

**SUPREME COURT OF INDIA**

Fee Regulatory Committee

Vs.

Kalol Inst.of Mgt.

C.A.No.8543 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

11.10.2011

**JUDGMENT**

**A.K.Patnaik,J.,**

SLP.(Civil)No.34150 of 2010

1. Leave granted.
2. These are appeals by special leave against the impugned orders of the Division Bench of the Gujarat High Court.
3. The facts very briefly are that the respondents are different unaided private professional and educational colleges and institutions in the State of Gujarat. The fees for admission to the private unaided professional and educational colleges and institutions in the State of Gujarat are regulated by the Gujarat Professional Technical Educational Colleges or Institutions (Regulation of Admission Fixation of Fees) Act, 2007 (for short 'the Act'), which came into effect on 30.04.2008. Section 9 of the Act provides that the State Government shall, for the purpose of determining the fees for admission of students in the professional educational colleges or institutions, constitute a Fee Regulatory Committee with a retired judge of the High Court nominated by the State Government as its Chairperson. Section 10(1) of the Act provides that the Fee Regulatory Committee shall determine the fee structure for admission of students in the professional course and different fee structure may be determined for admission of students in different professional courses and in different professional educational colleges or institutions. Section 10(3) of the Act states that the fee structure so determined by the Fee Regulatory Committee shall be binding on the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution. Section 11(1) of the Act provides that the Fee Regulatory Committee shall determine and fix the fee or fees to be charged by an unaided professional education college or institution taking into consideration the factors mentioned therein and

one of the factors mentioned therein is the expenditure on administration and maintenance. In accordance with these provisions of the Act, the Fee Regulatory Committee determined the fees for the students of the unaided professional educational colleges and institutions in the State of Gujarat for the three academic years 2008-2009, 2009-2010 and 2010-2011 by different orders for different colleges and institutions passed in the years 2009 and 2010. When the State Government accepted the recommendations of the Sixth Pay Commission for revision of the pay and allowances of the employees with effect from 01.01.2006, different private engineering and technical colleges and institutions sought revision of the fees for students admitted in their colleges and institutions before the Fee Regulatory Committee on the ground that they have to pay their teaching and non-teaching staff the revised pay and allowances as per the recommendations of the Sixth Pay Commission, but the Fee Regulatory Committee declined to revise the fees.

4. The respondents-colleges/institutions then moved the High Court in different writ petitions under Article 226 of the Constitution and by the impugned orders, the High Court held that the Self-Finance Institutions, like the institutions of the respondents, are liable to pay salary and allowances to its teaching and non-teaching staff on the basis of the recommendations made by the Sixth Pay Commission and the revision of pay of Teachers in accordance with the recommendations of the Sixth Pay Commission is one of the criteria to be taken into consideration for determination of fee by the Fee Regulatory Committee. The High Court, relying on its orders passed in similar cases, set aside the orders of the Fee Regulatory Committee and remitted the matters to the Fee Regulatory Committee for fresh consideration and decision in accordance with the observations made in the impugned orders. The High Court also held that if the respondents file undertaking that they will actually implement the recommendations made by the Sixth Pay Commission for their teaching and non-teaching staff, such additional burden on account of implementation of the recommendations of the Sixth Pay Commission shall also be taken into consideration while deciding the fee structure afresh by the Fee Regulatory Committee. The High Court observed that till such orders are passed by the Fee Regulatory Committee, the respondents shall continue to collect the same fees from the students as are collected presently under the orders of the Fee Regulatory Committee. Aggrieved by the impugned orders of the High Court, the Fee Regulatory Committee has filed these appeals.

5. The only contention raised before us by Dr. Rajiv Dhavan, learned counsel appearing for the appellants, is that the direction of this Court in *Islamic Academy of Education and Another v. State of Karnataka and Others* [(2003) 6 SCC 697] is that the fee fixed by the Committee shall be binding for a period of three years and at the end of the period of three years, the institution would be at liberty to apply for revision and accordingly it has been provided in Section 10(3) of the Act that the fee structure determined by the Fee Regulatory Committee shall be binding on the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution. He submitted that despite this statutory provision in Section 10(3) of the Act, the High Court has directed to revise the fees for the academic years 2008-2009, 2009-2010 and 2010-2011,

which had already been determined by the Fee Regulatory Committee and which could not be revised for a period of three years.

6. Mr. Dushyant A. Dave, learned counsel appearing for the respondents, on the other hand, submitted that unaided private engineering and professional colleges have to pay the revised pay and allowances as per the recommendations of the Sixth Pay Commission and, therefore, they are entitled to recover the additional cost on account of payment of revised pay and allowances from the students by enhancing fees in accordance with the judgments of this Court in *T.M.A. Pai Foundation and Others v. State of Karnataka and Others*<sup>1</sup> *Islamic Academy of Education and Another v. State of Karnataka and Others* (supra) and *P.A. Inamdar and Others v. State of Maharashtra and Others*<sup>2</sup>

7. We have considered the submissions of the learned counsel for the parties and we find that Section 10(3) of the Act reads as follows:

"10(3). The fee structure so determined by the Fee Regulatory Committee shall be binding to the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution."

8. Obviously, the Fee Regulatory Committee cannot overlook the aforesaid statutory provisions in Section 10(3) of the Act that the fee structure so determined by the Fee Regulatory Committee shall be binding on the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution. The High Court, therefore, could not have directed revision of the fees already fixed by the Fee Regulatory Committee for the academic years 2008-2009, 2009-2010 and 2010-2011 contrary to the aforesaid statutory provisions. Nonetheless, the unaided private professional and technical colleges or institutions were entitled to recover the extra cost on account of payment of revised pay and allowances to the teaching and non-teaching staff through the fees collected from the students and this could be done only by enhancing the fees from the students for the academic years 2011-2012, 2012-2013 and 2013-2014 and for period of three years thereafter. Exactly how much of this cost would be recovered through the fees collected from the students during the first period of the three years and how much of this cost would be recovered through fees collected from the students during the second period of three years can only be appropriately worked out by the Fee Regulatory Committee keeping in mind both the interest of the colleges/institutions and the students.

9. We accordingly set aside the impugned orders of the High Court and direct that the increase in cost suffered by the respondents-colleges/institutions on account of the higher pay and allowances payable to the teaching and non-teaching staff on the basis of the recommendations of the Sixth Pay Commission will be taken into consideration by the Fee

Regulatory Committee while determining the fees for the academic years 2011-2012, 2012-2013 and 2013-2014 and subsequent period of three years in accordance with the provisions of the Act and the observations made herein. These appeals are allowed. There shall be no order as to costs.

Judgment Referred.

<sup>1</sup>(2002) 8 SCC 0481

<sup>2</sup>(2005) 6 SCC 0537