

# RAJASTHAN HIGH COURT

Society (Association) R I M S Jaipur

Vs.

State of Rajasthan

Civil Writ Petn. No. 3544 of 2000

(Shiv Kumar Sharma, J.)

07.01.2002

## ORDER

**Shiv Kumar Sharma, J.**

1. The petitioner is an association of societies registered under the Societies Registration Act. The members of petitioner society are professional colleges imparting education in the field of Management sciences. In the instant writ petition the petitioner has challenged the determination of fee structure and made prayer to quash the communications dated November 24, 1999 (Annexure 3) and June 22, 2000 (Annexure 10).

2. A scheme governing admission to professional colleges was framed by their Lordships of the Supreme Court in *Unni Krishnan J.P. v. State of A.P.*, <sup>1</sup> with the object to put an end to the financial and other irregularities that had become rampant in the institutions, covering most of them into teaching shops. The All India Council for Technical Education (for short AICTE) framed under All India Council of Technical Education Act, 1987 (for short 1987 Act), the AICTE (Norms and Guidelines for fees and Guidelines for Admission in Professional Colleges) Regulations 1994 (for short 1994 Regulations) consistent with and in furtherance of the scheme and directions contained in the judgment aforesaid.

3. Regulation 7 of 1994 Regulations provides that tuition and other fees for a professional college shall be determined by a State Level Committee. The AICTE shall constitute a standing committee for each State to fix ceiling on the fees chargeable for individual courses by a professional college. The standing committee shall consist Vice Chancellor of a University Secretaries Technical Education and Finance, two economists or experts in Cost Accountancy and a Member Secretary not

below the rank of joint secretary. The Vice Chancellor, Secretaries and Member Secretary shall hold office for a period of three years. The committee shall give an opportunity to the professional colleges to place relevant material in determining the tuition fee and other fees and the fees shall be fixed once in every three years. The fees chargeable in professional colleges shall be determined on the basis of estimation of expenditure of the professional college for its functioning. While calculating the fees, the estimates of recurring expenditure shall be based on at least the last two years audited figures of recurring expenditure of the college and projected requirement for next three years. No professional college shall be entitled to receive from the students any other payment or amount under whatever name it may be called in addition to the fee fixed by the committee for a free seat or payment seat. A professional college shall send intimation to the competent authority in advance the fees chargeable for the entire course commencing from the academic year for which admissions shall be made. In the first instance, fees only for the first year or semester shall be collected.

4. The AICTE constituted State Level Committee for deciding fee structure for non-aided private institutes. Member-Secretary of State Level Committee vide letter dated November 24, 1999 informed the Registrar, University of Rajasthan that after considering the proposals of the institutions, following fee structure per annum was approved for both regular and part-time MBA Courses for three years i.e. 2000-2001 to 2002-2003 and will be charged from the students admitted in 2000-2001 and onwards -

A.	Free seat	Rs. 15000 per year
B.	Payment Seat	Rs. 25000 per year
C.	NRI seat	U. S. Dollar 4500 per year
D.	Caution money Rs. 500 (refundable) for both free and payments seats.	

No other amount shall be charged in any form except hostel charges by any Institute.

5. The AICTE vide letter dated November 5, 1999 informed all the Directors and Secretaries of Technical Education of all the States that Development fee can be charged at a flat rate by the institution.

6. The State Level Committee of Rajasthan considered the letter dated November 5, 1999 and its Member-Secretary informed the Registrar, University of Rajasthan vide letter dated June 22, 2000 that following fee structure per annum will be applicable for M.B.A. Courses for three years i.e. 2000-2001 to 2002-2003 and will be charged from the students admitted in 2000-2001 and onwards-

	Free seat	Payment seat	NRI
Tuition fee	Rs. 8000	Rs. 7500	US Dollar 2500
Development Fee	Rs. 7000	Rs. 17500	US Dollar 2000
Caution Money	Rs. 500	Rs. 500	US Dollar 100
Total Fee	Rs. 15500	Rs. 25500	US Dollar 4600

For part-time MBA the fee charge/year will be 2/3 of the above fee.

For MCA institutions, the fee on free and payment seats will be kept as follows from 2000-2001 to 2002-2003-

	Free seat	Payment seat	NRI
	Free seat	Payment seat	NRI
Fee	Rs. 15000	Rs. 25000	US Dollar 4500
Caution Money	Rs. 500	Rs. 500	US Dollar 100
Total Fee	Rs. 15500	Rs. 25500	US Dollar 4600

No other amount shall be charged by any institute in any form except Hostel charges.

7. The petitioner expressed its grievance in the communication dated June 24, 2000 addressed the Chancellor, University of Rajasthan that very important aspect of payment of development fee of Rs. 17,500/- was ignored by the University of Rajasthan in RMAAT Bulletin, which was a material omission and will create complications for the Management Institutions. If compared the MBA fee schedule of other States, the fee schedule in Rajasthan would be found to be the lowest in whole of India and non-aided institution can fulfill the infrastructural requirements AICTE and affiliation requirements of the University on the basis of the revenue collected from the admitted students.

