

Assam Non-Government Educational Institutions (Regulation of Fees) Act, 2018

ASSAM

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Act 15 of 2018

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Assam Non-Government Educational Institutions (Regulation of Fees) Act, 2018(Assam Act No. 15 of 2018)Last Updated 12th February, 2020(Received the assent of the Governor on 9th May, 2018)(Published in the Assam Gazette, Extraordinary, dated 18-5-2018, pp.2137-51)An Act to make provision for fixation of fees for the non-government educational institutions in the State of Assam.PreambleWhereas it is expedient to make provision for fixation of fees for the Non-Government Educational Institutions in the State of Assam and the matters connected therewith and incidental thereto.It is hereby enacted in the Sixty-ninth Year of the Republic of India as follows:

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Assam Non-Government Educational Institutions (Regulation of Fees) Act, 2018.(2)It extends to the whole of the State of Assam.(3)It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"academic year" means the year specified by the Government or, as the case may be, by any Board or Council to which respective institution is affiliated;(b)"educational district" means an educational district, as may be specified by the Government in the Official Gazette ;(c)"elementary education" means the education from Class I to Class VIII;(d)"employee" means a teacher and includes every other employee working in a

non-government educational institution;(e)"existing school" means a recognized non-government educational institution which is in existence at the commencement of this Act;(f)"Fee or Fee Structure" means any amount, by whatever name called, collected, directly or indirectly, by a school for admission of a student to any Standard or course of study and includes, -(i)Tuition fee;(ii)Term fee, which shall not exceed one month tuition fee per term;(iii)Library fee and deposit;(iv)Laboratory fee and deposit;(v)Gymkhana fee where such facilities are available;(vi)Caution money; .(vii)Examination fee;(viii)Admission fee, which shall not exceed one month tuition fee;(ix)Yoga and Physical Education fee where yoga and physical education are imparted;(x)any other fee as determined by the Fee Regulatory Committee;(g)"Fee Regulatory Committee" means a committee constituted under section 3;(h)"Fee Revision Committee" means a committee constituted under section 13;(i)"Government" means the State Government;(j)"Government school" means a school established, owned or maintained by the Government;(k)"institution" means and includes the non-government educational institution as defined under clause (p) of this Act;(l)"local authority" means, -(i)a Gauhati Municipal Corporation constituted under the Gauhati Municipal Corporation Act, 1971 (Assam Act No.I of 1973);(ii)All other Municipal Boards or Municipal Town Committees of the State constituted under the Assam Municipal Act, 1956 (Assam Act No. XV of 1957) and Village Councils in case of Autonomous Council areas;(iii)a Panchayat constituted under the Assam Panchayat Act, 1994 (Assam Act No. XVIII of 1994);(m)"Lower Primary School" or "LP School" means a school imparting education upto class V;(n)"management" means, -(i)in the case of a school managed by the Government, the Government;(ii)in the case of school managed by any local authority, the respective local authority;(iii)in any other case, maintaining committee or the governing body by whatever name called, of school to which the affairs of the school are entrusted and, a person, by whatever name or designation called, where such affairs are entrusted to such person and shall also include trust or company associated with the school in any manner whatsoever;(o)"minority educational institution" means the Government approved institution established and administered by minority having right to do so under clause (1) of article 30 of the Constitution of India;(p)"non-government educational institutions" means schools established and ran by an individual or association of individuals or any Non-Government Organization or Society or Trust, except the schools established and maintained by minorities under clause (1) of article 30 of the Constitution of India and imparting education at Primary, Middle, Secondary and Higher Secondary Level without receiving any grants-in-aid from the State Government which have been registered under sub-section (1) of section 6 of the Assam Non-government Educational Institutions (Regulation and Management) Act, 2006 (Assam Act No. IV of 2007) excluding the educational institutions ran or aided by the Central Government or the State Government. The word "institution" wherever it occurs in the Act shall be construed accordingly :Provided that the institution established by any person or body of persons including trusts and received permission/recognition/ affiliation/concurrence as the case may be, from the competent authority after 1.1.2006 shall be treated as non-government educational institution provided they are registered under subsection (1) of section 6 of the Assam Non-Government Educational Institutions (Regulation and Management) Act, 2006 (Assam Act No. IV of 2007);(q)"prescribed" means prescribed by rules made under this Act;(r)"pre-primary school" means a Nursery, Junior Kindergarten, Senior Kindergarten level or any school imparting education up to pre-primary school level for children having age of 3 to 6 years, by whatever name called and of any medium attached in the prescribed manner to the school;(s)"profiteering" means any amount

