

Non-Reportable**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****Civil Appeal Nos. 606 - 616 of 2021****Najiya Neermunda & Anr. Etc.****... Appellant(s)*****Versus*****Kunhitharuvai Memorial Charitable Trust & Ors. Etc.****.... Respondent (s)****WITH****Civil Appeal Nos. 617-634 of 2021****Civil Appeal No. 635 of 2021****Civil Appeal No. 636 of 2021****Civil Appeal No. 637 of 2021****Civil Appeal No. 666 of 2021****Civil Appeal No. 679 of 2021****J U D G M E N T****L. NAGESWARA RAO, J.**

1. The controversy in these Appeals pertains to fee fixation by the Admission and Fee Regulatory Committee for MBBS students in private self-financing medical colleges in the State of Kerala.

2. Pursuant to the judgement of this Court in ***P.A. Inamdar & Ors. v. State of Maharashtra & Ors.***¹, the State of Kerala enacted Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006. The Rules framed under the said Act came into force *w.e.f.* 2006. The said Act was replaced by Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (hereinafter referred to as “the 2017 Act”). Certain provisions of the 2017 Act were challenged by way of Writ Petitions filed in the High Court of Kerala. The fixation of admission fee for all the medical colleges in the State of Kerala provisionally at Rs. 5 Lakh by the Admission and Fee Regulatory Committee was also subject matter of challenge in the said Writ Petitions. Section 8 of the 2017 Act delineates the powers and functions of the Admission and Fee Regulatory Committee (hereinafter referred to as “the Committee”) constituted under Section 3 of the 2017 Act. Section 8(1)(a) provides that the Committee can direct a private aided or unaided medical institution to furnish the required information along with necessary material for

¹ (2005) 6 SCC 537

enabling the Committee to determine the fee that may be charged by the institution in respect of each medical course. Section 11 of the 2017 Act mentions the factors that are to be taken into account by the Committee for determination of the fee to be charged by a private aided or unaided medical institution. The challenge to Sections 8(1)(a) and Section 11 of the 2017 Act was rejected by the High Court in its judgment dated 02.11.2017. However, the High Court held that fixation of fee provisionally was *ultra vires* the 2017 Act. After examining the law laid down by this Court in ***T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.***², ***Islamic Academy of Education v. State of Karnataka & Ors.***³, ***P.A. Inamdar*** (supra) and ***Modern Dental College & Research Centre & Ors. v. State of Madhya Pradesh & Ors.***⁴ with respect to fixation of fee for professional courses in unaided medical colleges, the High Court of Kerala held that the institutions shall propose the fee structure and the scrutiny by the Committee shall only be for the purpose of ensuring that such fee is not exploitative and that the institutions are not indulging in profiteering or collecting capitation fee. According to the High Court, the Committee can formulate a policy of directing the colleges to submit

2 (2002) 8 SCC 481

3 (2003) 6 SCC 697

4 (2016) 7 SCC 353

audited accounts of previous years for the purpose of ascertaining that there is no profiteering by the institutions in fixing the fee. The High Court made it clear that the Committee cannot go into the desirability or appropriateness of the expenses incurred by the institution as per its own notions and standards. While disposing of the Writ Petitions, the High Court fixed a time schedule for finalizing the fee to be paid by students as it would be detrimental to the interests of both students and the institutions to keep the finalization of fee pending for a long time.

3. Consequent upon the judgment dated 02.11.2017 of the High Court, the Committee fixed fee for the MBBS course for the years 2017-18 and 2018-19 for private medical colleges. Dissatisfied with the fee fixed by the Committee, the managements of private self-financing medical colleges again approached the High Court by filing Writ Petitions which were heard and disposed of by the High Court on 28.02.2019. The principal contentions of the managements before the High Court were that the Committee acted in excess of its jurisdiction in fixing fee for the years 2017-18 and 2018-19 and that all the members of the Committee were not parties to the order of fee fixation. Considering the first point of the Committee acting in excess of the