8. The contention of the petitioner in the instant writ petition is that the aforesaid communications dated November 24, 1999 and June 22, 2000 are violative of Regulation 7 of 1994 Regulations. The Committee which decided the fees was not constituted in accordance with the provisions of Regulation 7 (2). No opportunity was given to the professional colleges to represent their point of view in the process pertaining to determination of fee structure and thus Regulation 7 (4) was flouted. The representations submitted by the petitioner were sent to dust bin. In fact the State of Rajasthan and the respondent No. 6 have played fraud upon the professional colleges and the AICTE for the following reasons-

(i) On 24-11-1999, fees apparently tuition fees @ 15,000 and 25,000 respectively for free and payment seat was determined. The development fee already stood determined by the AICTE through communication/order dated 16-11-1999. Thus the fee as per the decisions and Rules chargeable is tuition fees plus development fees as determined.

(ii) On 18-1-2000, the State Level Committee communicated this decision to the AICTE. Thus the fee i.e. tuition fee plus development fee stood crystallised and for this reason the State Level Committee which met on 29-4-2000 unanimously took resolution to determine the fee structure at Rs. 15,000 and Rs. 25,000/- respectively for free and payment seat and also development charges/fee as per the decision of the AICTE.

(iii) Thereafter, the respondents issued order dated 22-6-2000 and fixed Rs. 8,000 tuition fee and Rs. 7,000/- development charges for free seats per annum for 3 sessions and Rs. 7,500/- tuition fee and Rs. 17,000 development charges for payment seats. Interestingly this order was never communicated or endorsed

to the AICTE which clearly shows the mala fides of the respondents.

(iv) From the replies of the respondents, it is not established that after 29-4-2000 State Level Committee again met and reviewed its earlier decisions taken in 29-4-2000 meeting.

(v) The order dated 22-6-2000 is clearly fraudulent exercise of powers by the respondents for the reason that while slashing the tuition fee to accommodate development charges mandatorily fixed and chargeable as per AICTE directions lost sight of the provisions of Regulation 3 (e) and (f) of the Regulations of 1994 which defines free seats and payment seats. According to Regulation 3 (f) payment seats means on which the fees payable shall be substantially higher than for free seats. Amazingly tuition fees fixed for payment seats is 7500/- whereas for free seats it is Rs. 8,000/-. Further, vide communication/order dated 18-1-2000 respondents informed AICTE the fee structure of various courses including the MBA course. Amazingly the fee structure of MBA course alone was changed on 22-6-2000. Furthermore, if communication dated 18-1-2000 is looked into, it will be found that there is a vast gap in between the tuition fee for free and payment seats. The following charge shows the determination.

Course	Free	Payment
Engineering Degree	Rs. 6,000	Rs. 52,000
Engineering Diploma	Rs. 1,900	Rs. 16,000
Pharmacy	Rs. 6,000	Rs. 32,000
D-Pharma	Rs. 3,500	Rs. 17,500

In comparison with this, the order dated 22-6-2000 fixes tuition fees for free seats in MBA course at Rs. 8,000/- whereas Rs. 7,500/- for payment seats.

9. The petitioner further contends that the determination of fees is violative of the

Guidelines issued by the Supreme Court and circulated as a bench mark by the AICTE through letter dated 21-8-1996. The determination of the fees is violative of principles of natural justice, therefore, contrary to Articles 14, 19 and 21 of the Constitution of India as regards the rights of the persons undertaking the management of the professional colleges in accordance with the AICTE Regulations. Law and Citation on the point that State action in violation of natural justice is *ab initio* void is well embedded in our ethos and jurisprudence, therefore, much more citations are not needed except the celebrated judgment of the Supreme Court in the case of *Central Inland Water Transport Corporation v. Brojo Nath Ganguli*, reported in <sup>2</sup> which contains classic observations to the effect that arbitrary State action is ante-thesis to the Rule of equality enshrined under Article 14 of the Constitution of India. Thus, an order passed without hearing and/or in contravention of statutory regulations granting right of hearing to a person as a statutory right is definitely violative of Article 14.

10. It appears from the record that this Court passed an interim order on August 22, 2000 staying the operation of the impugned communications dated November 24, 1999 and June 22, 2000. Thereafter Maharishi Arvind Institution of Science and Management, *Jaipur* started charging from the students of MCA 2000 batch Rs. 40,000 per annum instead of Rs. 15,500 per annum. On receiving complaint from the students the Registrar, University of Rajasthan directed the Director, Maharishi Institute of Management, *Jaipur* vide letter dated Sept. 4, 2001 to charge the fee prescribed in the order dated June 22, 2000 failing which the institution shall be disaffiliated. In turn Maharishi Institute issued communication on Sept. 6, 2001 that in compliance of the orders dated August 22, 2000 of the High Court staying implementation of order dated June 22, 2000 regarding fee structure for the MCA course of session 2000-2001 the fee from the MCA students of 2000-2001 batch was charged as Rs. 20,000/- per semester by all the private colleges. Thereafter some of MCA students approached this Court and they were impleaded as respondents 7 to 11 in the writ petition.

