



2025:DHC:2074-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

(43)

+ W.P.(C) 11366/2023

SHRI LAXMAN DASS SACHDEVA MEMORIAL
EDUCATIONAL SOCIETY

.....Petitioner

Through: Mr. Namit Suri, Mr. Rameezuddin
Raja and Ms. Tanya Sharma,
Advocates.

versus

DIRECTORATE OF HIGHER EDUCATION GOVERNMENT OF
NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Dhruv Rohtagi, Panel Counsel
with Ms. Chandrika Sachdev and Mr.
Dhruv Kumar, Advocates for R-1 &
R-2.

(44)

+ W.P.(C) 11374/2023

SOCIETY FOR EMPLOYMENT AND CAREER COUNSELING
(REGD.).

.....Petitioner

Through: Mr. Namit Suri, Mr. Rameezuddin
Raja and Ms. Tanya Sharma,
Advocates.

versus

DIRECTORATE OF HIGHER EDUCATION GOVERNMENT OF
NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Dhruv Rohtagi, Panel Counsel
with Ms. Chandrika Sachdev and Mr.
Dhruv Kumar, Advocates for R-1 &
R-2.

(45)

+ W.P.(C) 11382/2023

SHREE MAA LEELAWATI SHIKSHAN SANSTHANPetitioner



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Through: Mr. Sameer Rohtagi, Mr. Namit Sri,
Mr. Rameezuddin Raja, Ms. Tanya
Sharma and Mr. Kartikey Singh,
Advocates.

versus

DIRECTORATE OF HIGHER EDUCATION GOVERNMENT OF
NCT OF DELHI & ANR.Respondents

Through: Mr. Dhruv Rohtagi, Panel Counsel
with Ms. Chandrika Sachdev and Mr.
Dhruv Kumar, Advocates for R-1 &
R-2.

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Date of Decision: 25th March, 2025

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

DEVENDRA KUMAR UPADHYAYA, CJ: (ORAL)

CM APPL. 64725/2023 in W.P.(C) 11382/2023

1. Having regard to the contents of the application and also considering the fact that learned counsel representing the respondents does not have any objections to the prayer made therein, the application is allowed. The amended memo of parties has also been filed and is taken on record.

W.P.(C) 11366/2023, W.P.(C) 11374/2023 and W.P.(C) 11382/2023

2. Since the subject matter and challenge made in these writ petitions is the same, with the consent of the learned counsel for the parties, all the three petitions are being disposed of by the judgment and order which follows.

3. The petitioner-institutions are privately managed and unaided colleges which are affiliated with Guru Gobind Singh Indraprastha University and are imparting education leading to grant of various



undergraduate and postgraduate degrees awarded by the said University.

4. These petitions have been instituted by the petitioner-institutions challenging the notifications dated 10.04.2023 and 04.04.2022 issued by the Directorate of Higher Education of GNCTD under Section 6(3) and 6(13) of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 (hereinafter referred to as the '2007 Act') whereby the fee to be charged by the petitioner-institutions has been notified as proposed by the State Fee Regulatory Committee (hereafter referred to as 'SFRC') constituted under the said enactment. By the impugned notification, these institutions which were earlier categorised as 'A+' institutions entitling them to charge higher fee than the fee being charged by institutions categorised as 'A', have been downgraded as category 'A' institutions.

5. The necessary facts which are relevant to be mentioned for evaluation and determination of the issues involved in these petitions are as under.

6. Challenging the earlier notification dated 04.04.2022, a society/association namely, Self-Financing Education Institutions (Regd.) had filed a writ petition being W.P.(C) No.13897/2022 which was finally disposed of by a Coordinate Bench of this Court by means of an order dated 26.09.2022, permitting the colleges, which are members of the aforesaid association, to submit their representations which was ordered to be decided by the GNCTD as expeditiously as possible. The Court further provided that the representations preferred under the said order shall be decided preferably within two weeks. It was also provided in the said order by the Court that the GNCTD will be free to take appropriate decision in accordance with the law



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in the matter. The Court further observed that the SFRC shall cooperate with the GNCTD in the matter and shall forward the entire records in respect of the colleges to GNCTD. The Court while disposing of the said writ petition by means of the order dated 26.09.2022 further observed that in case the GNCTD arrives at a conclusion that the process of assessment has to be done afresh, the SFRC shall be free to re-assess the colleges in question.