accepted in cash or kind, directly or indirectly which is in excess of the fee fixed or approved as per the provisions of this Act and shall include profit earned from school by trust or company associated with the school in any manner whatsoever;(t)"public examination" means an examination conducted by the Board of Secondary Education, Assam, constituted under the Assam Secondary Education Act, 1961 (Assam Act No. XXV of 1961) and Assam Higher Secondary Education Council constituted under the Assam Higher Secondary Education Act, 1984 (Assam Act No. XVII of 1984) or Central Board of Secondary Education or Council of Indian School Certificate Examinations or any other Board recognized by the Government;(u)"recognized school" means a school recognized by the competent Educational Authority of the State or the Central Government;(v)"school" includes a Lower Primary School, Upper Primary School, High School/High Madrassa, Higher Secondary School, Senior Secondary School and also includes any other institution which imparts education or training below the degree level, but does not include an institution which exclusively imparts technical education;(w)"school property" means all movable and immovable property belonging to, or in the possession of, the school and all other rights and interests in, or arising out of, such property, and includes land, building and its appurtenances, playgrounds, hostels, furniture, books, apparatus, maps, equipments, utensils, cash, reserve fund, investments and bank balances;(x)"secondary education" shall have same meaning as defined under clause (n) of section 2 of the Assam Secondary Education Act, 1961 (Assam Act No. XXV of 1961);(y)"Upper Primary School" or "UP School" including ME Madrassa means a school imparting education upto class VIII.

Chapter II

Constitution of Committee, Determination of fee and Prohibition of Collection of Excess Fee

3. Constitution of Fee Regulatory Committee.

(1)The Government shall constitute a Fee Regulatory Committee for the purpose of determination of the fee for any standard or course of study in non-government educational institutions.(2)The age of the Chairperson and the members shall not be more than 65 years at the time of appointment. The term of the Chairperson and other nominated members shall be three years.(3)The honorarium and allowances payable to and other terms and conditions of service of member shall be such as may be prescribed by the Government.(4)The Committee shall consist of the following members, namely : (a)retired District and Session Judge or a person who had been a member of All India Service, having retired from a post not below the rank of Commissioner and Secretary to Government or a person who had been a member of Indian Police Service, having retired from a post not below the rank of Additional Director General of Police, to be nominated by the Government, who shall be the Chairperson of the Committee;(b)one Chartered Accountant, to be nominated by the Government;(c)one Civil Engineer/Government approved valuer, to be nominated by the Government;(d)the Secretary, Assam Higher Secondary Education Council and Board of Secondary Education;(e)one representative from the non-government educational institution management to be nominated by the Government;(f)one Academician of repute, to be nominated by the Government;(5)The Director shall act as a co-ordinator to the Committee to provide administrative support.

4. Jurisdiction and headquarters of Committee.

(1)The jurisdiction of the Fee Regulatory Committee shall comprise of such districts or zones as the State Government by notification in the Official Gazette specify. There may be one or more such Committee as per need. These Committees have to be constituted as per section 3 of the Act.(2)The Headquarter of the Fee Regulatory Committee shall be at such place specified by the State Government by notification in the Official Gazette .

5. Vacancies, etc., not to invalidate proceedings of the Committee.

(1)If any vacancy occurs by reason of death, resignation, expiry of term of office or termination of appointment of the member or for any other cause whatsoever, such vacancy shall be filled in by the State Government as soon as possible within a period of six months from the date of occurrence of the vacancy.(2)No act or proceeding of the Committee shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the Constitution of the Committee.