11. Written statements were filed by all the respondents and Dr. K. L. Kamal respondent No. 6 against whom allegations of mala fides have been leveled also filed counter-affidavit denying the allegations.

12. I have heard the rival submissions and scanned the record.

13. According to the petitioner the MBA fee schedule in the State of Rajasthan is the lowest in whole of India and no non-aided institution can fulfill the infrastructural

requirements of AICTE and affiliation requirements of the University on the basis of the revenue collected from the admitted students. The petitioner seeks assistance of this Court in raising the MBA fee schedule and prays to quash the impugned communications dated November 24, 1999 and June 22, 2000. In the alternative the petitioner prays that communication dated June 22, 2000 may be set aside and it may be declared that communication dated November 24, 1999 is not inclusive of Development fee prescribed by the AICTE vide its letter dated November 16, 1999 and permit the member institutions of the petitioner society to collect Development fee as per AICTE decision from the students in addition to fee chargeable as per letter dated November 24, 1999.

14. I am afraid, this Court under Article 226 of the Constitution of India cannot provide any assistance to the member institutions of the petitioner society to collect from the students the Development fee prescribed by the AICTE.

15. 1987 Act was enacted by the Parliament to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinate development of the Technical Education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the Technical Education system and for matters connected therewith. Under Section 10 (j) of 1987 Act the AICTE is duty bound to take all such steps to fix norms and guidelines for charging tuition and other fees. Under Section 11 of 1987 Act the Council may cause an inspection of the institution or University for the purposes of ascertaining the financial needs of an institution. Even according to Regulation 11 of 1994 Regulations the Council has the power to issue clarification to remove any doubt which arises in regard to implementation of 1994 Regulations.

16. In *Central Inland Water Transport Corporation v. Brojo Nath*,<sup>3</sup> their Lordships of the Supreme Court indicated that the Constitution was enacted to secure to all citizens of this country social and economic justice. Their Lordships posed following questions in the said judgment-

-Should our Courts not advance with the times?

-Should they still continue to cling to outmoded concepts and outworn ideologies?

-Should we not adjust our thinking caps to match the fashion of the day?

-Should all jurisprudential development pass us by leaving us floundering in the sloughs of nineteenth century theories?

-Should the strong be permitted to push the weak to the wall?

-Should they be allowed to ride roughshod over the weak?

-Should the Courts sit back and watch supinely while the strong trample under foot the rights of the weak?

The principle laid down in Brojo Nath case was that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable bargain.

17. Article 226 is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Court to reach injustice wherein it is found. While exercising the writ jurisdiction the High Court must balance the public interest against the private interest and where it would be entirely against the public interest the High Court would not interfere. The language of Article 226 shows that the issuing of writs or directions by the Court is founded only on its decision that a right of aggrieved party under Part III of the Constitution has been infringed. It can also issue writs or give similar directions for any other purpose. The existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226.

18. Letter dated November 16, 1999 was addressed by the AICTE to all the Directors and Secretaries of Technical Education of the States to consider the aspect of development charges and it did not create any right in favor of a professional college. If the State Level Committee did not properly consider the said direction of the AICTE, no *mala fide* can be attributed to the Vice- Chancellor of the University of Rajasthan. The Members of the petitioner- society may approach the Council under Regulation 11 of 1994 Regulations and request the Council to issue clarification in this regard. The Council may also be requested to cause inspection of the institutions for the purpose of ascertaining the financial needs of the institutions under Section 11 of 1987 Act.

19. I am unable to persuade myself to agree with the submissions advanced before me by Mr. Bharat Vyas learned counsel for the petitioner. After having closely examined the material on record, I am satisfied that opportunity of hearing was afforded to the professional institutions as required by Regulation 7 (4) of 1994 Regulations.

20. In view of what I have discussed hereinabove I find no merit in the writ petition, it

accordingly stands dismissed with costs. The interim order passed on August 22, 2000 shall stand vacated and it is directed that the fee shall be charged from the MBA and MCA students strictly in accordance with the communications dated November 24, 1999 and June 22, 2000. The excess fee already charged by the institutions shall be paid back to the students with interest @ of 12% per annum within a period of one month.

Petition dismissed.

Cases Referred.

1. (1993) 1 SCC 645: (AIR 1993 SC 2178)
2. AIR 1986 SC 1571
3. AIR 1986 SC 1571