Vasavi Engineering College Parents ... vs The State Of Telangana on 1 July, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4731, AIRONLINE 2019 SC 762, (2019) 3 SCT 482, (2019) 6 ANDHLD 218, 2019 (7) SCC 172, (2019) 9 SCALE 95

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Bench: Navin Sinha, Arun Mishra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).5133 OF 2019
(arising out of SLP(C)No.30090 of 2018)

VASAVI ENGINEERING COLLEGE
PARENTS ASSOCIATION ...APPELLANT(S)

VERSUS

STATE OF TELANGANA AND OTHERS ...RESPONDENT(S)

WITH
CIVIL APPEAL NO(s).5135 OF 2019
(arising out of SLP(C)No.32626 of 2018)

THE STATE OF TELANGANA REPRESENTED
BY ITS PRINCIPAL SECRETARY,
HIGHER EDUCATION DEPARTMENT
AND OTHERS ...APPELLANT(S)

VERSUS

VASAVI ACADEMY OF EDUCATION ...RESPONDENT(S)

CIVIL APPEAL NO(s).5134 OF 2019
(arising out of SLP(C)No.31983 of 2018)

STATE OF TELANGANA ...APPELLANT(S)

VERSUS

SREE EDUCATIONAL SOCIETY & OTHERS
Signature Not Verified ...RESPONDENT(S)
Digitally signed by

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JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. This court, in Islamic Academy of Education and another vs. State of Karnataka and Ors., (2003) 6 SCC 697, directed the establishment in each State, of a Committee to regulate the fee structure in unaided minority and non-minority educational institutions. The Telangana Admission and Fee Regulatory Committee (for Professional Courses offered in Private Unaided Professional Institutions) Rules, 2006 (hereinafter referred to as "the Rules") were framed under Section 15 read with Sections 3 and 7 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (hereinafter referred to as "the Act"). Under Rule 4(v), the Committee is required to communicate the fee structure determined by it to the State Government for notification. The fee structure so notified, inter alia for the B.E. and B.Tech courses, for the block period 2016-17 to 2018-19, on a challenge made by the respondent institutions did not meet the approval of the learned Single Judge. The matter was remanded to the Committee. On a reconsideration, the Committee granted some escalation, which was again challenged. Opining that the fixation was not proper, the learned Single Judge proceeded to fix the fee structure to his satisfaction. Aggrieved, the State of Telangana and the Fee Regulatory Committee assailed the same unsuccessfully before the Division Bench. The parent's association has also assailed the impugned orders directly before this Court, after having been granted leave to do so. Thus, the appeals.

3. Shri K. Radhakrishnan, learned senior counsel appearing for the State of Telangana, submitted that the Telangana Admission and Fee Regulatory Committee constituted under the Rules (hereinafter referred to as "TAFRC") has framed detailed guidelines under which the private unaided professional institutions were required to submit fee proposals for the block period 2016-17 to 2018-19. The guidelines lay down an elaborate procedure with regard to the requisite information required to be submitted by an institution in support of the proposal, the factors to be considered by the TAFRC, the manner of consideration in arriving at a balanced fee structure, keeping in mind the interest of the students as also the educational institutions, to ensure that there was no profiteering or capitation fee. The Committee is headed by a retired High Court Judge, and comprises various domain experts from different fields with necessary expertise. The recommendations of the TAFRC with regard to the fee structure therefore ought not to have been interfered with by the High Court in exercise of the powers of judicial review by substituting its own view over that of the TAFRC to redetermine the proper fee structure. The fee structure for the three-year block period vide GOM No.21 dated 04.07.2016 was initially determined by the TAFRC at Rs.

86,000/□and Rs. 91,000/□for the respondent institutions, which after remand by the High Court was uniformly redetermined at Rs.97,000/□per student on 04.02.2017. The TAFRC did not act arbitrarily by declining to take into consideration relevant materials, or relied on extraneous materials collected behind the back of the respondent institutions. The TAFRC acted in consultation with the respondent institutions, including seeking clarifications from them. The High Court did not find that the TAFRC had acted contrary to the provisions of the Act, the Rules, the guidelines or in violation of any basic principles of accounting and procedures. The fact that after remand the TAFRC may have adopted a different methodology to determine 10% inflation and 15% furtherance for the entire block period cannot be construed as arbitrariness. Merely because in the opinion of the High Court another view could also have been taken, cannot justify the usurpation of the jurisdiction of the TAFRC by the High Court.

