IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No. 229

CWP-9682-2020 (O&M)
Date of decision : 20.04.2022

Aditya Kashyap and others ..... Petitioners

VERSUS

State of Punjab and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Sarthak Gupta, Advocate,
Mr. Varun Dutta, Advocate and
Ms. Sehej Sandhawalia, Advocate,
for the petitioners.

Mr. Arun K. Kaundal, DAG, Punjab.

Mr. Puneet Gupta, Advocate with
Mr. Ravinder Singh, Advocate and
Mr. Kshitiz Goel, Advocate,
for respondent No.2.

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SUDHIR MITTAL, J.

Does the lockdown imposed due to Covid-19 pandemic and resultant curtailment of educational facilities entitle the petitioners to a reduction in the fee chargeable for the academic session 2020-21, is the primary question which arises for consideration in this writ petition. Related to this question is the issue of capacity of this Court to issue directions to an educational institution regarding the manner of reduction of fee.

The petitioners are under-graduate students of Rajiv Gandhi National University of Law (hereinafter referred to as the University). Their regular classes were suspended w.e.f. 14.03.2020 on account of the Covid-19 pandemic. They were asked to vacate the hostel premises and to go home. On 12.04.2020, a notice was issued that regular online classes would be conducted w.e.f. 15.04.2020. Online classes were conducted, although, the case of the petitioners is that they were highly irregular and erratic. As the hostel premises had been vacated and academic activities had been curtailed, a representation dated 18.05.2020 allegedly signed by 726 students out of a total of 850 students of the University was submitted to the Vice Chancellor and others, requesting for reduction/waiver of fee under various heads. It was requested that part of the fee charged for the session February-2020 to May-2020 which remained unutilized be adjusted against the fee chargeable for the session August-2020 to December-2020. The fee chargeable for this session be also reduced as all facilities could not be availed by the students. Rebate in late fee was also sought. This was followed by an identical representation dated 25.05.2020 submitted to the Dean Students Welfare of the University. The said official replied on the same day and informed the applicants that their request would be placed before the appropriate authority shortly. The matter was, accordingly, placed before the Finance Committee which took a decision dated 20.06.2020 that annual increase of Rs.5,000/- in tuition fee for the academic year 2020-21 would be waived and that mess charges would not be taken till the mess started functioning. On 27.06.2020, a notice was issued to the students to deposit the fee for the next semester in accordance with the prescribed schedule. Unhappy with the decision, another representation dated 03.07.2020 was submitted followed by a complaint made before the National Human Rights Commission. A legal notice dated 05.07.2020 was also issued, but having failed to get the desired relief, the present writ petition was filed.

Detailed written statement on behalf of the University has been filed. The State of Punjab has filed a short affidavit.

The University has taken the stand that the writ petition having been filed by only six students does not possess sufficient representative character to espouse a grievance on behalf of all the students. Further, it has been stated that the University is a creation of Rajiv Gandhi National University of Law Act, 2006 (hereinafter referred to as the Act) and is bound to function in accordance with its provisions. The fee structure has been approved by the relevant statutory bodies and the students were well aware of the same. Nothing beyond the approved fee structure is being charged. Although, the fee is charged under various heads, it is a composite fee and is deposited in one account. Thus, fee charged under one head can always be utilized for another purpose. By way of example, it has been averred that library fee is charged only @ Rs.2,000/- per annum per student as is evident from the break-down of fee annexed as Annexure P-8 and the collection made accordingly, is around Rs.16,00,000/-, whereas, in the session 2020-21, a sum of Rs.48,00,000/- has been spent in subscriptions for various software made available to students. The shortfall has to be met through fee collected under other heads. The averment in the writ petition regarding waiver of hostel charges has been controverted by stating that all students are required to reside in the hostel in accordance with the provisions of the Act and while going home, they have locked up their respective rooms. Possession thus, remains with them and they are bound to pay the rent thereof. Rebate in late fee cannot be granted as the same is being charged to ensure that students pay their fee in time. Administration of the University would be jeopardized, if, fees are not paid in accordance with the schedule. The University is entitled to receive annual grants from the State of Punjab, but no such provision was made in the budget for the year 2020-21. A sum of almost Rs.2.00 crores is pending against the grant for the year 2019-20 and accordingly, there is a resource crunch. The University has catered for a grant of Rs.17.00 crores in its budget for the year 2020-21, but the same has not been paid by the State. Money invested in Corpus Fund cannot be utilized to off-set loss caused due to reduced fee. The said fund can only be utilized in accordance with the provisions of the statute. Regarding curtailment of academic activities, it has been stated that online classes have been conducted regularly w.e.f. 15.04.2020 and complete details thereof have been annexed as Annexure R-2/6. This document clearly outlines the classes conducted for each of the petitioners and teachers who imparted instructions to them. Apart from this, online moot Courts, viva-voce and project submissions were held. Funds have been expended in this process and teachers' salaries have been paid in addition. The students have also been provided remote access to the library and details of e-journals subscribed for their benefit have been listed. Under the circumstances, the best possible relief that could be granted to the students has been provided vide decision of the Finance Committee dated 20.06.2020 which has been approved by the Executive Committee. It is also proposed to set up a fully equipped studio for better conduct of online interactive classes and money would have to be spent from the fee collected from the students. It has also been specifically stated that the petitioners have not placed on record any proof that their parents are undergoing financial hardship and thus, their demand for additional fee reduction is unreasonable.