6. Procedure to be regulated by the Fee Regulatory Committee.

(1)The Fee Regulatory Committee shall meet as and when necessary but at least once in a quarter at such time and place as the Chairperson may think fit.(2)The Committee shall regulate its own procedure for the conduct of its business.(3)All orders and decisions of the Committee shall be authenticated by the Chairperson of the Committee or the person duly authorized by the Chairperson on his/her behalf.

7. Disqualification of members of Fee Regulatory Committee.

- The Government may terminate the appointment of the Chairperson or any member of the Fee Regulatory Committee before the expiry of the term of his office, if he -(i)has been adjudged an insolvent;(ii)has, in the opinion of the State Government, become physically or mentally incapable of acting as a member;(iii)has been convicted of an offence involving moral turpitude, or(iv)has been guilty of proven misbehaviour :Provided that no member shall be removed from his office on the above grounds, unless he has been given a reasonable opportunity of being heard.

8. Powers and functions of the Fee Regulatory Committee.

(1)Subject to the provisions of section 10, the Fee Regulatory Committee shall determine the fee payable by students in the non-government educational institution.(2)The Committee shall have power to, -(a)require each non-government educational institution to place before the Committee, the proposed fee structure of such school along with all relevant documents and books of account for, scrutiny before such date as may be specified by the Committee;(b)verify whether the fee proposed by the non-government educational institution justified and whether it amounts to profiteering or charging of exorbitant fee;(c)approve the existing fee structure or determine the fee which can be charged by the non- educational institution;(d)verify whether the non-government

educational institution operating within the territory of the State of Assam is recognized by the competent authority of the State Government or affiliated to the Assam Higher Secondary Education Council or Board of Secondary Education, Assam or the Central Board of Secondary Education or the Council for Indian School Certificate Examinations or any other Board constituted by the State or the Central Government, as the case may be, and the institution imparts instruction prescribed by the Assam Higher Secondary Education Council or Board of Secondary Education, Assam or any other Board, as referred to above as the case may be;(e)hear complaints or initiate suo motu hearing with regard to collection of excess fee by a non-government educational institution, as referred to above in clause (d);(f)regulate the fees charged by the school and penal action as per the provisions of this Act;(g)report the matter to the State Government that the institution has collected excess fee and it has not complied with the provisions of the respective applicable Acts and rules made thereunder of the concerned Board for appropriate action.(3)(a)For the purposes of this Act, the Fee Regulatory Committee while holding inquiry shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) while trying a suit in respect of the following matters, namely, -(i)summoning and enforcing the attendance of any witness and examining him on oath;(ii)requiring the discovery and production of any document:(iii)receiving evidence on affidavit; and(iv)issuing commission for examination of witnesses for local inspection.(b)All inquiries and revisions under this Act shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860 (Act No. 45 of 1860).

9. Power of State Government to notify maximum limits of fees.

- The Fee Regulatory Committee shall recommend maximum limits of fees to be charged by different categories of non-government educational institutions every year before starting of the academic session taking into account the factors as mentioned under section 10 and the State Government shall notify the same in the Official Gazette , from time-to-time.

10. Exemption from appearance before Committee.

(1)The Fee Regulatory Committee may exempt such non-government educational institutions that charge amount of fee lower than the fee as notified by the Government under section 9 from the determination of fee. Such non-government educational institutions shall file an affidavit to that effect:Provided that if any such institution desires to revise the fee, it shall follow the procedure as laid down in section 8 :Provided further that exclusive pre-primary classes, play groups and creches not attached to any school shall be exempted from the application of the provisions of this Act.(2)The Fee Regulatory Committee shall determine fee for all institutions except the institution as referred to in sub-section (1), imparting pre-primary, primary, upper primary, secondary, and higher secondary education.(3)The exemption shall remain operative till the prescribed fee is revised by the Government.(4)The Fee Regulatory Committee may withdraw the exemption, after providing reasonable opportunity of hearing to the erring school, if it has reason to believe that the school has charged fee in excess of the fee, prescribed under sub-section (1) or has furnished false or misleading or incomplete information to the committee.(5)The information regarding erring schools including details of their management shall be published by the Fee Regulatory Committee through an advertisement in the leading daily newspapers, in the best interest of students, parents, and

society at large.