4. The mere fact that the determination of the fee structure by the TAFRC has been held to be of a quasi□judicial nature, amenable to challenge under Article 226 of the Constitution, did not vest in it the nature of an adversarial dispute between the TAFRC and the respondent institutions. The disallowance of certain claims, the genuineness of which, did not meet the approval of the expert committee, does not render the fee fixation arbitrary.

5. Learned senior counsel Shri F.S. Nariman, appearing on behalf of the respondent institutions, submitted that the three□year block period was now over, and the actual expenses are available. The respondent institutions, on the fee structure as approved by the TAFRC, would land up with a huge financial deficit. The fee structure of Rs.1,60,000/□and Rs.1,37,000/□as fixed by the High Court would almost allow a break even for the respondent institutions. The TAFRC, for the accepted expenditure of the base year in the previous block period recommended a fee structure of Rs.1,15,400/□ Ironically, despite having accepted increased audited expenditure of Rs.29.26 crores, astonishingly the fee structure of Rs.97,000/□only has been recommended. 10% inflation and 15% furtherance in accordance with the methodology of the TAFRC for the block period justifies fees of Rs.1,58,675/□per student. The claim of the institutions was reasonable considering the expenses of equivalent government colleges in the State and the subsidy they get from the State, unlike which the respondent institutions have only fees to fund their expenses. The State was also not reimbursing the necessary fee with regard to those students whose parents did not have an annual income of Rs.2 lakh per year.

6. The submission on behalf of the parents association was that the mere giving of an undertaking to abide by the final decision cannot operate as an estoppel preventing challenge to the fee structure as determined by the High Court.

7. We have considered the respective submissions. A brief recapitulation of the essential provisions and facts would be necessary for better appreciation.

8. Rule 3(i) provides for the constitution of the TAFRC which shall have a term of three years from the date of constitution under Rule 3(iii). The TAFRC as prescribed under Rule 3(ii) is headed by a retired High Court Judge and other members as provided therein. The 2006 Rules were modified on 22.07.2015 by GOMs. No.26. The present constitution of the Committee is as follows:

The Admission and Fee Regulatory Committee (AFRC) shall consist of the following:
□

(i) Retired High Court Judge Chairman

(ii) One academic expert on technical Member education

(iii) One academic expert on medical Member education

(iv) One finance expert Member

(v) One legal expert Member

(vi) One Vice□Chancellor Member

(vii) One representative from Govt. Finance Member Department

(viii) The Chairman, Telangana State Member Council of Higher Education

(ix) One representative of All India Council Member of Technical Education/Medical Council of India/Bar Council of India/National Council for Teacher Education (as the case may be)

(x) Any special invitee as decided by the Member Chairman

(xi) The Principal Secretary/Secretary Member representing the Education/Health, Secretary Medical & Family Welfare Department

9. Rule 4 deals with fee fixation and provides for examination by the TAFRC of the proposed fee structure submitted by an educational institution. Rule 4(ii) vests power in the TAFRC to decide whether the proposed fee structure submitted was justified or not and amounted to profiteering or capitation fee. Rule 4(ii) and 4(iv) require the TAFRC to take into consideration the following factors for prescribing the fees.

“4(ii) The AFRC shall decide whether the fees proposed by the institution is justified and does not amount to profiteering or charging of capitation fee.

4(iv) The AFRC shall take into consideration the following factors while prescribing the fee:

a) the location of the professional institution;

b) the nature of the professional course;

c) the cost of available infrastructure;

d) the expenditure on administration and maintenance;

e) a reasonable surplus required for the growth and development of the professional institution;

f) the revenue foregone on account of waiver of fee, if any, in respect of students belonging to schedule castes, schedule tribes and whenever applicable to the socially and educationally backward classes and other economically weaker sections of Society, to such extent as shall be notified by the Government from time to time.

g) any other relevant factor."

10. The guidelines framed by the TAFRC under Rule 3(vii) for submission of the proposed fee structure by an institution are detailed and elaborate. It is therefore considered necessary to reproduce the same for better understanding and appreciation of the functioning of the TAFRC.

"TELANGANA ADMISSION AND FEE REGULATORY COMMITTEE (TAFRC) GUIDELINES For Furnishing fee proposals by Private Un□aided Professional Institutions in the State of Telangana for the block period 2016□2017 to 2018□2019.