jurisdiction vested in it by the 2017 Act, the High Court was of the opinion that the Committee was empowered to ensure that the fee fixed by the institutions was reasonable. The contention of the managements that the proposal made by them in respect of the fee to be collected from the students has to be accepted by the Committee which does not have the power to disallow any expenditure, was not accepted by the High Court. That the Committee lacked the power to fix a fee different from the one proposed by the managements was also rejected by the High Court. After carefully considering the judgments of this Court relating to fee fixation and the judgments of the High Court on the same point, a Division Bench of the High Court of Kerala in its judgment dated 28.02.2019 observed that the Committee has the power to examine whether the fee proposed by the managements of private self-financing medical colleges was not excessive and non-exploitative, apart from considering that the surplus proposed was reasonable and was being ploughed back into the institution. The managements of private self-financing medical colleges were directed to cooperate with the Committee by furnishing all the accounting details as directed by the Committee. It is important to note that the High Court observed that the

Committee has the power to examine the material furnished by the institutions for eliminating impermissible ingredients so as to arrive at a reasonable fee that can be charged by the management. As all members of the Committee were not present during the decision-making process of fixation of fee, the High Court set aside the order passed by the Committee. The Committee was directed to pass fresh orders for fixing the fee in accordance with law at the earliest. The Committee issued fresh orders in July, 2019 in respect of fixation of fee for MBBS Course for the years 2017-18 and 2018-19. Proceeding on the premise that the orders passed earlier fixing the fee were set aside by the High Court for lack of quorum, the Committee did not re-examine the proposals made by the managements earlier. The Committee reiterated the fee that was fixed for the medical colleges in its earlier orders. The managements of private self-financing colleges approached the High Court of Kerala by filing Writ Petitions challenging the orders passed by the Committee by which the fee fixed for the years 2017-18 and 2018-19 had been repeated again. By an order dated 14.01.2020, the High Court directed the managements of private self-financing colleges to provide a statement,

accompanied with an affidavit and a list of documents within a period of 3 weeks from the date of the order, relating to:

- a. The cost of land and building with date of acquisition of land and construction of building,
- b. Listed value of infrastructure,
- c. List of equipment, its value and approximate life,
- d. The salary and allowances paid to the teaching and non-teaching staff,
- e. The expenditure on administration and maintenance of the medical educational institution,
- f. Any other expenditure, and
- g. Surplus for future development.

4. *Prima facie*, the High Court was convinced that the Committee did not reconsider the matter after the judgment of the High Court dated 28.02.2019. The High Court was convinced that the orders passed by the Committee fixing fee for the years 2017-18 and 2018-19 suffered from the vice of non-application of mind. The order dated 14.01.2020 was subject matter of challenge in the SLPs filed in this Court which were disposed of on 06.03.2020 with a request to the High Court to decide the Writ Petitions. The High Court was also given the liberty to decide whether it can itself decide the fee.

5. On 19.05.2020, the High Court disposed of the Writ Petitions in which orders passed by the Committee were assailed. After examining the orders passed by the Committee, the High Court was of the opinion that there was

no fresh consideration for fixation of fee in spite of directions issued by the Division Bench of the High Court in its judgment dated 28.02.2019. The High Court was not satisfied with the hearing that was given to the managements with an interval of 15 minutes. The failure on the part of the Committee in not reconsidering the matter of fee fixation was found fault with by the High Court. The High Court found it inappropriate to fix the fee by itself and remanded the matter back to the Committee to re-examine the proposals of the managements of private self-financing colleges and to pass suitable orders. The High Court gave a specific direction to the Committee to examine whether the estimate of the expenditure provided by the institutions are in accordance with the audited balance sheets and in the absence of audited balance sheets, in accordance with the provisional profit and loss accounts to be furnished by the managements. The High Court directed the Committee to examine the audited balance sheets only for the purpose of considering whether the expenditure that is shown by the managements should be excluded or not. The Committee was directed to arrive at a decision regarding fixation of fee without being influenced by its earlier orders. A fair opportunity was directed to be given to the managements of

private self-financing medical colleges. The State of Kerala and the students of private self-financing medical colleges have challenged the judgment dated 19.05.2020 by filing these Appeals.

