendations

13. This recommendation of the Telangana AFRC was accepted by the Government of Telangana and it issued G.O.Ms.No.126, Health, Medical and Family Welfare (C1) Department, dt.12.09.2016 for the academic year 2016-17.

Contentions of the Petitioner

14. Petitioner assailed G.O.Ms.No.126 dt.12.09.2016 issued by the Government of Telangana on the ground that the fee fixation for MBBS course for five (5) years cannot be valid, when the Regulation 7(1) of the Regulations on Graduate Medical Education, 1997 prescribed the study period of the MBBS course only for 4 ½ academic years. It is contended by the petitioner that the AFRC for the State of Telangana could not have recommended fee for five (5) years for the MBBS course as per its minutes of meeting dt.01.09.2016 and 02.09.2016 enabling private unaided professional institutions / managements to collect from students who get admissions to the said courses in the said institutions fee for five (5) years, when the course of study as per Medical Council of India Regulations, referred to above, is for 4 ½ years.

Other events

15. When this was pointed out to the Government Pleader for Medical and Health for the State of Telangana, he addressed a letter dt.05.12.2019 to the TAFRC.

16. The TAFRC again conducted a meeting on 07.12.2019 and passed a resolution as under:

- “3. With regard the facts, “The TAFRC is of the opinion that the petitioner is not a student of any medical college in Telangana State, she may not have locus standi to file the writ petition; at the most there could have been PIL. The fact that the petitioner is not a student of any medical college in Telangana may be brought to the notice of Hon’ble High Court.
4. With regard to the period for which fee has to be collected, it is seen that, from the inception in the combined State of A.P. and in the State of Telangana after separation, and as well as in the present A.P., fee is being collected for 5 years and apparently in most of the States throughout India, same procedure is being followed. Efforts are being made to collect authentic material from other States as to whether fee is being collected for 5 years or 4 ½ years.
5. There may not be substantial difference, as the total fee would be calculated on the basis of expenditure incurred by the colleges and colleges would be allowed to collect the fee fixed on the basis of such calculation so as to enable them to collect the appropriate amount to recover the expenditure etc. In case it is collected in 4 ½ years the fee is likely to be more per annum than when it is collected in 5 years. Ultimately the quantum of amount to be recovered in the form of fee would be likely to be the same whether it is collected in 4 ½ years or 5 years.”

The consideration by the Court

17. It is most unfortunate that the TAFRC, whose duty was to protect interests of students and their parents and to ensure that they are not overcharged by the private unaided professional institutions / managements where they secure admission to study the MBBS course, should question the locus of the petitioner to file the Writ Petition on the ground that the petitioner in the Writ Petition did not secure admission in any of the medical colleges in the Telangana State.

18. While the petitioner might not have secured admission to any educational institution in Telangana to pursue the MBBS course, the fact remains that when the Writ Petition was filed in July, 2018, the petitioner had applied online by paying application and counseling fee for an A category seat in the MBBS course. We are accordingly of the view that the stand of the TAFRC questioning the locus of the petitioner is to be strongly deprecated.

19. It is even more unfortunate that the Rules framed vide G.O.Ms.No.6, Higher Education (EC.2) Department, dated 08.01.2007 do not contemplate any hearing to any students or parents association before the AFRC decides on the claims of the private unaided professional institutions / managements for fixation of tuition fee for MBBS courses. Neither the State Government of Telangana, nor the TAFRC seem to be bothered about this serious omission in the Rules which deprives students/parents from having any role in protecting their interests before the fee fixation is done by the TAFRC. Yet, both

exhibited a strong hostility to the petitioner as well as the cause she espouses in the Writ Petition.

20. The defence of the TAFRC is that from inception in the combined State of A.P. and in the State of Telangana after separation, fee is being collected for five (5) years; and that the quantum of amount to be recovered in the form of fee would be likely to be the same whether it is collected in 4 ½ or 5 years. It is stated that the total fee would be calculated on the basis of expenditure incurred by the colleges and that in case the fee is collected in 4 ½ years, the fee is likely to be more per annum, than when it is collected in five (5) years.

21. When the TAFRC does not dispute that the Medical Council of India “Regulations on Graduate Medical Education, 1997” in Regulation 7(1) specify that the course of study is 4 ½ academic years, its justification for enabling collection of fees for five (5) years by the private educational institutions, as above, i.e., for an extra half year, is baffling. It appears that the TAFRC had not taken note of the above Regulation at all while fixing the fee for the MBBS course for five (5) years. In our considered opinion, it was the duty of the TAFRC to protect the interests of the student community by correctly taking note of the Regulations of the Medical Council of India and that it has failed to do so.