As per the provisions of Prohibition of Capitation Fee Act, the collection of capitation fee by Private Unaided Professional Institutions by whatever name is illegal. The Institutions shall submit audited statements of income and expenditure, audited balance sheets and requirements for the developmental needs for the immediately preceding year 2014□15 and also particulars of expenditure incurred on salaries and infrastructure and other particulars (with supporting bills, vouchers or receipts etc.) with projected figures for 2015□16.

Any fee proposals in respect of Private Unaided Professional Institutions have to be evaluated keeping in view the above noted cardinal principles.

It is therefore necessary that the fee proposals furnished by the Private Unaided Professional Institutions have to be evaluated based on the income and expenditure of the institutions as well as the Societies/Trusts under which umbrella the said institutions are established.

The fee proposals the following principles will be considered for adoption keeping in view the interest of both the institutions as well as the student community. a. All the required financial information should be submitted as per the Mercantile (Accrual) System of Accounting. Financial information submitted in any other system of accounting will not be treated as the information provided by the institution and the same will not be considered for the purpose of evaluation. b. If an institution previously followed any other system of accounting and for the purpose of fee fixation has migrated to the Mercantile (Accrual) System of Accounting, all the expenditure which pertains to the financial years 2014□15 and 2015□16(projected) only shall be taken into account while preparing the financial statements/information to be submitted to the Telangana Admission and Fee Regulatory Committee (TAFRC).

c. The fee shall be fixed based on the revenue expenditure including depreciation on the Assets of the institution. In order to fix the fee structure for the block period 2016□17 to 2018□19 information given the following schedules will be taken into consideration.

Reference	Details to be furnished in the schedule
Schedule–1	Details of Fee Collections for all the Programmes in the Institution for the Financial Year 2014–2015 & 2015–16.
Schedule–2	Income & Expenditure Statement of the Institution for the financial years 2014–2015 & 2015–16.
Schedule–3	Income & Expenditure Statement of the Society for the financial years 2014–2015 & 2015–16.
Schedule–4	Eligible Teaching Staff Salaries & Arrears paid by the institution (including complete employee details)
Schedule–5	Other Teaching Staff Salaries & Arrears paid by the institution (including complete employee details)
Schedule–6	Regular Non–Teaching Staff Salaries & Arrears paid by the institution (including complete employee details)
Schedule–7	Contract Non–Teaching Staff Salaries & Arrears paid by the institution (including complete employee details)
Schedule–8	Statement of Administrative & Other Expenses of the institution for the Financial Year 2014–2015 & 2015–16.
Schedule–9	Statement of Finance Costs of the institution for the financial Years 2014–2015 & 2015–16.
Schedule–10	Fixed Assets Schedule for Depreciation

Schedule□11 Statement of Revenue Grants Received & Utilised by the Institution for the Financial Years 2014□2015 & 2015□16.

Schedule□12 Status of Utilisation of Amounts collected under NRI Quota Schedule□13 Status of Utilisation of 10% allowed towards furtherance of education.

Schedule□14 Details of Fixed Deposits of the institution.

Schedule–15	Details of Loans Received from Societies, Banks/Financial Institution by the Institution.
Schedule–16	Details of Loans Received from Others by the Institution (Private Loans)
Schedule–17	Statement of Corpus/Capital Fund of the Institution
Schedule–18	Statement of Capital Grants Received & Utilised by the Institution
Schedule–19	Balance Sheet for Institution
Schedule–20	Balance Sheet for Society
Schedule–21	Legal Expenditure
Schedule–22	Other Information (Students Results etc.)

B) With regards to the expenditure it is broadly categorized as follows:

A) Salary Expenditure:

i) Salary expenditure on teaching faculty for 2014–15 & 2015–16, who are fully qualified as per norms, including the age of retirement, Teacher student ratio and cadre strength as per the AICTE norms.

ii) Salary expenditure of teaching faculty for 2014–15 & 2015–16, who are not fully qualified regarding qualifications, age, and staff beyond prescribed teacher student ratio etc.

iii) Salary expenditure of non–teaching staff for 2014–15 & 2015–16, who are on regular scales and within the prescribed teaching and non–teaching ratio, including the age of retirement.

iv) Salary expenditure of non–teaching staff for 2014–15 & 2015–16, who are on consolidated/contract emoluments or reemployed beyond the age of retirement and staff engaged beyond the prescribed teaching and non–teaching ratio.

v) The retirement age shall be 65 years for teaching faculty and 58 years for non–teaching staff and 60 years for last grade servants.

vi) Arrears of previous years' salary should not be included in the gross salary and should be shown separately.