6. We have heard Mr. Jaideep Gupta and Mr. Paramjit Singh Patwalia, learned Senior Counsel appearing on behalf of the State of Kerala, Mr. P.S. Narasimha, learned Senior Counsel, Mr. Raghenth Basant and Mr. Wills Mathew, learned counsel appearing on behalf of the students, Mr. Dushyant Dave and Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the managements of private self-financing colleges. The main contention of the State of Kerala is that the earlier orders of fee fixation for the years 2017-18 and 2018-19 have been upheld by the High Court in its judgment dated 28.02.2019. The matter was remanded back by the High Court only because the orders were passed without quorum. It was argued on behalf of the State that the managements of private self-financing colleges were given an opportunity to furnish additional material, if any, which was not availed of. There was no necessity for reconsideration of fee fixation for the years 2017-18 and 2018-19 with which no fault was found by the High Court by its judgment dated 28.02.2019. The State of Kerala is also

aggrieved by the direction given by the High Court in the impugned judgment restricting the powers of the Committee in exercise of its jurisdiction to fix the fee. The directions given by the High Court are contrary to Section 11 of the 2017 Act, which refers to factors that have to be taken into account by the Committee for fee fixation. On behalf of the students, a submission was made that the fee fixed by the Committee is appropriate and should not be interfered with. A fervent appeal was made on behalf of the students that any revision of fee would impose financial burden on the students and their families. Relying upon the judgments of this Court, it was argued on behalf of the students that the fee charged by the private self-financing colleges should be reasonable.

7. The managements of private self-financing colleges stressed on the fact that they have a right guaranteed under Article 19 (1)(g) of the Constitution of India which can be curtailed only by reasonable restrictions. They have a right to establish and administer an institution without any undue interference. The case canvassed on behalf of the managements is that the power of the Committee is restricted to scrutinize the proposals made by them for charging the fee. No doubt, the managements should not be

permitted to charge excessive fee but reasonable surplus is permitted under Section 11 of the 2017 Act. Expenditure involved in running an institution along with reasonable profit is permitted by the statute. There is no error committed by the High Court in directing the audited accounts to be considered for fee fixation. Reference has been made to higher fee fixed for a Deemed University in Kerala and by other States to argue that the fee for the years 2017-18 and 2018-19 shall be fixed at par with those institutions. The submission of the management is that there should have been a *de novo* consideration after remand by the High Court on 28.02.2019. They have complained about the hearing that was given to them after the remand, wherein 19 private self-financing colleges were directed to be present before the Committee with an interval of 15 minutes, which is wholly unreasonable. The stand of the managements is that the fixation of fee for students pursuing medical courses 2017-18 onwards should not be delayed any further.

8. Fixation of fee payable by students pursuing their medical courses in the State of Kerala since 2017-18 has not been finalized till date. One college complains of non-finalization of fee from the year 2016-17. The students are continuing their education after remitting a provisional fee.

Sections 8 and 11 of the 2017 Act which provide for the powers and functions of the Committee and the factors to be taken into account for fixation of fee have been upheld by the High Court. The exercise undertaken by the Committee for finalizing the fee payable by the students for the years 2017-18 and 2018-19 was examined by the High Court at the behest of the managements. The High Court by its judgment dated 28.02.2019 remanded the matter back to the Committee directing that fresh orders be passed. The State contends that the remand was for a limited purpose as the fee fixation by the Committee was set aside only because it lacked quorum and not otherwise. On the other hand, the managements insisted that the Committee had to re-examine the matter on remand by the High Court. If the remand was only on a technical ground of lack of quorum, the High Court would have mentioned it in its judgment dated 28.02.2019. The stand taken by the managements was accepted by the High Court in the impugned judgment. The High Court was of the firm opinion that the Committee ought to have considered the matter *de novo* and fixed the fee after giving an opportunity to the managements and after considering the proposals again. A close scrutiny of the judgement dated 28.02.2019 would not indicate that the