The Stand of the State Government and its consideration by the Court

22. A more startling reason is given by the Special Chief Secretary to Government, Health, Medical and Family Welfare Department to

support it's acceptance of the recommendation of the TAFRC in G.O.Ms.No.120 dt.20.07.2017 in an additional affidavit filed in this Court on 13.12.2019 as under:

“6. I submit that for candidates who are not eligible due to shortage of attendance and secured less than 35% marks in internal assessment and for candidates who have failed in the final examination at the end of the course will have to undergo further/additional course of study for six months including clinical postings to appear for supplementary examination. The Medical College has to conduct separate classes, clinical postings and conduct internal assessment examinations for such students for six months without charging any fee at the end of the 9th Semester. The candidates who failed in final examination have to undergo course of study with clinical postings and internal assessment examination till they clear all the examinations. Hence additional classes for those students who failed in 1st MBBS, additional classes and clinical postings for extended duration of 6 months for those who failed in final MBBS have to be conducted by the colleges without charging any additional tuition fee.”

23. According to the above stand of the State of Telangana, students/candidates, on account of either shortage of attendance or securing of less than 35% marks in internal assessment or who fail the final examination, would have to again undergo further/additional course of study for six (6) months including clinical postings to appear for supplementary examinations; the medical college concerned, in such situations, would not charge any fee at the end of the 9th semester; and therefore, the medical colleges are justified in collecting fee for five (5) years for *all* students who get admission into private professional institutions.

24. It appears as if the State Government of Telangana is proceeding on the assumption that *all* students who get admission to the MBBS course are likely to fail and would require an additional six (6) months course study and therefore, for *all* students, the fixation of fee shall be for five (5) years.

25. Such presumption of the State of Telangana is wholly without any basis because only some of the students might fail and require to be provided additional study period, but on that account *all* students cannot be charged tuition fee for five (5) years when the course of study as fixed by the Medical Council of India is only 4 ½ years.

26. According to para 10 of the said affidavit,

“the tuition fee fixed in 2016 by TAFRC for various categories of the admissions in private unaided Medical Colleges is as follows:

A- Category – 60,000/- per year.

B- Category – 11,00,000/- per year.

C- Category – up to two times of B Category i.e., Rs.22,00,000/-.”

This also indicates that the fee fixation done by the TAFRC, which was accepted by the Government of Telangana is for five (5) years and the above sums will be collected *every year*.

27. In para 14 of the additional affidavit, it is further stated as under:

“I also submit that the system of fixation of tuition fee payable for 5 years has been conventionally followed in the State of Andhra Pradesh and Telangana from the beginning and also in reputed institutes of Government of India i.e., All India Institute of Medical Sciences, New Delhi.”

28. Merely because in the past the tuition fee fixation was done for five (5) years, that cannot be a ground to persist in the said practice when

Regulation 7(1) of the Medical Council of India “Regulations on Graduate Medical Education, 1997” do not permit it and only permits collection of tuition fee for 4 ½ years.

29. We have also impleaded as 6th respondent, the Telangana State Private Medical and Dental College Managements Association, a registered body under the A.P.Societies Registration Act, 2001 and heard its counsel Sri V.Srinivas. No doubt, its members would collect what fee is prescribed by the TAFRC for the MBBS courses, but the said Association cannot improve what the State of Telangana or the TAFRC have stated in defence of their actions.

30. We accordingly declare that the action of the TAFRC in recommending, as well as the action of the State Government of Telangana in accepting the said recommendation in G.O.Ms.No.120 dt.20.7.2017 permitting the members of the 6th respondent Association to collect tuition fee from students admitted in the private medical colleges/members for five (5) years though the period of study of the MBBS course as per Medical Council of India “Regulations on Graduate Medical Education, 1997” is only for 4 ½ years is arbitrary, illegal and violative of Art.14 of the Constitution of India; and the members of the 6th respondent Association are permitted to collect tuition fee for the MBBS course as per G.O.Ms.No.120, Health, Medical and Family Welfare (C1) Department, dt.20.07.2017 issued by the 1st respondent only for 4 years; and for the balance ½ year, they shall be entitled to collect only half of the amounts specified in the said G.O. only. Any

violation of this rule by the members of the 6th respondent shall be actionable under the A.P.Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983.

31. The Writ Petition is partly allowed as above. No costs.

32. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 08-01-2020

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