1) In order to consider the expenditure on teaching and non–teaching staff, the cadre strength fixed by the respective competent authorities like AICTE/NCTE and Bar

Council of India etc., have to be adopted. Persons who are appointed over and above this strength shall be shown in the other related proforma.

2) Faculty norms shall be as per notification issued by respective competent authorities like AICTE, NCTE etc.

3) In case services of any of the employee is utilized for more than one programme, such names shall be shown only in one programme.

4) The teaching faculty should be qualified. Non-qualified teaching faculty will not be counted/considered for the purpose of expenditure.

5) PAN number for teaching faculty is a must. In respect of non-teaching and other staff also, PAN data shall be furnished, where monthly salary/emoluments/honorarium/remuneration is Rs.25,000 or more. If no PAN/wrong PAN data of them is given, the expenditure to that extent will be ignored.

6) Aadhar Card Number has to be indicated both for teaching faculty/non-teaching faculty.

7) Payment of salaries through cheque/bank will only be considered for expenditure purpose in respect of teaching faculty. Cash payments shall be subject to production of evidence.

8) In case of non-teaching staff, the monthly honorarium/salary/remuneration, as the case may be, is more than Rs.25,000/- shall be made through cheque/bank. Cash payments shall be subject to production of evidence.

9) Audited financial statements for the period 01/04/2015 to 30/11/2015 and projected financial statements for the period 01/12/2015 to 01/03/2016 will be the basis for calculating the expenditure for the Institution.

10) Audited financial statements for the financial year 2014-15 & 2015-16 will be the basis for calculating the expenditure for the Institution.

11) Audited financial statements for the financial years 2014-15 & 2015-16 shall also be furnished along with the fee proposals.

12) Acknowledgement of Returns of income filed with the Income Tax Department for the Assessment Years 2014-15 & 2015-16 pertaining to the financial years 2013-14 & 2014-15 together with Form-10B Audit Report shall be submitted along with the fee proposal.

13) Audit report shall contain the signature of the Auditor, his name, ICAI membership number along with the following information: □

i) PAN Number of the Auditor.

ii) E□mail id of the Auditor.

iii) Cell No. of the Auditor.

If the Auditor is a partner of the firm; following additional details shall be given:

a) Firm ICAI Registration Number

b) PAN Number of the Firm.

c) E□mail id of the Firm.

NOTE:□

(a) If the above said details are not furnished, auditor's report will not be considered and the fee proposal will be summarily rejected.

(b)TAFRC has a right to direct the presence of Auditor or seek confirmation from him/her and the corresponding costs, if any, shall be met by the Institution concerned. It is the responsibility of the Institution to secure the presence of the auditor when required.

In case any institution runs more than one programme all the expenditure can be bifurcated and reflected in respective Schedules and the bifurcated expenditure shall be certified by Chartered Accountant. If clear bifurcation is not given the proposal shall be rejected. The entire particulars would be obtained online. However, the institution shall provide a hardcopy of uploaded information duly signed by the Auditor/Secretary/Correspondent/Director/Principal (wherever it is required) by paying prescribed programme wise processing charges.

To be credited to the "Telangana Admission and Fee Regulatory Committee (TAFRC)" bearing A/c No. 62436164496, IFSC Code SBHY0020070, State Bank of Hyderabad, Shantinagar Branch, Hyderabad.

If a society/trust runs more than one institution, the data/information shall be furnished institution wise. Note: All the above schedules can be used for different programmes by changing the no. of years of course as deemed fit. For example, 4 years of duration for under□graduate courses (3 years for Lateral Entry) and 2 years for PG Programmes etc. Note:

Any expenditure that does not directly relate to the student's education shall not be considered.

Projected expenditure like advertisement of the institution in the ensuing block period, purchase of equipment, new recruitment to be made during the block period shall be met from the funds earmarked for the furtherance of the education.

Percentage of increase between financial year 2014□15 and 2015□16 will be taken into account to consider expenditure expenditure pertaining to the financial year 2015□16. However, the Audited Income & Expenditure for the period 01/04/2015 to 30/11/2015 and Projected Income & Expenditure for the period 01/12/2015 to 31/03/2016 must be submitted.