7. Pursuant to the aforesaid order passed by the Coordinate Bench of this Court on 26.09.2022, representations were made, both by the petitioner-institutions as also by the association to the government. We may refer to two such representations dated 28.09.2022 and 28.10.2022 filed by the petitioner in W.P.(C) No.11382/2023. It is to be noticed that the Court while disposing of the writ petition filed by the association, *vide* its order dated 26.09.2022, had directed the GNCTD to decide the representations to be preferred by the petitioners under the said order, preferably within a period of two weeks. However, since no decision was taken, a miscellaneous application was moved in the aforesaid petition, which was taken up and disposed of by the Court by means of an order dated 17.11.2022 reiterating the directions issued earlier to GNCTD and further providing that the decision may be taken within a period of three weeks.

8. Pursuant to the said order dated 17.11.2022, the petitioners again represented the concerned authorities of the GNCTD by means of making a representation on 25.11.2022. However, since the said representation also did not field any result in the sense that no decision as directed by the Court was taken by the GNCTD, a Contempt Petition bearing CONT.CAS(C) No.1376/2022 was filed. In the said Contempt Petition, a statement was made on behalf of the GNCTD by the learned Additional Standing Counsel



to the effect that the representation shall be disposed of within a period of one week.

9. Thereafter, a letter dated 26.12.2022 was written by the Directorate of Higher Education, GNCTD to the Chairman of 5th SFRC, pointing out therein that the assessment of the self-financed institutions was conducted by the 5th SFRC for determining the fee for the year 2022 – 2025, however, on the basis of incorrect Joint Assessment Committee (JAC) Reports forwarded by the University, some of the institutions were downgraded and accordingly, notification dated 04.04.2022 was issued. The letter further stated that the association of the self-financed institutions had approached this Court by way of filing W.P.(C) No.13897/2022 and further by preferring Contempt case no.1376/2022 and this Court had directed that the process of assessment has to be done afresh and the Committee shall be free to reassess the colleges in question. The letter dated 26.12.2022 also intimated the Chairman of the Committee that the Hon'ble Lieutenant Governor had directed the representations of the effected institutions to be forwarded to the 5th SFRC for reassessment considering the fresh JAC's Report and in view of the anomalies admitted by the Committee as well as by the University. By the said letter, the representations preferred by the petitioners as also by certain other affected self-financing institutions were forwarded to the SFRC.

10. It is relevant to notice at this juncture itself that what the letter dated 26.12.2022 reveals is that the Directorate of Higher Education of GNCTD itself had recognised and acknowledged the anomalies in determination of the fee to be charged by the self- financed institutions as per the notification dated 04.04.2022.



11. After the said letter was sent to the SFRC, the State Government issued a notification dated 10.04.2023 whereby the category of the petitioner-institutions has not been changed and the category as notified *vide* earlier notification dated 04.04.2022 has been maintained.

12. It is this notification dated 10.04.2023 and the earlier notification dated 04.04.2022 that are under challenge in these writ petitions.

13. Assailing both the impugned notifications, the learned counsel representing the petitioners has vehemently argued that firstly, the order dated 26.09.2022 passed by this Court in earlier writ petitions filed by the association of the self- financed institutions, even today remains uncomplied with, in the sense that the Court had earlier directed the government to take a decision on the representation and thereafter, in case it was found that the matter required re-assessment, to refer the same to the Committee. However, no such decision has been taken till date by the Directorate of Higher Education, GNCTD. It has also been argued that prior to the notification dated 04.04.2022, the petitioner-institutions were categorized as 'A+' category institutions permitting them to charge higher fee than the fee being charged by the institutions categorised as 'A', however by the notification dated 04.04.2022 as also the notification dated 10.04.2023, the petitioner-institutions have been downgraded from 'A+' category to 'A' category, as such, in terms of the requirements of principles of natural justice, an adequate opportunity of hearing ought to have been given both by the State Government as also by the Committee. This submission is that accordingly, the impugned notification dated 10.04.2023 *qua* the petitioner-institutions suffers from the vice of non-observance of principles of natural justice and hence is not sustainable.



14. Our attention has been drawn to the provisions contained in the proviso appended to Section 6(2) of the 2007 Act, according to which, the Fee Regulatory Committee is under statutory mandate to give a reasonable opportunity of being heard to the institutions before determining the fee to be fixed for such institutions and before recommending the fee for such institution in each course of the study. It has thus been argued that since the petitioner-institutions were not given any opportunity of hearing, though their category was downgraded from 'A+' to 'A', the impugned notification dated 10.04.2023 is illegal and cannot be permitted to be acted upon. In support of his submissions, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court dated 03.12.2024 passed in SLP(C) No.21782/2023 titled ***Srusti Academy of Management vs. The State of Odisha & Ors.***, and has submitted that the facts of the instant case are akin to the facts of the case which was under consideration before the Supreme Court and accordingly, these petitions also deserve to be allowed.

