

A ICON EDUCATION SOCIETY

v.

STATE OF MADHYA PRADESH & OTHERS

(Civil Appeal No. 1760 of 2023)

B MARCH 17, 2023

[DINESH MAHESHWARI AND SANJAY KUMAR, JJ.]

Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 – s.9 –

- C *Fee-fixation – Power of Admission and Fee Regulatory Committee (AFRC) – Held: AFRC constituted under the 2007 Act exercises only the power of ‘regulation’ in respect of the fees proposed by the institution, conditioned by the parameters in s.9(1) of the 2007 Act – Liberty given to unaided institutions to propose the fees that they wish to charge, keeping in mind the factors set out in s.9(1) of the 2007 Act stands protected – It is only by way of regulating the fees so proposed that the AFRC would exercise the power of reviewing the proposed fees, after giving due opportunity of hearing to the educational institution concerned – Thus, in the present case, it is not open to the AFRC to unilaterally fix the fees to be charged by the appellant-society for the professional courses offered through its educational institutions – At the same time, the appellant cannot claim complete immunity in undertaking this exercise and seek exemption from any interference by the AFRC – Appellant must necessarily submit the fees proposed by it in respect of the professional courses offered through its institutions to the AFRC*
- F *for the purpose of review and regulation, as per the provisions of s.9 of the 2007 Act and the principles laid down by Supreme Court in the decisions referred to herein – Constitution of India – Articles 19(1)(g), (6), 30(1) – National Commission for Minority Educational Institutions Act, 2004 – s.2(g).*

- G *T.M.A. Pai Foundation and others Vs. State of Karnataka and others (2002) 8 SCC 481 : [2002] 3 Suppl. SCR 587; P.A. Inamdar and others Vs. State of Maharashtra and others (2005) 6 SCC 537 : [2005] 2 Suppl. SCR 603; Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and*
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others (2016) 7 SCC 353 : [2016] 3 SCR 579 – followed. A

Sk. Md. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and others (2020) 1 SCT 627(SC); Ahmedabad Saint Xaviers College Society and another Vs. State of Gujarat and another (1974) 1 SCC 717 : [1975] 1 SCR 173; Association of Private Dental and Medical Colleges Vs. State of MP (2009) SCC Online MP 760 – referred to. B

<u>Case Law Reference</u>			
[2016] 3 SCR 579	followed	Para 3, 7 & 13	C
[1975] 1 SCR 173	referred to	Para 7	
[2002] 3 Suppl. SCR 587	followed	Para 11, 12	
[2005] 2 Suppl. SCR 603	followed	Para 12	D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1760 of 2023.

From the Judgment and Order dated 19.11.2020 of the High Court of Madhya Pradesh at Indore in WP No. 9690 of 2020.

Dama Seshadri Naidu, Sr. Adv., Pai Amit, Rohit R. Saboo, Ms. Pankhuri Bhardwaj, Abhiyudaya Vats, Advs. for the Appellant. E

P. V. Yogeswaran, A.A.G., Ms. Rukhmini Bobde, Pashupathi Nath Razdan, Ms. Soumya Priyadarshinee, Ankit Ambasta, Amit Kumar Srivastava, Amlaan Kumar, Advs. for the Respondents. F

The Judgment of the Court was delivered by

SANJAY KUMAR, J.

Leave granted.

2. The short question that arises for consideration in this case is whether a minority educational institution in the State of Madhya Pradesh is required to get the fees charged by it fixed by the Admission and Fee Regulatory Committee under the provisions of the Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Vinyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (for short, ‘the Act of 2007’)? G

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- A 3. This issue is no longer *res integra* as the contours and import of the Act of 2007, including the question aforestated, were dealt with and decided by a Constitution Bench in ***Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others***[(2016) 7 SCC 353]. However, failure of the parties in properly understanding the *ratio decidendi* of the above decision led to the present litigation.
- B 4. Icon Education Society, the appellant herein, maintains and manages two unaided educational institutions at Indore, viz., Indore Institute of Law and Indore Nursing College. Both these institutions qualify as ‘minority educational institutions’ under Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004. While so, by letter dated 08.07.2019, the Admission and Fee Regulatory Committee (for short, ‘the AFRC’), constituted under Section 4 of the Act of 2007, called upon the Indore Institute of Law to submit its proposal for regulation of the fees pertaining to law courses offered by it. This was followed up by a reminder on 24.07.2019, which was addressed to all private law colleges in the State of Madhya Pradesh. The appellant society addressed reply dated 31.07.2019, stating that the AFRC was not empowered to regulate the fees charged by minority educational institutions and requesting that the notices issued may be withdrawn or cancelled. The AFRC responded, vide letter dated 14.11.2019, stating that a decision had been taken in the meeting held on 08.11.2019 that the fees of minority institutions should be fixed by the AFRC. The appellant society was accordingly informed that its request for relaxation from getting the fees fixed by the AFRC was rejected.
- C 5. Aggrieved thereby, the appellant society preferred an appeal under Section 10 of the Act of 2007 before the designated authority. The appeal was dismissed by the appellate authority, by order dated 10.01.2020, holding that the procedure of regulating/fixing of fee was common to both minority and non-minority institutions. The review/recall petition preferred by the appellant society was dismissed with costs by the appellate authority on 06.03.2020.
- D 6. Thereupon, the appellant society filed WP No. 9690 of 2020 before the Indore Bench of the Madhya Pradesh High Court. Its prayer therein was to declare Sections 4 and 9 of the Act of 2007 *ultra vires* as these provisions did not distinguish between minority educational institutions and other educational institutions and, in consequence, did

not exempt minority educational institutions from fee-fixation. A further direction was sought to exempt the appellant society, being a minority educational institution, from the application of Section 9 of the Act of 2007, thereby permitting it to fix its own fees.