Schedules for salary payment for the teaching staff will be included for

(i) Those with qualifications

(ii) Those without qualifications.

Interest on the loan given by the societies to the institutions in respect of internal funds will not be taken into consideration.

When an institution is running more than one course/programme, the income and expenditure statement and Balance sheet shall be bifurcated and bifurcated statement certified by the Auditor shall be furnished along with the fee proposals. If it is not done, the proposals will be summarily rejected.

Annual TDS Returns filed in Forms 24Q and 26Q under Income Tax Act shall be submitted along with the proposal.

Either rent or depreciation will be allowed on the buildings. In respect of rents the Institution shall obtain Rent Fixation Certificate from the concerned Executive Engineer of R&B Department and registered rental Agreement also should be provided.

Any expenditure for which the corresponding income is there shall be disallowed if no corresponding income is shown.

Filling up of the column relating fee proposed (course wise) for the block period of 2016□17 to 2018□19 in the general information sheet is mandatory.

Procedure to be adopted for filling the proforma:

i) The Codes allotted by the respective conveners to the institution shall be used, for example EAMCET code for Engineering Colleges.

ii) Financial details shall be furnished in Rupees only.

iii) The per student fee proposed should be programme□wise and for the block period 2016 – 2019 to be shown in the General Information sheet.

iv) Audited financial statements for the year 2014□15, for the period 01/04/2015 to 30/11/2015, and also the projected figures for the period 01/12/2015 to 31/03/2016 must be submitted duly attested by Secretary/Correspondent of the Society/Trust shall also to be furnished along with the information relating to the institution together with the fee proposals.

Scanned copy of the statements shall be furnished online along with the relevant data.

v) If the institution furnishes incomplete data or fails to remit the processing charges as prescribed, such proposals will not be considered and ignored. The institute has to submit the following documents along with the fee proposals:

1. Formats duly filled in and signed by the Secretary/Correspondent/Director/Principal of the Institution;

2. Proof of depositing the processing charges;

3. Audited financial Statements for the period 2014□15 and for the period 01/04/2015 to 30/11/2015 and also the projected figures for the period 01/12/2015 to 31/03/2016 must be submitted and duly certified by Secretary/Correspondent of the Society/Trust.

4. Details of sanctioned intake given by the competent Authority for each course wise to be submitted.

5. Details of current status of affiliation, programme wise has to be submitted.

6. Other information/documents, if any (specify)

7. The following directions of Hon'ble High court of A.P., in the D.B. Judgment dt.29.10.2011 in WP's No.16547/2010 and batch reported in 2012 (3) ALT 686 (D.B.) is brought to the notice of the Institutions: □"……an institution which is unresponsive or does not submit statements of income and expenditure, audited balance sheets, and requirements for developmental needs for the immediately preceding year; particulars of expenditure incurred on salaries and infrastructure and other particulars as may be specified (with supporting bills, vouchers or receipts, etc.,) shall not be permitted to collect any fee…." Accordingly, in case of failure to furnish specified data as mentioned above or submission of proposal with incomplete data the institution/college will not be entitled for determination of fee and will not be allowed to collect any fee from the students for the block period 2016□17 to 2018□19 in terms of the said judgment."

11. The TAFRC initially fixed an annual fee of Rs.86,000/□and Rs.91,000/□respectively by notification dated 04.07.2016 for the block period for the respondent institutions, in consultation with their representatives, including the seeking of clarifications from them. The fact that determination of the fee structure was quasi□judicial in nature, any disagreement by an institution with the fee structure as determined by the TAFRC cannot ipso facto be termed arbitrary to create a lis, but may call for further scrutiny in an appropriate case, in exercise of judicial review. Initially the Single Judge opined that the determination of the fee structure for the block period suffered from defects and remanded the matter by order dated 14.11.2016, whereafter the TAFRC fixed a uniform structure of Rs.97,000/□annually per student for the block period notified on 04.02.2017 which was again challenged by the respondent institutions.