In the rejoinder filed on behalf of the petitioners, the averment in the written statement regarding their being no proof of the parents of the petitioners undergoing financial hardship has not been controverted. Regarding non-grant of funds by the State, it has been stated that same is a matter between the University and the State and the petitioners cannot be made to suffer on that account. In respect of the Corpus Fund, it has been stated that interest accrued thereupon can be utilized for capital expenditure and maintenance and thus, the same is available for provision of additional facilities and for maintenance. In response to the averment that online classes have been conducted regularly, it has been stated that the same were erratic.

A perusal of the short reply filed on behalf of the State shows that no grant has been catered for during the Financial Year 2020-21.

The prayer made in this writ petition is, *inter alia,* for quashing of decision of the Finance Committee dated 20.06.2020, restricting relief to the students to waiver of annual increase in tuition fee and postponement of charging of mess fee till the mess actually reopens as well as for quashing of notice dated 27.06.2020, whereby, the students have been directed to deposit fee for the next semester, i.e. August-2020 to Decembe-2020 in accordance with the prescribed schedule. That apart, a writ in the nature of mandamus has been sought directing the respondents to adjust the unutilized portion of fee for the semester February-2020 to May-2020 against fee chargeable for the next semester and also to direct the respondents to charge only that amount of fee in respect of which actual expenditure is incurred. In support of this prayer, learned senior counsel for the petitioners has placed strong reliance on the Minutes of Meeting of the Finance Committee held on 20.06.2020, wherein, the impugned decision was also taken. Reference has been made to Item No.4 thereof to argue that a sum of Rs.214.67 lacs was left over from the budget for the year 2019-20. The same is sought to be reappropriated for other purposes. Instead of reappropriating the same, it can be utilized for giving necessary relief to the students. Reference has also been made to Item No.7 thereof, whereby, a decision has been taken to reduce the rent charged to 25% till the mess/canteen/shops reopened as the contractors thereof were not earning anything due to lockdown. The argument is that if, contractors can be given the benefit of 75% waiver of rent, the students can also be given benefit of 75% waiver of hostel charges. By placing reliance upon short affidavit filed on behalf of the State, it has been argued that the State is providing maintenance grant and thus, charging of campus development fund from the students is unfair. Strong reliance has also been placed upon judgment of the Supreme Court dated 03.05.2021 passed in Civil Appeal No.1724 of 2021 (arising out of SLP (C) No.27881 of 2019 and connected cases) titled as **Indian School, Jodhpur and another Vs. State of Rajasthan and others.** On the basis thereof, it has been submitted that the Supreme Court granted 15% reduction in the annual fee payable and a similar direction be issued in this case also. Decision dated 16.07.2020 of the National Law University, Jodhpur as well as decision dated 11.08.2020 taken by the Gujarat National Law University have also been relied upon to submit that the National Law University, Jodhpur has granted a reduction of Rs.24,500/- from the fee payable during the session 2020-21 and the Gujarat National Law University has granted reduction of Rs.63,630/- from the fee payable for the same period. The submission thus, is that (a) hostel fee be reduced by 75%, (b) tuition fee be reduced by 15% and (c) full waiver be granted of fee chargeable towards amenities fee, campus development fund, moot Courts and library facilities.

