SUPREME COURT OF INDIA

Cochin University of Science & Technology

Vs.

Thomas P. John

C.A.No.4159 of 2003

(B.N. Agarwal, Harjit Singh Bedi and G.S. Singhvi JJ.)

06.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. These appeals by special leave arise out of the following facts:

2. In the Undergraduate 4 years B. Tech. Cost-Sharing Engineering Course of eight semesters started in the year 1995 by the appellant university, 10% seats were reserved for Non-Resident Indian Students (hereinafter called "NRI students"). As per the prospectus such students were required to make a deposit of US $5000 at the time of their admission towards 'development charges' and to pay in addition a fee of students were required to pay a uniform fee of Rs.20,000/- per semester. From the academic year 1996-97, however, the University increased the fee for NRI students to US $4000 per annum whereas the other students continued to pay fee at the rate of Rs.20, 000 per semester. This practice was continued for three admission years, i.e. 1996-97, 1997-98 and 1998-99, but from the year 1999-2000 the provisions made in the year 1995-96 i.e. confining the payment of fee to a one time payment US $5,000 and Rs.20,000/-per semester were restored. The respondents herein who had been admitted to the course in question during the years 1997-98 and 1998-99 filed representations claiming that they had been adversely treated by the appellant University and that they were entitled to claim parity vis-`-vis the fee structure for NRI students as from the years 1999-2000 onwards. As the representations bore no result, 34 of the 56 NRI students who had been admitted to the course during the two years, filed two writ petitions before the Kerala High Court. On notice, a counter affidavit was filed by the Registrar on behalf of the appellant University pointing out that the NRI students had not been admitted to the course on the basis of merit and that the B. Tech. programme conducted at the Centre was a self-financing and unaided one being run exclusively with funds collected by way of fees. The fact as to the increase and the changes made from time to time in the fee structure were broadly admitted but it was pleaded that the Syndicate of the University had reduced the fee for the batch entering the course for the year 1999-2000 before the admission process had commenced and that the writ petitioners could not claim an automatic reduction in the fee and it was essential that the fee structure designed for a particular batch should be allowed to

continue as to make a change midway would lead to a complete break down of the finances of the University. The Division Bench of the High Court observed that two questions arose for consideration:

> "(1) Is the action of the University in charging fee at different rates from the students on the basis of the batches in which they were admitted arbitrary and unfair ?
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> (2) Are the petitioners estopped from challenging the impugned action? And then went on to examine each point under specific heads. While dealing with the question No.1, the Court observed that there appeared to be no rationale for subjecting the writ petitioners to a higher rate of fee than the rate fixed in the years 1995-96 and 1999-2000 onwards more particularly as in the written statement filed on behalf of the University no basis for a differential treatment had been disclosed and the averment that a reduction in the fee would lead to financial stress in the conduct of the courses had not been substantiated by facts and figures. The Court also observed that even assuming that the university had the right to fix the rate of fee, a duty was still cast on it to act fairly, and being a statutory body, its decision was to be based on reasonable facts and if a classification between the different categories of students was pleaded, it must satisfy the test of having a rational basis."

3. On question No.2, the Court held that though the University had issued a prospectus disclosing the fee structure, it would not bind the respondents even on the principle of estoppel, as estoppel was a principle of equity and as it appeared that the fundamental right of the writ petitioner under Article 14 of the Constitution had been violated, the same could not be waived even by their own action. The ultimate direction was accordingly rendered on 2nd April 2003 as under:

> "In view of the above, the writ petitions are allowed. The University is directed to refund the extra fee charged from the petitioners. It may be noticed in this connection that initially the levy of an additional fee had been stayed by this Court. However, on a subsequent date, the order of stay was vacated. At that time an undertaking was given by the University that in case the writ petition is allowed, the disputed amount of fee shall be refunded. The University shall do so within two weeks from the date of receipt of a certified copy of this order. In case of failure to refund within the time as aforesaid, it shall be liable to pay the amount along with interest at the rate of 10% from the date of deposit till the date of refund. The University is also directed to declare the result of the petitioners forthwith."

4. It is against this judgment and order of the Division Bench that the present appeals have been filed by way of Special Leave. This matter first came up for hearing on 9th May 2003 on which date leave was granted and pending proceedings the order for refund was stayed. We have also been told that this Court had directed the respondent students as an interim measure to pay the entire fee as per the fee structure under which they had been admitted and it is the conceded position that all the students have in fact deposited the amounts in question.