11. Factors for determination of fee.

(1)The Fee Regulatory Committee shall determine the fee leviable by different categories of non-government educational institutions categorized by the Committee after taking into account the following factors, namely :-(i)location of the non-government educational institution where the school is situated;(ii)investment incurred to setup the school;(iii)infrastructure made available to the students for the quality education, facilities provided as mentioned in the prospectus or website of the school;(iv)expenditure on administration, maintenance of services and utilities of the school;(v)strength of students in the non-government educational institution;(vi)classes of study and courses of study offered by the school;(vii)qualification of teaching, and non-teaching staff (as per the relevant norms) their salary components, and reasonable amount for yearly salary increments;(viii)expenditure incurred on the students against total income of the school which shall include profit earned from school by the trust or company associated with such school;(ix)reasonable revenue surplus for the purpose of development, education and expansion of the institution;(x)any other factors which may be prescribed by the Government from time-to-time.(2)The Fee Regulatory Committee shall, after determining the fee leviable by a non-government educational institution, communicate its decision to the institution concerned.(3)The Fee Regulatory Committee shall determine the total fees which shall be levied by considering all different fees charged by the institution.(4)The fee structure so determined by the Fee Regulatory Committee shall be binding on the non-government educational institution for a period of three years.

12. Prohibition of collection of excess fee.

(1)No non-government educational institution shall collect any fee in excess of the fee fixed by the Fee Regulatory Committee for admission of students to any standard or course of study in that institution.(2)No excess fee shall be collected by any person either for himself or on behalf of such non-government educational institution or on behalf of the management of such non-government educational institution.(3)No institution itself or on its behalf shall collect any donation or capitation fee under any name whatsoever, or receive any deposit under any head from the parents to the school management, school trust, company, or any trustee or member of the school. If any parents or guardian of a student has paid voluntarily any above referred amount, he shall inform the concerned Fee Regulatory Committee, the details of such payment on affidavit. Such non-disclosure shall amount to abetment of the profiteering committed by the school management.(4)The institution shall open and operate separate and only one Bank account for individual non-government educational institution. The parents shall make payments of prescribed fees directly into the concerned school bank account. The acknowledgement of receipt of the total collected fee from the parents shall be given in the form of counterfoil from bank and concerned school, as the case may be.

13. Fee Revision Committee.

(1)The Government shall constitute a committee for the purpose of revision against the order passed by the Fee Regulatory Committee. The headquarter of the Fee Revision Committee shall be at Guwahati or at such other place, as may be decided by the Chairperson of the Committee.(2)The Fee Revision Committee shall consist of the following members, namely(i)A retired Judge of the High Court, to be nominated by the Government shall be the Chairperson of the Committee;(ii)The senior most Secretary to the Government of Assam, Secondary Education Department or Elementary Education Department;(iii)The Commissioner and Secretary to the Government of Assam, Finance Department, or his nominee not below the rank of the Deputy Secretary;(iv)The Director of Secondary Education, ex-officio, who shall be the Member-Secretary;(v)One representative from the non-government educational institution Management to be nominated by the Government;(vi)One Chartered Accountant, to be nominated by the Government.(3)A person or any institution aggrieved by the order of the Fee Regulatory Committee made under section 11 may file revision application before the Fee Revision Committee within a period of twenty-one days from the date of receipt of such order :Provided that if the Fee Revision Committee is satisfied that such institution was prevented for filing a revision application within prescribed time-limit for sufficient cause, it may condone the delay and shall allow the revision application but not later than three months.