Learned counsel for the University has in turn argued that the decision dated 20.06.2020 as well as notice dated 27.06.2020 are reasonable, legal and valid and do not call for any interference. The students have already been granted a benefit amounting to Rs.19,782/- in the annual fee payable. Rs.5,000/- is towards waiver of annual increase and Rs.14,782/- is towards Covid-19 waiver. It amounts to reduction in the annual fee to the extent of 17.8% which is more than the reduction granted by the Supreme Court in **Indian School** (supra). In co-relation with this argument, it has been submitted that a sum of Rs.2.00 crores (approximately) is due from the State for the year 2019-20 and if, the same were to be paid, the students would get further benefit. The other arguments are not being reproduced as they are similar to what has been stated in the written statement. It has also been submitted that judgment in **Indian School** (supra) is not applicable as educational institutions in the State of Punjab have been specifically excluded while deciding the said case. The argument based upon fee reduction by other National Law Universities is sought to be controverted by submitting that no factual pleadings have been made in this regard and thus, the University has been denied the opportunity to rebut the same. There is nothing on record to suggest that the said Universities have granted more benefits to the students in terms of the waiver of fee, even though, they are identically placed as the University. Taking advantage of pendency of the writ petition, the students have not paid the fee and the same is affecting the functioning of the University. As on date, a total of 144 students have made part payment only and 18 have not paid any fee at all. Additionally, it has been submitted that the State of Punjab be directed to pay the arrears of grant.

The details given in the written statement regarding conduct of online classes, online moot Courts, viva voce and project submissions have not been specifically denials. All that has been stated to controvert the relevant averments is that online classes were irregular and erratic. In this state of pleadings, it has to be held that online classes were conducted in full earnest. The University is thus, entitled to charge full tuition fee and no reduction is called for.

Details of the fee payable by under-graduate students are reproduced below:-

FEE DETAILS

FEE PAYABLE BY UNDER-GRADUATE STUDENTS

B.A. LL.B. (Hons.)

<table>
<tr><th></th><th>Fee Detail</th><th>Annual Fee</th><th>First Half
(At time of Admission)</th><th>Second Half
(Before 10th of Jan.)</th></tr>
<tr><td>1</td><td>Admission fee</td><td>Rs.5000*</td><td>Rs.5000*</td><td>-</td></tr>
<tr><td>2</td><td>Tuition fee</td><td>Rs.110000
US $ 6000 or equivalent in INR for the Foreign Nationals (US $ 3000 in case of SAARC candidates)</td><td>Rs.55000</td><td rowspan="6">Rs.55000</td></tr>
<tr><td>3</td><td>Amenities fee</td><td>Rs.23000</td><td rowspan="5">Rs.41000</td></tr>
<tr><td>4</td><td>Campus Development Fund</td><td>Rs.10000</td></tr>
<tr><td>5</td><td>Moot Court fees</td><td>Rs.3000</td></tr>
<tr><td>6</td><td>Examination fee</td><td>Rs.3000</td></tr>
<tr><td>7</td><td>Library fee</td><td>Rs.2000</td></tr>
<tr><td>8</td><td>Hostel Rent (Double occupancy) and other charges</td><td>Rs.30000***</td><td>Rs.15000***</td><td>Rs.15000</td></tr>
<tr><td>9</td><td>Refundable security</td><td>Rs.20000*</td><td>Rs.20000*</td><td>-</td></tr>
<tr><td>10</td><td>Total fee</td><td>Rs.206000</td><td>Rs.136000</td><td>Rs.70000</td></tr>
<tr><td>11</td><td>Advance Mess bill adjustable against actual bill</td><td>Rs.34000**</td><td>Rs.17000**</td><td>Rs.17000**</td></tr>
</table>

Note:

1. *Admission fee of Rs.5000/- at sr. no. 01 and Refundable Security of Rs.20000/- at serial no.9 shall be **payable by 1st years students only.**

2. **The advanced mess fee for the session July to December, 2020 shall be deposited upon the physical joining of the students to their respective classes.