15. Opposing the prayers made in the writ petitions, on the other hand, learned counsel representing the respondent nos.1 & 2 has argued that it is not a case where it can be inferred that the petitioner-institutions were not given any opportunity of hearing before the notification dated 10.04.2023 was issued for the reason that the representations received from the petitioners which were preferred by them pursuant to the order of this Court passed on 26.09.2022, were referred by the Directorate of Higher Education to the Fee Regulatory Committee and it is only on consideration of the said representations that the notification dated 10.04.2023 had been issued. Further submission of the learned counsel for the respondents is that as per the requirement contained in the proviso appended to Section 6(2) of the 2007 Act, a reasonable opportunity of being heard would not mean



opportunity of personal hearing and in case an institution is provided with an opportunity of making representation and producing documents in support of its claim, that would sufficiently meet the requirement of principles of natural justice in terms of the said proviso appended to Section 6(2) of the 2007 Act.

16. Having heard learned counsel for the parties and perused the records available before us on these writ petitions, we find ourselves unable to agree with the submissions made by the learned counsel representing the respondents.

17. It is to be noticed that the association, of which the petitioner-institutions are members, had approached this Court earlier by instituting W.P.(C) No.13897/2022 which was disposed of by a Coordinate Bench on 26.09.2022 permitting the said petitioner as also the members of the said petitioner to make representations to the State Government and thereafter, the government was directed to consider and decide the said representations. It was however kept open for the government to refer the matter for re-assessment to the SFRC in case it was found that the assessment had to be done afresh. The time limit provided in the said order dated 26.09.2022 for taking decision on the representations preferred by the members of the petitioner therein was not adhered to by the GNCTD which compelled the said association to move this Court again by way of moving a miscellaneous application which was decided on 17.11.2022 with a direction to GNCTD to take a decision within three weeks. However, strangely enough, even after the said direction, the Higher Education Department of the GNCTD did not take any action, which led the association to approach this Court by instituting contempt proceedings. Even in the contempt



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proceedings, an order was passed on 16.12.2022 in terms of the statement made by the learned Additional Standing Counsel representing the GNCTD that the order dated 26.09.2022 shall be complied with within one week.

18. If we examine the contention of the learned counsel for the respondents that plea based on the alleged non-observance of the principles of natural justice, is not available to the petitioner-institutions in view of the fact that the decision was taken at the end by the State Government for referring the matter to the SFRC for re-assessment based on the submissions made by the petitioners in their representations which were preferred pursuant to the order passed by this Court on 26.09.2022, we find it difficult to come in agreement with the same for the reason that a bare perusal of the notification dated 10.04.2023 reveals that the said notification is not confined to the petitioner-institutions alone, rather it is in relation to 23 such institutions, in respect of which a decision appears to have been taken by the Hon'ble Lieutenant Governor which is reflected in the letter dated 26.12.2022 written by Higher Education Department to the SFRC. The said letter clearly reveals that it was written to the SFRC for considering the entire matter pertaining to as many as 23 colleges based on the general complaints received in respect of recommendations made by the JAC of the University concerned. The said letter does not anywhere make a reference to the contents of the representations made by the petitioner-institutions and accordingly, any re-assessment made by the SFRC based on the said letter dated 26.12.2022 cannot be termed to be a decision taken in compliance of the order passed by this Court on 26.09.2022.

19. We are of the opinion that the notification dated 10.04.2023 is culmination of a fresh exercise undertaken by the Fee Regulatory Committee not only in respect of the petitioner-institutions but in respect of other



institutions in terms of the letter dated 26.12.2022.

20. Accordingly, the respondents cannot hide behind the letter dated 26.12.2022 to submit that compliance of the order dated 26.09.2022 passed by this Court, was ensured by the respondents.

21. Issuance of the impugned notification dated 10.04.2023 is to be viewed in the light of the provisions contained in Section 6 of the 2007 Act. The 2007 Act is a State enactment which was passed by the State Legislature with the aim of providing for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matters incidental thereto.

22. Section 3 contains a definition clause. Section 3(i) defines the 'Fee Regulatory Committee' to mean the committee constituted by the government under Section 6 of the said Act for determining the fee for admission in an institution. Section 6 provides for constitution of the Fee Regulatory Committee which as per the requirement of the said provision is to be done by the government by way of notification in the official Gazette. The constitution of the Fee Regulatory Committee is also given in the said Act. Section 6(2) of the 2007 Act provides that Fee Regulatory Committee will be free to adopt for its own procedure for the conduct of its business.

23. The proviso appended to Section 6(2) of the 2007 Act is very relevant for the purposes of deciding the issues engaging attention of this Court about the application of the principles of natural justice in the business to be transacted by the Fee Regulatory Committee. The said proviso clearly states that Fee Regulatory Committee shall give a reasonable opportunity of being



heard to an institution before determining the fee to be fixed for a course of study. For clarity, Section 6(2) of the 2007 Act is extracted hereunder:-

“6(2) The Fee Regulatory Committee shall adopt its own procedure for the conduct of its business.