Chapter III

Regulation of Accounts and Maintenance of Records

14. Regulation of Accounts and Maintenance of Records.

(1)The Government shall regulate the maintenance of accounts by the non-government educational institutions in such manner as may be prescribed.(2)The non-government educational institution shall maintain such records in such manner as may be prescribed.(3)Every non-government educational institution shall maintain accounts for different kinds of transactions like the fees collected, the grants received, financial assistance received including funds from NRIs, payments of salary of staff, purchase of machinery and equipments, furniture, laboratory articles, sports equipments, library books, stationary and other expenditure incurred towards payments to the agencies companies hired or engaged by the school for different kind of services and these accounts shall be audited by the chartered accountant.(4)Every non-government educational institution shall keep the accounts and the records within the premises of the educational institution and shall make them available at all reasonable times for inspection by the Fee Regulatory Committee or its authorized officer.(5)The accounts maintained by the non-government educational institution together with all vouchers relating to various items of receipts and expenditures shall be preserved by the schools for a period of at least seven years.

Chapter IV

Contraventions and Penalties

15. Contravention and penalties.

(1) For contravention of any of the provisions of this Act or the rules made thereunder, the school management shall, in addition to refund of twice the amount of fee to the parents or guardians or to the person who has made the payment, be liable, - (a) to pay fine which shall be upto five lakh rupees to the Government for the first contravention; (b) to pay fine which shall not be less than five lakh rupees but which may extend to ten lakh rupees to the Government for the second contravention; and (c) for cancellation or withdrawal of registration/affiliation/no objection certificate of the school, on third and subsequent contravention by the concerned authority on the recommendation of the Fee Regulatory Committee. (2) The amount of fine and the amount of refund shall be paid within fifteen days from the receipt of the order, failing which fine of one per cent of the total payable amount shall be levied each day till the refund of the total amount and fine is paid. However, if the school management fails to make the payment of fine and refund within three months, then the entire unpaid amount shall be recovered as an arrear of land revenue.

16. Bar of jurisdiction of civil court.

- No civil court shall have the jurisdiction to deal with or decide any question which the Fee Regulatory Committee or, as the case may be, the Fee Revision Committee is empowered to deal with or decide with by or under this Act and no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any of the provisions of this Act.

Chapter V

Miscellaneous

17. Power of State Government to give directions.

- The State Government may from time-to-time, issue general or special directions consistent with the provisions of this Act and the rules made thereunder, as in its opinion are necessary or expedient for carrying out the purposes of this Act or for giving effect to any of the provisions contained therein or in any rules or orders made thereunder and the management of the non-government educational institution shall be bound by such directions.

18. Operation of other laws.

- Save as otherwise provided in this Act the provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force.

19. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall be instituted against the Fee Regulatory Committee and Fee Revision Committee or the members thereof, Government or any officer,

authority or person empowered to exercise the powers or perform the functions by or under this Act for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

20. Members of Committee, officers and employees to be public servant.

- All the members of the Fee Regulatory Committee or the Fee Revision Committee, as the case may be, and the officers and employees while acting or purporting to act in pursuance of the provisions of this Act or rules made thereunder, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act No. 45 of 1860).

21. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as it appears to it to be necessary or expedient for the purposes of removing the difficulty: Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act. (2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before the State Legislature.

22. Power to make rules.

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely; (a) the honorarium and allowances payable to and other terms and conditions of service of members of the Fee Regulatory Committee under sub-section (3) of section 3; (b) the fee to be levied by the non-government educational institution under sub-section (1) of section 10; (c) the other factors under which the Fee Regulatory Committee shall determine the fees leviable by the non-government educational institution under clause (X) of sub-section (1) of section 11; (d) to regulate the maintenance of accounts by the non-government educational institution under sub-section (1) of section 14; (e) for maintenance of records of accounts of the Fee Regulatory Committee under sub-section (2) of section 14. (3) All rules made by the State Government under this Act shall, as soon as may be after they are made, be laid before the Assam Legislative Assembly, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modifications or annulments as the Assam Legislative Assembly may, during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.