3. 1st Semester students are required to deposit the fee through demand draft, in favour of Registrar, RGNUL, Punjab, payable at Patiala, preferably of State Bank of India. The draft for University fee shall be of Rs.86000/- (after adjusting CLAT counseling fee of Rs.50000/-)

4. All students of 2nd semester to 10th semester shall pay the fee and other charges online. The form for fee payment is available on the RGNUL website www.rgnul.ac.in

5. ***Single occupancy in the Hostel, if available, will be allotted as per University Policy to senior students on the basis of merit. The charges for single occupancy shall be Rs.35000/- per annum.

6. The annual increase of Rs.5000/- in the Tuition Fee is not being added for the current Academic Year 2020-2021.

The petitioners are asking for reduction in tuition fee by 15%, complete waiver of amenities fee, campus development fund, moot Court fees and library fee. Reduction to the extent of 75% is sought in hostel rent.

Before examining the merits of this case, it would be appropriate to go into the question, whether, this Court possesses the necessary capacity to determine the actual utilization of fee charged under a specific head and whether, it can decide that fee chargeable under different heads should be waived as expenditure under that head would not take place? The petitioners have not placed on record any data to establish that fee under a particular head has remained unutilized. The argument is being raised on the basis of assumptions. On the other hand, the University has argued that although, the fee is charged under different heads, it is a composite fee and is deposited in one and the same account. If, there is a shortfall under a particular head, example, library fee (illustrated by figures and which have not been controverted), the shortfall can be off-set through fee collected under other heads. The figures in this regard clearly show that a sum of Rs.48,00,000/- was expended for providing software for use of students as against a collection of only Rs.16,00,000/- (approximately) and obviously, shortfall has to be made good through fee collected under other heads. It is thus, not possible to determine with any amount of exactitude, the amount remaining unutilized on account of lockdown. For the same reason, it is not possible to determine the waiver of fee to be granted. In **Indian School** (supra), although, schools situated in the State of Punjab have been kept out of its purview, the following observations have been made and the same can be relied upon even for the decision of this case:-

> ‘115. In law, the school Management cannot be heard to collect fees in respect of activities and facilities which are, in fact, not provided to or availed by its students due to circumstances beyond their control. Demanding fees even in respect of overheads on such activities would be nothing short of indulging in profiteering and commercialization. It is a well-known fact and judicial notice can also be taken that, due to complete lockdown the schools were

not allowed to open for substantially long period during the academic year 2020-21. Resultantly, the school Management must have saved overheads and recurring cost on various items such as petrol/diesel, electricity, maintenance cost, water charges, stationery charges, etc. Indeed, overheads and operational cost so saved would be nothing, but an amount undeservedly earned by the school without offering such facilities to the students during the relevant period**.** Being fee, the principle of *quid pro quo* must come into play. However, no accurate (factual) empirical data has been furnished by either side about the extent to which such saving has been or could have been made or benefit derived by the school Management. Without insisting for mathematical exactitude approach, we would assume that the school Management(s) must have saved around 15 per cent of the annual school fees fixed by the school/adjudicated by the Statutory Regulatory Authorities for the relevant period.'

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'117. Ordinarily, we would have thought it appropriate to relegate the parties before the Regulatory Authority to refix the school fees for the academic year 2020-21 after taking into account all aspects of the matter including the advantage gained by the school Management due to unspent overheads/expenses in respect of facilities not availed by the students. However, that course can be obviated by the arrangement that we propose to direct in terms of this judgment. To avoid multiplicity of proceedings (as school fee structure is linked to school-school wise) including uncertainty of legal processes by over 36,000 schools in determination of annual fee structure for the academic year 2020-21, as a onetime measure to do complete justice between the parties, we propose to issue following directions:

(i) The appellants (school Management of the concerned private unaided school) shall collect annual school fees from their students as fixed under the Act of 2016 for the academic year 2019-20, but by providing deduction of 15 per cent on that amount in lieu of unutilized facilities by the students during the relevant period of academic year 2020-21.

(ii) The amount so payable by the concerned students be paid in six equal monthly instalments before 05.08.2021 as noted in our order dated 08.02.2021.

(iii) Regardless of the above, it will be open to the appellants (concerned schools) to give further concession to their students or to evolve a different pattern for giving concession over and above those noted in clauses (i) and (ii) above.

(iv) The school Management shall not debar any student from attending either online classes or physical classes on account of nonpayment of fees, arrears/outstanding fees including the installments, referred to above, and shall not withhold the results of the examinations of any student on that account.

