



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2739 OF 2020
(Arising out of SLP (C) No. 20049/2019)

RAJEEV GANDHI MEMORIAL COLLEGE OF ENGINEERING
AND TECHNOLOGY & ANR. Appellant(s)

VERSUS

THE STATE OF ANDHRA PRADESH & ORS. Respondent(s)

WITH

CIVIL APPEAL NO. 2740 OF 2020
(Arising out of SLP (C) No. 20148/2019)

J U D G M E N T

R.F. Nariman, J.

- 1) Leave granted.
- 2) Applications for Intervention are allowed.
- 3) The Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short "the Act"), *inter alia*, deals with fee fixation insofar as unaided institutions like the present two institutions are concerned.
- 4) For the years 2016-2019, so far as the petitioner in the first matter is concerned, the fee was fixed at Rs.86,800/-, and so far as the Petitioner in the second matter is concerned, it was fixed at Rs. 59,500/- per student. Thereafter for the next block of two years i.e.

2019-2020, proposals were made by both the petitioner in the first matter and in the second matter asking for an increase up to Rs. 1.35 lakhs and Rs.72,000/- respectively.

5) Rule 4 which is made under the said Act provides as follows:-

"4. FEE FIXATION:

(i) The AFRC shall call for, from each Institution, its proposed fee structure well in advance before the date of issue of notification for admission for the academic year along with all the relevant documents and books of accounts for scrutiny.

(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.

(iii) The AFRC shall be at liberty to approve or alter the proposed fee for each course to be charged by the Institution.

Provided that it shall give the Institution an opportunity of being heard before fixing any fee or fees.

(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 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 the Schedule Caste, Schedule Tribes and wherever applicable to the Socially and Educationally Backward Classes and other Economically weaker Sections of the society, to such extent as shall be notified by the Government from time to time.

(g) Any other relevant factor.

Provided that, no such fees, as may be fixed by the AFRC, shall amount to profiteering or commercialization of education.

(v) The AFRC shall communicate the fee structure as determined by it, to the Government, for notification.

(vi) The fee or scale of fee determined by the AFRC shall be valid for a period of three years.

(vii) The fee so determined shall be applicable to a candidate who is admitted to an institution in that academic year and shall not be altered till the completion of his course in the institution in which he was originally admitted. No Professional Educational Institution shall collect at time a fee which is more than one year's fee from a candidate."

6) Instead of following the drill of Regulation 4, the State, by an order dated 23.07.2019, fixed, as an interim measure, that the earlier fee that was prescribed for the years 2016-19 would govern the block period of 2019 onwards as well. A writ petition was filed dated 29.07.2019 by the petitioners in which this interim fixation was challenged as being violative of the aforesaid Regulation 4 set out by us herein above.

7) After hearing all concerned parties, the learned Single Judge's order dated 31.07.2019 *prima facie* found that the contentions of the petitioners were correct, and therefore passed the following order:

"Having regard to the facts and circumstances of the case considering the submissions of the

learned counsel for the petitioners, and on perusal of the record, in the interest of justice, this Court felt it appropriate to grant interim direction, as the petitioners have shown prima facie case, balance of convenience and irreparable loss.

Therefore, the impugned G.O.Ms.No.38 dated 23.07.2019 is suspended, pending disposal of the writ petition.

Further, the respondents are directed to permit the petitioners to collect the Fee determined and submitted by the 2nd respondent, pending adjudication of the writ petition."

8) The Division Bench, by the impugned order dated 08.08.2019, interfered with the aforesaid Single Judge's interim order and "modified" the aforesaid order as follows:

"20. For the aforesaid reasons, the order of the learned Single Judge suspending the impugned G.O. is modified as follows:

The writ petitioners herein are permitted to collect the fee fixed for the block period 2018-2019 for the engineering and other courses and obtain a bank guarantee from the students admitted in those professional courses to an extent of 50% of the difference of fee claimed by the writ petitioners-colleges or the fees recommended by AFRC to the Government, whichever is less, for the block period, 2019-2020 to 2021-2022, which will be in force till the new fee structure is notified by the Government. The Advocate General informs that the State Government will inform to the colleges as well as to the appropriate authorities about the fees claimed by the colleges and recommended by AFRC. Students shall be informed about the pendency of the writ petition before this Court regarding fees structure and they are not entitled to claim any equities thereafter. We hope that the new fee structure taking care of the students and management shall be notified at the earliest preferably by the end of this year. In case,

the fee recommended and notified by the Government is more than the fee collected pursuant to this order, the petitioners-educational institutions are at liberty to invoke the bank guarantee to the extent of difference between fee paid and in case it is less, the petitioners shall return the amount to the students or adjust the same, if permissible."

9) We have been informed that the Andhra Pradesh Higher Education Regulatory and Monitoring Commission Act, 2019 has since come into force on 14.08.2019, under which a Commission is set up to determine fees, *inter alia*, relating to unaided institutions. This Commission, we are reliably informed, has been constituted with effect from October, 2019.

10) Mr. K.V. Viswanathan, learned Senior Advocate, appearing on behalf of the Intervenor, has pointed out that a learned Single Judge, by an order dated 07.05.2020, has stayed the operation of fees that has been fixed by the Government under this Act relating to the year 2019-20.

11) Mr. Mahfooz Nazki, learned counsel for the Respondent, points out that the Single Judge's order has since been clarified to exclude a number of institutions. Be that as it may, we are not today directly concerned with the 2019 Act, which appears to be prospective in nature. The interim fee fixed by the Andhra Pradesh Government without following the drill of Rule 4 has correctly been found to be *prima facie* illegal and has therefore correctly been suspended by the

learned Single Judge's order of 31.07.2019. The Division Bench ought not to have interfered with the aforesaid order by the impugned order dated 08.08.2019. The appeals are allowed and the impugned order is set aside and the learned Single Judge's order will now continue to operate insofar as the period of 2019 onwards is concerned until a final fee is fixed in accordance with the requisite Act and Rules.

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(NAVIN SINHA)

.....J.
(B.R. GAVAI)

New Delhi;
July 14, 2020.