7. By order dated 19.11.2020, a Division Bench of the Madhya Pradesh High Court at Indore dismissed the writ petition. The Division Bench noted that the validity of the Act of 2007 had already been upheld in *Modern Dental College and Research Centre (supra)*. The High Court then relied upon *Sk. Md. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and others* [(2020) 1 SCT 627(SC)], wherein this Court referred to its earlier edict in *Ahmedabad Saint Xaviers College Society and another Vs. State of Gujarat and another* [(1974) 1 SCC 717] that the right under Article 30(1) of the Constitution is not absolute or above other provisions of law and the essence of Article 30(1) was to ensure equal treatment between majority and minority institutions. It was further held that the laws of the land, including rules and regulations, must apply equally to majority institutions as well as minority institutions. In his concurring opinion, H.R.Khanna J had held that a balance must be kept between the two objectives – one, to ensure the standard of excellence of the institution and the other, preserving the right of minorities to establish and administer educational institutions. In the light of *Modern Dental College and Research Centre (supra)* and *Sk. Md. Rafique (supra)*, the High Court concluded that no grounds were made out to interfere with the orders passed by the AFRC.

8. Heard Mr.Dama Seshadri Naidu, learned senior counsel, appearing for the appellant society; and Mr.P.V.Yogeshwaran, learned AAG, appearing for the State of Madhya Pradesh.

9. Section 4 in Chapter 2 of the Act of 2007 deals with the constitution and establishment of the AFRC. Section 4(1) provides that the State Government shall, by notification in the official gazette, constitute a committee to be called the ‘Admission and Fee Regulatory Committee’, for the supervision and guidance of the admission process and for the fixation of fees to be charged from candidates seeking admission in a private professional educational institution. Section 4(8) provides that the AFRC may require a private aided or unaided professional educational institution or a deemed university to furnish,

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- A by the prescribed date, information as may be necessary for enabling the AFRC to determine the fees that may be charged by the institution in respect of each professional course and the fees so determined shall be valid for such period as may be notified by the State Government.
 - B 10. Chapter 4 of the Act of 2007 deals with fixation of fees. Section 9(1) therein provides that, having regard to the location of the private unaided professional educational institution; the nature of the professional course; the cost of the land and building; the available infrastructure, teaching, non-teaching staff and equipment; the expenditure on administration and maintenance; the reasonable surplus required for growth and development of the professional institution; and any other relevant factor, the AFRC shall determine, in the manner prescribed, the fees to be charged by the private unaided professional educational institution. Section 9(2) provides that the AFRC shall give the institution an opportunity of being heard before fixing any fees.
 - C D The *proviso* thereunder states that no such fees, as may be fixed by the AFRC, shall amount to profiteering or commercialization of education.
11. Significantly, in the 11-Judges Bench decision of this Court in ***T.M.A. Pai Foundation and others Vs. State of Karnataka and others*** [(2002) 8 SCC 481], the majority opinion voiced by B.N.Kirpal CJ, speaking for himself and five other learned Judges, answered the question as to whether statutory provisions regulating facets of administration of educational agencies, including regulation of fees, would interfere with the right of administration by minorities in the negative, but held that such regulatory measures should be minimal in the case of unaided minority educational institutions. As regards the fees to be charged by unaided institutions, it was held that the same could not be regulated but no institution should charge capitation fee. It was emphasized that, inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations
- E F G H that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition “charitable”, it was held to be clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, *per* the majority, in the establishment of an educational

institution, the object should not be to make a profit inasmuch as education is essentially charitable in nature, but there could, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution. The partly-concurring opinion of S.N.Variava J, speaking for himself and Ashok Bhan J, was to the effect that there could be an appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to, but the extent of regulation would not be the same for aided and unaided institutions.

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12. Thereafter, in the 7-Judges Bench decision of this Court in *P.A. Inamdar and others Vs. State of Maharashtra and others* [(2005) 6 SCC 537], this Court unanimously held that, as per the law declared in *T.M.A. Pai Foundation (supra)*, setting up a reasonable fee structure is also a component of the right to establish and administer an institution, within the meaning of Article 30(1) of the Constitution, and every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly or in any form. It was further held that it is permissible to regulate admission and fee structure for achieving that purpose. The question whether guidelines could have been issued in the matter of regulating the fee payable by students to educational institutions was, therefore, answered in the affirmative by holding that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering and capitation fees.