5. Mr. T.L.V.Iyer, the learned senior cousel appearing for the University has seriously controverted the conclusions of the High Court and has pointed out that it was open to a self financing institution to fix its own fees and interference in this exercise by the Court was not called for. He has submitted that there was adequate material on record to show that the University was in need of funds as the course set up was a new one and the necessary infrastructure and facilities had yet to be developed which justified a substantial fee on those who could best afford it. The learned counsel has placed reliance for this submission on *T.M.A.Pai Foundation vs. State of Karnataka*[1], *Islamic Academy of Education & Anr.Vs. State of Karnataka & Ors*[2], *P.A.Inamdar & Ors. vs. State of Maharashtra &Ors.*[3].On the second question, posed by the High Court, Mr. Iyer has submitted that it would be a very dangerous doctrine to lay down, that a student having accepted admission under a particular fee structure could turn around and say at a later stage that the fee which was called upon to pay was excessive and that he was liable to pay such fee which was leviable on students admitted in subsequent years. It has been highlighted and in this situation that there would be complete uncertainly in the quantum of funds available and that it would be well nigh impossible for any educational institution to chalk out its own parameters for development. It has finally been submitted that having taken admissions under a certain fee regime the NRI students were estopped from challenging the same in Court. In support of this argument, the learned counsel has relied upon *Om Prakash Shukla vs. Akhilesh Kr.Shukla & Ors.*[4] *and Standard Chartered Bank vs. Andhra Bank Financial Services Ltd. & Ors.*[5].

6. Mr. Rao, the learned senior counsel for the respondents has, however, supported the judgment of the Division Bench and has submitted that though the right of the University to fix a fee was undeniable, but the quantum was required to be reasonable and also supported by relevant material to justify the levy. He has pointed out the stand of the university had been a vacillating one, as before the High Court the plea taken was that the funds available from the NRI students were required for infrastructure development whereas a complete somersault had been made in the affidavit filed in this Court by pleading that it had been observed, that during the admissions made in the year 1997-98 and 1998-99 meritorious NRI students had not sought admission on account of the high fee and it was in that eventuality that the University had decided to re-introduce the fee structure for the year 1995-96, so as to attract NRI students from a wider base. It has been submitted by Mr. Rao that the quantum of the fees and the manner of its imposition suggested that the fees was, in fact, a capitation fee, the levy of which was completely barred by several judgments of this Court and in this connection has placed reliance on T.M.A.Pai Foundation & Ors. (supra). It has been pleaded that as per the budget estimates shown in the affidavit filed by the university in this Court (from the year 1996-97 to 1999-2000) it was clear that there were substantial reserves with the University during the years 1997-98 (academic years) which did not warrant an increase in the fee. It has finally been argued that in the light of the judgments aforequoted, the fee structure for the year 1995-96, and 1996-97 had been determined by a committee and as such any deviation therefrom by the University was unjustified. For this pleading on facts Mr. Rao has referred us to Civil Appeal No. 6143/2003.

7. At the very outset, it must be observed that the dispute pertains only to two years and as of today there appears to be no difficulty, as the fee structure is now devised by committees set up under the orders of the Supreme Court in the aftermath of the judgment in T.M.A.Pai's case (supra). We are also of the opinion that the matter relating to the fixation of a fee is a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision. The Supreme Court has laid down several broad principles with regard to the fixation of fees and as of today, those principles are being adopted by the committees set up for the purpose. It must be understood at the outset that an educational institution chalks out its own programme year wise on the basis of the projected receipts and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. From this, however, it should not be understood that the educational institution has a carte blanche to fix any fee that it likes but substantial autonomy must be left to it. Mr. Rao has very candidly admitted that it was undoubtedly open to an educational institution to fix its fee but subject to certain broad principles. We have accordingly gone through the affidavits filed by the appellant University and they reveal that the University had set up the new course in the year 1995-96 for which funds were required for infrastructure development, the development of a faculty, which would mean making provision for adequate salary for the teaching and supporting staff so as to attract the best minds. It has also been emphasized in the second affidavit that the fees had been first increased and subsequently reduced as experience had shown that the amount of US $ 5000 per year was excessive and left out consideration a large number of NRI students who could not afford the fee and in order to make the course available to a larger segment amongst this category, the fee had been reduced. We are of the opinion that no contradiction or fault can be found with the University in taking these two stances in the two affidavits as they supplement each other and make out a justification for the initial increase in the fee and subsequent downward revision.

8. We have also gone through the judgments cited by the learned counsel. In T.M.A.Pai case (supra) several questions as to the rights of minority institutions to manage their own affairs were taken up one of the significant questions being the right to determine and levy fee. Question 5(c) and its answer are reproduced below:

> "Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principles including their service conditions an regulation of fees, etc. would interfere with the right of administration of minorities?
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> A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-

teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."