12. The High Court in disagreement with the fresh recommendations of the TAFRC, took upon itself to redetermine the fee structure for the block period at Rs.1,60,000/□and Rs.1,37,000/□ respectively, by a process of fresh mathematical calculation and accounting, which lay in the exclusive domain and jurisdiction of the TAFRC. This despite the fact that the TAFRC had already acted in consultation with the representatives of the institutions including the seeking of clarifications. The calculation sheet had also been made available to the institutions. The fact that earlier 10% inflation and 15% furtherance was calculated on the basis of the gross expenditure statement, which had now been changed by setting off the income against expenditure to make the net expenditure the basis of assessment, as compared to previous years, has been held by the High Court to be a change in methodology by the TAFRC without prior intimation and reasons, holding the same to be unjustified. But, the High Court did not return any finding that the TAFRC had acted contrary to the provision of the Act, Rules, guidelines, principles of natural justice or basic principles of economics and accounting, yet it chose to arrive at its own conclusions on a view which appeared to it to be more fairer, desirable or more logical. The High Court, has itself held that the procedural fairness and bonafides of the TAFRC could not be doubted. Furthermore, an amount of Rs.4,53,54,741.00 was found to be income with no corresponding expenditure figures and which had been taken into consideration for determination of the fee structure, was sought to be re□ agitated after remand without corresponding expenditure figures, leading to the rejection of the same again. The conclusion that inflation and furtherance had to be allowed separately for each financial year of the block period for that reason is wholly unsustainable.

13. The High Court also set aside the disallowance of Rs.1,39,20,000/□with regard to 58 additional teachers in excess of the 356 teachers required according to the norms of the All India Council of Technical Education (hereinafter referred to as “AICTE”) opining that it pertained to the jurisdiction of the AICTE and not the TAFRC. The High Court overlooked that the TAFRC inter alia consisted of domain experts from the AICTE also and the fact that the TAFRC on 22.10.2016 in response to the data submitted by the respondent institutions had already intimated in context of the disallowance that the relevant staff were not having the requisite qualifications. The actions of the TAFRC in this regard were well within its jurisdiction apparent from the guidelines extracted hereinabove, more particularly B(A) dealing with permissible expenditure with regard to teacher strength, qualifications etc as per AICTE norms. The importance of quality teachers, duly qualified, without overcrowding hardly needs to be emphasised. A teacher is the bedrock of the foundation on which the future of the nation is built. The High Court erred in its casual approach.

14. The High Court has laid much emphasis on the fact that it is the prerogative of an educational institution to determine its fee structure according to its needs, and that the TAFRC cannot act to scrutinise the same like a Chartered Accountant. It needs no reiteration that an element of justified flexibility has to be given to an educational institution in determination of the fee structure. But flexibility cannot be equated with elasticity to suit the desire or claims of an institution. Rule 4 (ii) vests jurisdiction in the TAFRC to decide whether a proposed fee structure submitted by an institution was justified or not and whether it amounted to profiteering or capitation fee. To prune the jurisdiction of the TAFRC by restraining it from examining and scrutinising the statement of accounts to decide the justification of the proposed fee structure, and confining its role to mere perusal and comments, will amount to taking away its regulatory jurisdiction completely. The object of the TAFRC is to ensure a justified fee structure which does not reflect profiteering and capitation fee. Profiteering is the making of an unreasonable profit taking advantage of a situation by escalating prices which are disapprovingly much or grossly exaggerated income generated through manipulation of price by the use of a dominant position. On the contrary, the 10% inflation and 15% furtherance allowed by the TAFRC are aspects of a reasonable return or financial gain, which is but a process of managing or running the institution allowing a reasonable return for further growth as distinct from unnecessary profitability. While a Regulatory Authority will not allow profiteering, it will have to take into consideration the necessity of a financial gain required inherent to the nature of the activity as provided in Rule 4(ii)(e). We do not think the TAFRC has faulted on that score.

15. The detailed and elaborate nature of the information sought by the TAFRC from an educational institution regarding the proposed fee structure submitted to it under the prescribed guidelines has already been noticed hereinabove. The TAFRC has also interacted with the representative of the respondent institutions and sought clarifications before the final determination by it. The proposition that the TAFRC is precluded from acting like a chartered accountant inhibiting scrutiny by it for justification of a proposal submitted to it by an institution is too wide a proposition fraught with possibilities which may inhibit the statutory functions of the TAFRC itself making it a toothless tiger. In other words, the examination of the proposal will have to be done by the TAFRC in a manner commensurate and appropriate to an educational institution and not by rigid adherence to the abstract principles of chartered accountancy in general, and which may call for some flexibility.