Provided that the Fee Regulatory Committee shall give a reasonable opportunity of being heard to an institution before determining the fee to be fixed for a course of study of such institution and recommending the fee for such institution in each course of study, to the Government.”

24. A bare perusal of the proviso appended to Section 6(2) of the 2007 Act reveals that Fee Regulatory Committee is under statutory mandate to provide a reasonable opportunity to the institution concerned before determination of the fee. So far as the facts of the instant case are concerned, we may observe that as it is the requirement under the proviso appended to Section 6(2) that the Fee Regulatory Committee shall give reasonable opportunity of being heard to an institution before determination of fee, the requirement of observance of principle of natural justice in the facts of the instant case assume more importance for the reason that it is a case where the petitioner-institutions were downgraded from category ‘A+’ to category ‘A’.

25. It is needless to observe that any downgrading of an institution from category ‘A+’ to category ‘A’ thus causes certain consequences to the institution concerned in terms of its entitlement to charge the fee from its students for imparting education. The petitioner-institutions, as observed above, are privately managed but do not receive any grant-in-aid from the State Government and therefore, the expenditure of running and managing the institutions and imparting the education etc. is borne by the petitioner-institutions primarily based on the receipts from the fee charged from the students. One of the determining factors for assessing the fee to be charged, thus, is the expected expenditure to be incurred by an institution for running and managing the education of the students studying in such



institutions, and accordingly, there cannot be any denial that downgrading of an institution from category 'A+' to category 'A' in terms of its entitlement for charging fee, thus causes civil consequences and therefore, at least in a situation where an institution is being downgraded by the Fee Regulatory Committee, it is incumbent upon the said committee to provide not only an opportunity of making representation but also to provide opportunity of being heard as well.

26. The aforesaid view taken by us is supported by an order dated 03.12.2024 passed by the Hon'ble Supreme Court in SLP(C) No.21782/2023 titled ***Srusti Academy of Management vs. The State of Odisha & Ors.***, which has been referred to by the learned counsel representing the petitioners. The said matter in the Supreme Court had arisen from the State of Orissa where as well, a Fee Structure Committee functions in terms of the statute known as the Orissa Professional Educational Institutions (Regulation of Admission & Fixation of Fee) Act, 2007. The function of determination of fee to be charged by unaided privately managed institutions has thus been entrusted by the State of Orissa to a statutory committee as is the case in the National Capital Territory of Delhi.

27. On perusal of the aforesaid order passed by the Hon'ble Supreme Court, what we find is that in the said case as well, the Fee Structure Committee had reduced the fee to be charged by the institution concerned and before reducing the fee to be charged, opportunity of being heard was not provided. It is in these circumstances that the Hon'ble Supreme Court observed that it is a settled principle of law that any order likely to have adverse consequences cannot be passed without adherence to the principles of natural justice and further that in any case, the relevant provision itself required an opportunity of hearing to be provided to the institutions before a



revision is made.

28. Having regard to the facts of the instant case, specially the fact that by the impugned notification dated 10.04.2023, the petitioner-institutions have been downgraded from category 'A+' to category 'A' as also to the provisions contained in the proviso appended to Section 6(2) of the 2007 Act and the order of the Supreme Court as referred to hereinabove, we are of the opinion that the notification dated 10.04.2023 cannot be sustained as the same suffers from not only the vice of non-observance of principle of natural justice but also is clearly against the statutory provisions contained in the proviso appended to Section 6(2) of the 2007 Act. Consequently, the earlier notification dated 04.04.2022 which was ordered to be revisited by the order of this Court dated 26.09.2022, thus also cannot be permitted to be sustained.

29. For the reasons given and discussions made above, the writ petitions deserve to be allowed. Resultantly, the writ petitions are allowed. The impugned notifications dated 04.04.2022 as also 10.04.2023, insofar as they relate to the petitioner-institutions, are hereby quashed.

30. We have been informed that 6th State Fee Regulatory Committee has been formed on 14.12.2023 and is proceeding with its function of determination of fee to be charged by the institutions. We thus clarify that the determination of fee to be charged by the petitioner-institutions shall be made by the 6th State Fee Regulatory Committee, treating the category of the petitioner-institutions to be 'A+'. We also clarify that petitioner-institutions shall be entitled to charge fee from its students in terms of the determination of fee prior to 04.04.2022 prospectively, that is to say only from the date of this judgement.

31. We categorically observe that the petitioner-institutions shall not be



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entitled to charge any arrears or difference of fee from the students already paid till today.

32. Pending applications also stand disposed of.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

MARCH 25, 2025/kct/ms