9. It was further held that though no capitation fee or profiteering was permissible but "reasonable surplus to cost (sic) expansion and augmentation(sic) facilities do not, however, amount to profiteering". This judgment came up for consideration in the Islamic Academy case (supra) primarily at the instance of unaided professional educational institutions, both minority and non-minority. Several questions were posed before the Court and question No.1 was whether the educational institutions were entitled to fix their own fee structure. This question was answered as under:

"So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority

judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise."

10. It was as a consequence of the directions issued in this case that a committee headed by a retired Judge was set up in each State to examine the fee structure which would be applicable both to aided and non-aided educational institutions with a further direction that the recommendations made by the committee were to remain binding for 3 years. Both the aforesaid judgments came up for consideration in P.A.Inamdar's case (supra) and it was observed that though a limited number of seats not exceeding 15% may be made available to NRIs depending upon the discretion of the management, two essential conditions were to be kept in mind; (1) the seats would be utilized for the benefit of bonafide NRIs and their children or wards and that within this quota merit would not be given a complete go-by and (2) further that the amount of money "in whatever form collected by such NRIs, should be utilized for the benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of fee."

11. A reading of the aforesaid judgments would reveal that the broad principle is that an educational institution must be left to its own devices in the matter of fixation of fee though profiteering or the imposition of capitation fee is to be ruled out and that some amount towards surplus funds available to an institution must be permitted and visualized but it has also been laid down by inference that if the broad principles with regard to fixation of fee are adopted, an educational institution cannot be called upon to explain the receipts and the expenses as before a Chartered Accountant. We find that the observations of the Division Bench of the High Court that no rational basis for the fixation of a higher fee for two years had been furnished, lays down an onus on the educational institution, which would be difficult for it to discharge with accuracy. It bears repetition that the University had set up the self-financing B.Tech. Course in the year 1995 and no grant in aid was available during this period or later and it had to make arrangements for its own funds. We have also examined the budget estimates, receipts and expenditure from the year 1996-97 to 1999-2000. We do find that there is a surplus in the hands of institution but in the facts that a new course was being initiated which would require huge investments, the surplus was not unconscionable so as to require interference. Moreover, the University had made its budget estimates keeping in view the proposed receipts and if the fee levied by it and accepted by the students was permitted to be cut down mid term on the premise that the University had not been able to explain each and every item to justify the levy, it would perhaps be impossible for it to function effectively.

12. We are also of the opinion that it would be well nigh impossible for an educational institution to have an effective administration and to maintain high educational standards, if a downward revision during the pendency of a course would be automatically made applicable to students admitted earlier under a different fee structure. A periodic revision is also visualized in the directions of the Supreme Court in Islamic Academy's case (supra) wherein

it has been provided that the fee structure fixed by a committee headed by a retired Judge would be operable for 3 years. In the present case, we find that the NRI students took admission on certain specific conditions and the University has a right to insist that those conditions are observed. To our mind, therefore, it would not be open to the students to contend that notwithstanding that they had been admitted on a certain fee structure they were entitled to claim as a matter of right, a reduction in fee to bring them at par with students admitted later under a lower fee structure. The argument of estoppel in such a case would, thus, be available to an educational institution. The High Court was influenced by the fact that estoppel was a plea in equity and as the right of the NRI students under Article 14 appeared to have been violated, this plea was not available to the University. We do not agree with this submission for several reasons, firstly the NRI students have not been granted admission on their over all merit but on the basis of the 10% reservation in their favour and as such any claim based on equity would be suspect and secondly each set of admissions made year wise cannot be said to over lap the admissions made earlier or later. We have also considered Mr. Rao's submission that the fee had the trappings of a capitation fee. We find no merit in this assertion, as the fee is being levied year wise for the course. We have also gone through the judgments cited by Mr. Iyer. To our mind, they are not applicable to the facts of this case.

13. Mr. Rao has finally submitted that as the fee for the years 1995-96 and 1996-97 had been fixed by a committee set up under the directions of the Supreme Court it was not open to the Syndicate to suggest a higher fee thereafter. We find, however, that there seems to be a misconception as to the facts as it is the specific case of the University that the fee had been fixed by the Syndicate under Section 18 of the Cochin University of Science and Technology Act, 1976 and not by any committee.

14. We therefore, find that the judgment of the Division Bench of the High Court cannot be sustained. We accordingly set it aside and allow the appeals with no order as to costs.

[1]*(2002) 8 SCC 481*
[2]*(2003) 6 SCC 697*
[3]*(2005) 6 SCC 537*
[4]*(1986) Supp. SCC 285*
[5]*(2006) 6 SCC 94*