16. In our considered opinion, the crux of the controversy is the jurisdiction and the extent to which the court can examine the determination of the fee structure by the TAFRC and approved by the State government, in exercise of the powers of judicial review. The TAFRC, a statutory body headed by a retired High Court Judge, consists of domain experts from various fields including two from the finance sector, one of which is from the Government. Rule 3(vii) vests the TAFRC with the power to frame its own procedure in accordance with regulations notified by the Government in that regard and pursuant to which the guidelines for fee fixation have been framed by it. The recommendations of the TAFRC being the resultant of a quasi-judicial decision-making process, it will undoubtedly be amenable to the jurisdiction of the court for scrutiny by judicial review, so as to ensure adherence to the constitutional principles of reasonableness, fairness and adherence to the law under Article 14 of the Constitution.

17. Judicial review, as is well known, lies against the decision-making process and not the merits of the decision itself. If the decision-making process is flawed inter alia by violation of the basic principles of natural justice, is ultra-vires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance with the law. The court, in the garb of judicial review, cannot usurp the jurisdiction of the decision maker and make the decision itself. Neither can it act as an appellate authority of the TFARC. In Fertilizer Corporation Kamgar Union (Regd.), Sindri v Union of India, (1981) 1 SCC 568, it was observed:

> "35. ....We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

18. Judicial restraint in exercise of Judicial review was considered in the State of (NCT) of Delhi vs. Sanjeev, (2005) 5 SCC 181 as follows:-"16....One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

19. It needs no emphasis that complex executive decisions in economic matters are necessarily empiric and based on experimentation. Its validity cannot be tested on any rigid principles or the application of any straitjacket formula. The court while adjudging the validity of an executive decision in economic matters must grant a certain measure of freedom or play in the joints to the executive. Not mere errors, but only palpably arbitrary decisions alone can be interfered with in judicial review. The recommendation made by a statutory body consisting of domain experts not being to the satisfaction of the State Government is an entirely different matter with which we were not concerned in the present discussion. The court should therefore be loath to interfere with such recommendation of an expert body, and accepted by the government, unless it suffers from the vice of arbitrariness, irrationality, perversity or violates any provisions of the law under which it is constituted. The court cannot sit as an appellate authority, entering the arena of disputed facts and figures to opine with regard to manner in which the TAFRC ought to have proceeded without any finding of any violation of rules or procedure. If a statutory body has not exercised jurisdiction properly the only option is to remand the matter for fresh consideration and not to usurp the powers

of the authority. In Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India, (1992) 2 SCC 343, it was observed:

> "31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

20. In the context of Indian jurisprudence, the Constitution is the supreme law. All executive or legislative actions have to be tested on the anvil of the same. Such actions will have to draw their sustenance as also their boundaries under the same. Any action falling foul of the constitutional guarantees will call for corrective action in judicial review to ensure adherence to the constitutional ethos. But so long as the fabric of the constitutional ethos is not set asunder, the court will have to exercise restraint, more particularly in matters concerning domain experts, else the risk of justice being based on individual perceptions which may render myths as realities inconsistent with the constitutional ethos. Courts often adjudicate disputes that raise the question of how strictly should they scrutinise executive or legislative action. Therefore, courts have identified certain questions as being inappropriate for judicial resolution or have refused on competency grounds to substitute their judgement for that of another person on a particular matter. The need for judicial restraint with regard to recommendations of expert committees, more particularly in matters relating to finance and economics, was considered in BALCO Employees' Union (Regd.) vs. Union of India, (2002) 2 SCC 333, it was held:

> "65...Nevertheless, contention is sought to be raised that the method of valuation was faulty, some assets were not taken into consideration and that Rs 551.5 crores offered by M/s. Sterlite did not represent the correct value of 51% shares of the Company along with its controlling interest. It is not for this Court to consider whether the price which was fixed by the Evaluation Committee at Rs.551.5 crores was correct or not. What has to be seen in exercise of judicial review of administrative action is to examine whether proper procedure has been followed and whether the reserve price which was fixed is arbitrarily low and on the face of it, unacceptable.
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> 98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

21. Similar view was taken in Government of Andhra Pradesh vs. P. Laxmi Devi, (2008) 4 SCC 720, observing as follows:

> "80. ....As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts. It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions."