13. As stated hereinbefore, the Act of 2007 fell for consideration before a Constitution Bench in *Modern Dental College and Research Centre (supra)* in the context of regulation of unaided educational institutions in the State of Madhya Pradesh. Significantly, the validity/vires of various provisions of the Act of 2007, including provisions pertaining to fixation of fees, was also under attack. The issue was as to whether provisions relating to fixation of fees were violative of Article 19(1)(g) or whether they were regulatory in nature and were permissible under Article 19(6) of the Constitution. Keeping in mind the fact that the State has the power to regulate fixation of fees in the interest of preventing profiteering and such fixation of fees has to be regulated and controlled at the initial stage itself, this Court observed that the parameters laid

- A down in Section 9(1) of the Act of 2007, which have to be kept in mind while fixing the fees were, in fact, the ones enunciated in earlier judgments of this Court. This Court, therefore, held that analysis of the provisions of the Act of 2007 by the Madhya Pradesh High Court in *Association of Private Dental and Medical Colleges Vs. State of MP*[(2009) SCC Online MP 760], from which the appeal arose, was perfectly in order. Reference was made to the observations contained therein to the effect that each professional educational institution can furnish information with regard to the fees that it proposes to charge from the candidates, taking into account the cost of components, the reasonable surplus required for growth and development and other factors relevant to impart professional education as mentioned in Section 9(1) of the Act of 2007, and that the function of the AFRC is only to find out, after giving due opportunity of hearing to the institution, whether the fees proposed by the institution is based on the factors mentioned in Section 9(1) of the Act of 2007 and did not amount to profiteering and commercialization of education. The High Court had further observed that the AFRC, while determining the fees, only gives final approval to the proposed fees to be charged, after being satisfied that it was based on the factors mentioned in Section 9(1), and that there was no profiteering or commercialization of education. The High Court accordingly concluded that the provisions of Sections 4(1), 4(8) and 9 of the Act of 2007, in substance, empowered the AFRC to be only satisfied that the fee proposed by private professional educational institutions did not amount to profiteering or commercialization of education and was based on the factors mentioned in Section 9(1) of the Act of 2007 and held that the Act of 2007, therefore, did not violate the right of the private professional educational institution to charge its own fee. Accepting the said interpretation, this Court observed that the AFRC which is set up for that purpose is discharging only a regulatory function, as the fee which a particular educational institution seeks to charge from its students has to be suggested by the said educational institution itself and the AFRC is empowered to satisfy itself that the fee proposed by the educational institution did not amount to profiteering or commercialization of education and was based on the intelligible factors mentioned in Section 9(1) of the Act of 2007. This Court, therefore, concluded that it was only a regulatory measure and did not take away the power of the educational institutions to fix their own fees.
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14. The supplementing opinion of R. Banumathi J noted that, though Section 9 of the Act of 2007 empowered the AFRC to determine the fees, the High Court had read down Sections 4(1), 4(8) and 9 of Act of 2007, by holding that those provisions “*in substance empower the committee to be only satisfied that the fee proposed by a private professional educational institution did not amount to profiteering or commercialization of education and was based on the factors mentioned in Section 9(1) of the Act 2007...*”. The learned Judge accordingly held that the State had the legislative competence to enact the Act of 2007 and regulation of fixation of the fees was to protect the right of the students in having access to higher education without being subjected to exploitation in the form of profiteering. The learned Judge concurred with the majority view in upholding the validity of the impugned legislation and affirmed the decision of the High Court.

15. It is, therefore, too late in the day for the appellant society to again seek to challenge the validity of the Act of 2007, as the provisions of this enactment have already been read down by this Court to mean that the AFRC would have the power only to regulate the fee once the same is proposed by the educational institution itself, keeping in mind the parameters encapsulated in Section 9(1) thereof.

16. Therefore, as matters stand, the Act of 2007 has been interpreted to mean that the AFRC, constituted thereunder, exercises only the power of ‘regulation’ in respect of the fees proposed by the institution, conditioned by the parameters in Section 9(1) of the Act of 2007. In effect, the liberty given to unaided institutions to propose the fees that they wish to charge, keeping in mind the factors set out in Section 9(1) of the Act of 2007, stands protected and it is only by way of regulating the fees so proposed that the AFRC would exercise the power of reviewing the proposed fees, after giving due opportunity of hearing to the educational institution concerned. The contrary stand taken by the AFRC, as is evident from its communications to the appellant society, therefore cannot be countenanced. It is not open to the AFRC to seek to unilaterally fix the fees to be charged by the appellant society for the professional courses offered through its educational institutions. At the same time, it is not open to the appellant society to claim complete immunity in undertaking this exercise and seek exemption from any interference by the AFRC. The appellant society must necessarily submit the fees proposed by it in respect of

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A the professional courses offered through its institutions to the AFRC for the purpose of review and regulation, as per the provisions of Section 9 of the Act of 2007 and the principles laid down by this Court in the decisions referred to hereinabove. Making this position clear, the appeal is disposed of accordingly.

B Parties shall bear their own costs.

Divya Pandey

(Assisted by : Shivani Pundir and Shashwat Jain, LCRAs)

Appeal disposed of.