IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.9043, 916 of 2016 and 16252 to 16257 of 2016,
and
WMP.Nos.8027, 8028, 700, 762, 14049 to 14060 of 2016

Ms.P.Anita Priya ...Petitioner in W.P.No.9043 of 2016

K.Gauthamraj ...Petitioner in W.P.No.916 of 2016

T.Sundareshwar ...Petitioner in W.P.No.16252 of 2016

Ms.S.Narmadha ...Petitioner in W.P.16253 of 2016

P.Kirubanandhan ...Petitioner in W.P.16254 of 2016

Ms.Priyam Divya ...Petitioner in W.P.16255 of 2016

S.Nadushad Ahamed ...Petitioner in W.P.16256 of 2016

S.Vinoth ...Petitioner in W.P.16257 of 2016

Vs.

1. The Registrar,
   Annamalai University,
   Annamalai Nagar,
   Chidambaram Taluk,
   Cuddalore District
   Pine Code : 608 002.

2. The Secretary to Government,
   Government of Tamil Nadu
   Health and Family Welfare Dept.,
   Secretariat, Fort St. George,
   Chennai - 600 009.

3. The Director of Medical Education,
   Kilpauk, Chennai - 600 010. ...Respondents

COMMON PRAYERS

W.P.No.9043, 916 and 16252 to 16257 of 2016:
Declaring Clause (4) of the agreement bond form for candidates admitted for M.B.B.S./B.D.S. Course for 2014-2015 Academic year as contained in Annexure-II of the prospectus in

so far as fixing and imposition of penalty of Rs.5 lakhs over and above the forfeiture of tuition fees for the entire duration of course of study as stipulated in item No.12 of the prospectus as illegal, unconstitutional besides void abinitio and direct the first respondent to refund the penalty amount of Rs.5 lakhs to the petitioner forthwith with interest at the rate of 12.95% commencing from 04.08.2015, 27.07.2015, 06.07.2015, 03.07.2015, 03.07.2015, 10.07.2015, 01.06.2015, 03.07.2015 apart from directing the first respondent to invest the entire tuition fees collected from petitioner in respect of third year and fourth year course of study for B.D.S. Degree course in any one of the Nationalized Bank in interest earning Fixed Deposits and refund the interest accrued thereon to petitioner after adjusting the tuition fees for each Academic year of the third year 2016-2017 and fourth year 2017-2018 BDS course on the due date of payment of respective academic year.

For Petitioner : M/s.R.Natarajan
in all W.Ps

For R1 : Mr.K.Sathish Kumar
in all W.Ps

For R2 and R3 : Mr.C.Jayaprakash,
Government Advocate
in all W.Ps

COMMON ORDER

The writs on hand have been instituted to declare Clause (4) of the agreement bond form for candidates admitted for M.B.B.S./B.D.S. Course for 2014-2015 Academic year as contained in Annexure-II of the prospectus in so far as fixing and imposition of penalty of Rs.5,00,000/- over and above the forfeiture of tuition fees for the entire duration of course of study as stipulated in item No.12 of the prospectus as illegal, unconstitutional besides void abinitio and direct the 1st respondent to refund the penalty amount of Rs.5,00,000/- to the petitioner forthwith with interest at the rate of 12.95% commencing from 04.08.2015 apart from directing the 1st respondent to invest the entire tuition fees collected from petitioner in respect of third year and fourth year course of study for B.D.S. Degree Course in any one of the Nationalised Bank in interest earning Fixed Deposits and refund the interest accrued thereon to petitioner after adjusting the tuition fees for each Academic year of the third year 2016-2017 and fourth year 2017-2018 B.D.S. course on the due date of payment of respective academic year.

2. The issues raised by the petitioners in all these writ

petitions are no more recital, the issues were adjudicated on several occasions before the Hon'ble Supreme Court of India and more particularly about fixation of fees. The Hon'ble Apex Court of India elaborately considered the procedures to be followed by the Educational Institutions in the case of Islamic Academy of Education and another Vs. State of Karnataka and others, reported in [2003] 6 SCC 697. The Hon'ble Constitution Bench, while elaborately considering the issues framed the following questions arose for consideration:

> "1) whether the educational institutions arc entitled to fix their own fee structure;
>
> 2) whether minority and non minority educational institutions stand on the same footing and have the same rights;
>
> 3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and
>
> 4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission."

3. With reference to the fees structure to be adopted paragraphs-7 and 8 are relevant, which extracted thereunder:-

> "7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students.They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be

used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in T.M.A. Pai case [(2002) 8 SCC 481] the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. 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 documents 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 period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

8. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was

submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."

4. In view of the fact that the Hon'ble Constitution Bench of the Apex Court of India rule the manner in which fees structure is to be adopted by the Educational Institutions across the country, no further adjudication needs to be done in respect of the issues raised in the present writ petitions.

5. The respondents are bound to follow the procedures as contemplated in the judgment cited supra and the issues are to be resolved in the manner prescribed in the said judgment.

6. The learned counsel appearing on behalf of the writ petitioners contended that the appropriation of excess amount paid by the respondents is illegal and in violation of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India. However, the respondents are denied the same by stating that they have charged in accordance with law. The respondents in this regard are directed to follow the principles laid down by the Hon'ble Supreme Court and if any excess amount has been already collected from the petitioners, the same is to be reimbursed and if not, suitable orders have to be passed informing the petitioners about the fees structure and fees collected by the respondents.

7.The learned counsel for the petitioners made a submission that the only left out question is the imposition of penalty, as far as the penalty is concerned the respondents are bound to take a decision strictly in accordance with the directives of the Constitution Bench of the Hon'ble Supreme Court of India in the case cited supra.

8.Accordingly, the respondents are directed to consider the cases of the petitioners individually, take a decision and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order.

9. With these directions, all the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jeni/Vs

To

1. The Registrar,
   Annamalai University,
   Annamalai Nagar,
   Chidambaram Taluk,
   Cuddalore District
   Pine Code : 608 002.

2. The Secretary to Government,
   Government of Tamil Nadu
   Health and Family Welfare Dept.,
   Secretariat, Fort St. George,
   Chennai - 600 009.

3. The Director of Medical Education,
   Kilpauk, Chennai - 600 010.

+8cc to Mr.R.Natarajan, Advocate, S.R.No.58708 to 58715

+1cc to the Government Pleader, S.R.No.58873, 58876, 58877

W.P.Nos.9043, 916 of 2016 and
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WMP.Nos.8027, 8028, 700, 762,
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JPL(CO)
RGA(10/01/2022)