remand was only for the purpose of curing the defect of lack of quorum. The High Court in its judgment dated 28.02.2019 considered the submissions of the managements that the Committee acted in excess of its jurisdiction conferred by Section 8 of the 2017 Act. The additional point raised by the managements that the fee was fixed without regard to the factors mentioned in Section 11 of the Act was also considered by the High Court in its judgment dated 28.02.2019. Moreover, the fee that was fixed by the Committee was not approved by the High Court in its judgment dated 28.02.2019. Nonetheless, the High Court held that the Committee should closely scrutinize the fee suggested by the managements to examine if fee proposed was not excessive and to eliminate any element of profiteering or collection of capitation fee. The managements were directed to co-operate with the Committee in the matter of fixation of fee. The powers and functions of the Committee and the factors to be considered by the Committee for fixation of the fee have been discussed by the High Court in its judgment dated 28.02.2019, without finally expressing its mind on the correctness of the fee fixed by the Committee. In the impugned judgment, the High Court rejected the contention of the students and the State

of Kerala and held that the matter was not sent back for reconsideration only on the ground of lack of quorum. If the remand was only on this technical issue, the High Court would have specifically mentioned in the judgment. In any event, the High Court in the impugned judgment held that it was incumbent on the Committee to reconsider the proposals for fee fixation afresh, as the matter was remanded by the High Court after giving reasonable opportunity of hearing to the stakeholders. The fee fixation of the Committee is subject to an appeal as per provisions of the 2017 Act. Except laying down principles of fee fixation, the High Court did not examine the merits of any case while remanding the matter for reconsideration in accordance with law by its judgment dated 28.02.2019. The Committee shall re-examine the proposals of the Managements of Medical Colleges for the fixation of fee 2017-18 onwards.

9. The other issue that requires to be considered relates to the restrictions placed by the High Court in the matter of fixation of fee by the Committee. We find force in the submission of Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the State, that no fetter can be placed on the exercise of power for fee fixation by the Committee, which shall be in accordance with the factors that are

mentioned in Section 11 of the 2017 Act. The High Court committed an error in directing the Committee to take into account only audited balance sheets, and provisional profit and loss accounts in the absence of audited balance sheets, to fix the fee. Though we are in agreement with the submission made on behalf of the managements that the fee as proposed by them should be considered by the Committee, it is no more *res integra* that the right conferred on the institutions to fix fee for professional courses is subject to regulation. It need not be reiterated that unaided professional institutions have the autonomy to decide on the fee to be charged, subject to the fee not resulting in profiteering or collection of capitation fee. Regulation of fee is within the domain of the Committee which shall ensure that the fee is non-exploitative and reasonable. There is no need to repeat the judgments of this Court, especially **P.A. Inamdar & Ors.** (supra), which have been copiously referred to by the High Court in the 3 rounds of litigation to indicate the principles to be followed for fixation of fee in private medical colleges. Suffice it to mention that the Committee shall reconsider the proposals of the managements for fee fixation 2017-18 onwards by taking into account the factors mentioned in Section 11 of the 2017 Act and the law laid

down by this Court in ***Modern Dental College & Research Centre*** (supra). The delay that is caused in finalizing the fee in medical colleges is beneficial neither to the institutions nor the students. Therefore, we direct the Committee to expeditiously reconsider the proposals of the private self-financing colleges for fee fixation from 2017-18 onwards. Needless to mention that fee for earlier years also needs to be finalized in case it has not been done in respect of any college. It can direct the managements to furnish any information that is required for the purpose of arriving at a decision that the fee proposed by the managements is neither excessive nor exploitative in nature. A reasonable opportunity should be given to the managements of private self-financing colleges in respect of their proposals for fee fixation. The entire exercise shall be completed within a period of three months from today.

10. For the aforementioned reasons, the Appeals are disposed of accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[S. RAVINDRA BHAT]

**New Delhi,
February 25, 2021.**