22. The need for judicial restraint in economic and financial matters based on reports of domain experts was again considered in Tamil Nadu Generation and Distribution Corporation Ltd. vs. CSEPDI–Trishe Consortium, (2017) 4 SCC 318, holding as follows:

> "36.... At this juncture we are obliged to say that in a complex fiscal evaluation the Court has to apply the doctrine of restraint. Several aspects, clauses, contingencies, etc. have to be factored. These calculations are best left to experts and those who have knowledge and skills in the field. The financial computation involved, the capacity and efficiency of the bidder and the perception of feasibility of completion of the project have to be left to the wisdom of the financial experts and consultants. The courts cannot really enter into the said realm in exercise of power of judicial review. We cannot sit in appeal over the financial consultant's assessment. Suffice it to say, it is neither ex facie erroneous nor can we perceive as flawed for being perverse or absurd."

23. Islamic Academy of Education (supra) was a sequel to T.M.A. Pai Foundation & Ors. vs State of Karnataka & Ors., (2002) 8 SCC 481, which was being understood in different perspectives leading to several litigations. The fixation of fee by the TAFRC is not an adversarial exercise but is meant to ensure balance in the fee structure between the competing interest of the students, the institution and the requirement and desire of the society for accessible quality education. It is but a part of the high concept of fairness in opportunities and accessibility to education, which is an avowed constitutional goal. But to equate it to the extent of a right to challenge and interference only on basis of a different view being possible, cannot be a justification to interfere with the recommendation of an expert committee. It is nobody's case that the TAFRC has acted contrary to principles of accounting and economics or any fundamental precincts of the same. In this context, the following observations in Modern School vs. Union of India, (2004) 5 SCC 583, are considered relevant in the necessary extract "20. We do not find merit in the above arguments. Before analysing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialisation of education has been a problem area for the last several years. One of the methods of eradicating commercialisation of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organisations/non-business organisations....

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51. Indisputably, the standard of education, the curricular and co-curricular activities available to the students and various other factors are matters which are relevant for determining of the fee structure. The courts of law having no expertise in the matter and/or having regard to their own limitations keeping in view the principles of judicial review always refrain from laying down precise formulae in such matters. Furthermore, while undertaking such exercise the respective cases of each institution, their plans and programmes for the future expansion and several other factors are required to be taken into consideration. The Constitution Bench in Islamic Academy of Education which as noticed hereinbefore subject to making of an appropriate legislation directed setting up of two Committees, one of which would be for determining fee structure. This Court, both in T.M.A. Pai Foundation and Islamic Academy of Education had upheld the rights of the minorities and unaided private institutions to generate a reasonable surplus for future development of education."

24. Before concluding the discussion, in view of the reasons stated by the High Court for fixation of the appropriate fee structure by itself, reference may usefully be made to the observations in D.N. Jeevaraj vs. Chief Secretary, Government of Karnatka, (2016) 2 SCC 653, as follows:

> "43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to by-pass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so. However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine....."

25. The High Court relied on (1986) 2 SCC 679 Comptroller and Auditor General of India, Gian Prakash, New Delhi and another vs. K.S. Jagannathan and another and (2000) 8 SCC 395 Badrinath vs. Government of Tamil Nadu and ors. to justify the taking over of the decision-making process by itself from the TFARC on four grounds. In our opinion, both the judgments are completely distinguishable on their own facts and have no relevance to the question for consideration in the present case. K.S. Jagannathan(supra) concerned promotion to the Subordinate Accounts Service. Badrinath (supra) related to a claim for promotion to super-time scale. Both the cases have no relevance to the present controversy concerning economic recommendations made by a statutory committee consisting of domain experts, and approved by the Government. We are, therefore, of the considered opinion in the facts of the present case, as demonstrated from the available records that none of the four grounds set out by the High Court can be considered as making out an exceptional case to warrant usurpation of the decision making jurisdiction of the TFARC by the High Court.

26. We, therefore, hold that the High Court exceeded its jurisdiction in interfering with the recommendation of the TAFRC for reasons discussed. The orders of the High Court are set aside.

The recommendation of the TAFRC dated 04.02.2017 for the block period 2016□2017 and 2018□ 2019 is restored.

27. In view of the interim order dated 27.06.2017 passed by the High Court, the bank guarantees furnished by the respondent institutions and directed to be kept alive are required to be activated and action taken accordingly in accordance with law for protection of the interest of the students.

28. The appeals are allowed. No costs.

..... J.

(Arun Mishra) ..... J.

(Navin Sinha) New Delhi, July 01, 2019.