(v) If any individual request is made by the parent/ward finding it difficult to remit annual fees for the academic year 2020-21 in the above terms, the school Management to consider such representation on case to case basis sympathetically.

(vi) The above arrangement will not affect collection of fees for the academic year 2021-22, as is payable by the students of the concerned school as and when it becomes due and payable.

> (vii) The school Management shall not withhold the name of any student/candidate for the ensuing Board examinations for Classes X and XII on the ground of non-payment of fee/arrears for the academic year 2020-21, if any, on obtaining undertaking of the concerned parents/students.'

The above shows that the Court is not equipped to determine issues as the present one with any mathematical exactitude and normally, such disputes are to be decided by the relevant Regulatory Authority on the basis of material produced before it.

Courts do not possess the necessary expertise to interfere in the micro financial planning of educational institutions. The same is done by experts in the field and Courts can interfere only if, a decision is shown to be completely unreasonable and perverse. Simply because the reduction is not in keeping with the expectation of the students, it cannot be called unreasonable. Sufficient reasons such as the fee being composite in nature, non-availability of State grants and expenditure incurred on conducting online classes, have been given in support of the decision. The argument raised by learned senior counsel for the petitioners based on Item No.4 of the decision dated 20.06.2020 of the Finance Committee deserves to be rejected for the reason that the balance of Rs.214.67 lacs was on account of non-clearance of liabilities/bills pertaining to the year 2019-20 on account of the national lockdown. Accordingly, an amount of Rs.40,00,000/- was reappropriated for purposes not catered in budget estimate for the year 2020-21. The liabilities/bills pertaining to the year 2019-20 would still need to be cleared and funds would have to be marshaled from some source for this purpose. Thus, no directions can be issued to the University to reappropriate the entire amount for giving the benefit in annual fee chargeable from the students. The questions raised in the beginning of this judgment are accordingly, answered in the negative.

In this case, the only concrete fact is that the students have not occupied their hostel rooms ever since lockdown was imposed till physical classes were resumed. Despite this fact, they have remained in possession of their respective rooms as is evident from a representation made to the District Authorities when a proposal was floated to convert the boys' hostel into Covid Care Isolation Centers. In the said representation, it was stated that important documents and personal belongings were lying in the rooms and occupation thereof would result in loss and jeopardizing of career. Under the circumstances, the University would be entitled to charge rent. No parity can be drawn with the contractors running mess/canteens/shops etc. as on account of closure of the University, their businesses have suffered which is not the case with the students. Vacation of the hostel room has resulted in non-utilization of mess facilities and on that account, necessary relief has already been granted vide decision dated 20.06.2020 as collection of mess fee has been postponed till reopening of the mess. A specific figure of Rs.14,782/- has been mentioned in the written statement and there is no denial thereof. Alongwith the waiver of annual increase of Rs.5,000/-, this amount would also take care of savings on account of reduction of over heads and operational costs. Regarding the unutilized fee for the semester

February-2020 to May-2020, it is held that the same being part of the composite fee, can be utilized for other purposes such as for off-setting the expenditure for library, being higher than the fee collected.

Reliance on the fee reduction granted by the National Law University, Jodhpur as well as the Gujarat National Law University cannot be accepted, *ipso facto,* as no factual ground has been laid down in support thereof. The University has thus, been denied the opportunity to rebut the submission. Also there is nothing on record to show that the University is identically placed as the said Universities and has the same system of financial management. These decisions can be relied upon for the limited purpose of citing examples of other National Law Universities and no more. They cannot be relied upon with complete exactitude. The University has already given reduction of 17.8% and in my considered opinion, the same is adequate in view of the facts and circumstances of this case especially when in **Indian School** (supra), a benefit of only 15% has been given.

Since, it has been held that the decision dated 20.06.2020 as well as the notice dated 27.06.2020 are not perverse, unreasonable or arbitrary, challenge thereto has to fail. Thus, the writ petition is dismissed with the observation that the University shall sympathetically consider individual cases for waiver of late fee charges on the basis of material produced before it. The State of Punjab is also directed to objectively consider the release of arrears pertaining to the year

2019-20. In case, the same are not being released, a speaking order be passed within eight weeks from the date of receipt of certified copy of this judgment.

(SUDHIR MITTAL)
JUDGE

20.04.2022
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes