

BEFORE THE APPELLATE AUTHORITY CONSTITUTED UNDER THE MADHYA
PRADESH NIJ VYAVSAYIK SHIKSHAN SANSTHA (PRAVESH KA VINIYAMAN
AVAM SHULK KA NIRDHARAN) ADHINIYAM, 2007 AS AMENDED IN 2013.

Appeal No. 91/2017 - R.D. Gardi Medical college, Ujjain,
Appeal No. 92/2017 - Chirayu Medical College & Hospital, Bhopal,
Appeal No. 94/2017 - Amaltas Institute of Medical Sciences, Dewas,
Appeal No. 95/2017 - Sri Aurobindo Institute of Medical Sciences, Indore.

Appellants

VERSUS

The Admission and Fee Regulatory
Committee, Bhopal.

Respondent

ORDER

(Date 07.07.2017)

1. The above-mentioned appeals were preferred against Admission and Fee Regulatory Committee (AFRC)'s fee fixation order dated 03.04.2017 fixing fee for MBBS course for academic sessions 2017-18 and 2018-19. Since all the four appeal cases were against AFRC's fee fixation chart dated 03.04.2017 and pleaded common grounds of appeal; these appeal cases were heard together and are being disposed off together vide this common order.

2. Brief Background :

(i) AFRC vide their order No. Sectt/AFRC/2016 dated 2.9.2016 had fixed fee for MBBS course for academic sessions 2016-17, 2017-18 and 2018-19 for seven medical colleges including the four appellant colleges. Appeals were filed against AFRC's fee fixation order dated 02.09.2016. Appellate Authority in its order dated 17.11.2016 had passed detailed orders and had held that the fee fixation order had been passed by AFRC without complying with the



provisions of the Act and the Regulations. However, since admission to MBBS course in academic session 2016-17 had already been completed and more than 1000 students had already been admitted, the Appellate Authority decided not to interfere with the fee fixed for MBBS course for academic session 2016-17. However, Appellate Authority rescinded AFRC's fee fixation orders for academic sessions 2017-18 and 2018-19 and directed AFRC to fix fee for MBBS course for the appellant colleges for academic sessions 2017-18 and 2018-19 as per provisions of the Act and the Regulations.

(ii) In pursuance of the Appellate Authority's order dated 17.11.2016, AFRC's Secretariat obtained fresh fee proposals along with detailed accounts from the appellant colleges. AFRC in its meeting dated 29.03.2017 and 03.04.2017 deliberated upon the issue of fee fixation for MBBS course of eight medical colleges including the four appellant colleges for academic sessions 2017-18 and 2018-19.

(iii) AFRC in its meeting dated 03.04.2017 prepared a chart titled "Chargeable Fee re-regulated/regulated for medical institutions running MBBS colleges by AFRC" wherein fee fixed by AFRC for eight medical colleges for academic sessions 2017-18 and 2018-19 were mentioned. The chart had been signed by four members of the AFRC including the Chairman who had participated in the meeting on 03.04.2017. As submitted by OSD AFRC, the fee fixation chart dated 03.04.2017 was uploaded on AFRC Secretariat's official website on 03.04.2017. However, the Minutes for AFRC's meeting dated 03.04.2017 had not been finalised and issued because only two members out of the four participating members had signed the minutes whereas two other members had declined to sign the minutes owing to certain differences of opinion regarding the draft minutes.



3. Grounds of Appeal:

Appellants have submitted the following common grounds of appeal:

- (i) AFRC had fixed fee for academic sessions 2017-18, 2018-19 without complying with the provisions of the Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 as Amended in 2013 ('Act' in short) and the Regulations for Fixation of fee in a Private unaided Professional Institution Regulation, 2008, ('Regulations' in short). Specifically, AFRC had not assigned any reason for rejecting the fee proposal submitted by the appellant institution which was supported by detailed accounts and projections of income and expenditure for 2017-18 and 2018-19.
- (ii) AFRC had failed to comply with the specific directives of the Appellate Authority in its order dated 17.11.2016 for fee fixation as per provisions of the Act and the Regulations and in light of relevant orders of the Supreme Court.
- (iii) Appellants had further submitted, through individual written and oral submissions, that in running MBBS course each appellant institution was in substantial cumulative deficit as per their audited accounts. Therefore, there was no basis for AFRC to arbitrarily reject the fee proposal submitted by them.
- (iv) Appellants further pleaded that the fee fixation chart dated 03.04.2017 uploaded on AFRC's official website was not a valid fee-fixation order, was uploaded in undue haste even without the minutes being finalised, was contrary to the provisions of the Act and the Regulations and without compliance with the Appellate Authority's specific directives vide his order dated 17.11.2016. Therefore, the fee fixed by AFRC vide the impugned chart dated 03.04.2017 deserved to be rescinded and



appropriate fee for academic session 2017-18 and 2018-19 should be fixed to enable the appellant colleges to meet the projected expenditure and provide quality medical education.

4. Respondent's Submissions:

4.01 Respondent made the following submissions:

AFRC Secretariat had obtained fresh online fee proposals from all the eight (5 new + 3 existing) institutions running MBBS course. AFRC Secretariat had submitted the information, as submitted by the various institutions to the Committee during the meeting on 03.04.2017.

Concerned institutions were heard by AFRC in its meeting dated 03.04.2017. After detailed discussions all the participating members of AFRC including the Chairman had signed on a chart which mentioned the fee for 2017-18 and 2018-19 for all the eight institutions and had instructed the Secretariat to upload the same on AFRC's portal immediately. AFRC Secretariat accordingly uploaded the fee fixation chart on the portal.

Minutes of the meeting dated 03.04.2017 was signed by the Chairman and one Member (Law). However, two Members (Member-Technical and Member-Medical) did not sign the minutes due to difference of opinion on some issues.

Subsequently on 24.06.2017 respondent submitted additional documents containing Minutes of AFRC Meeting dated 08.06.2017 and Minutes of AFRC meeting dated 03.04.2017. On perusal of these minutes it is confirmed that out of the four AFRC members who had participated in AFRC Meeting dated 03.04.2017, two Members (Member-Technical and Member-Medical) had raised several objections to the draft minutes of AFRC meeting dated 03.04.2017. Letters dated 10.04.2017 and 13.04.2017, jointly signed by Member-Technical and Member-Medical, raised several objections regarding the discussions, decisions and minutes of AFRC meeting dated 03.04.2017.



4.02 (i) Respondent submitted that no written verification report had been prepared by CA who had been engaged by AFRC and further that no assessment report had been prepared by AFRC Secretariat and no such documents were placed for consideration of AFRC in its meeting dated 03.04.2017. However, the audited accounts as submitted by the colleges were placed before the AFRC for their perusal and the discussions in the Committee were based on perusal of these documents.

(ii) Respondent further clarified that no written report either by the C.A. or by the AFRC Secretariat had been placed before Committee claiming that approval of fee structure as proposed by the appellant colleges would result in huge profit for the concerned institutions in 2017-18 and 2018-19.

5. **Findings and Conclusions:**

The key issues for consideration are as follows:

1. Are the minutes of the Committee's meeting dated 03.04.2017 confirmed and valid?
2. Is the fee fixation chart dated 03.04.2017 prepared by the Committee, a valid order under the Act?
3. Did the Committee pass fee fixation order in its meeting dated 03.04.2017 as per the provisions of the Act and the Regulations, the directives of the Supreme Court pertaining to right of private educational institutions to fix fees subject to reasonable restrictions and the specific directives of the Appellate Authority?

5.1 On 24.06.2017 respondent has filed a copy of minutes of AFRC meetings held on 08.06.2017 and on 03.04.2017. As per the minutes, AFRC in its meeting dated 08.06.2017 confirmed the minutes of the meeting held on 03.04.2017. However, it is noted that Member (Technical) reiterated that the



minutes of the meeting dated 03.04.2017 were approved subject to the dissent note given by himself and the Member (Medical) vide their letters dated 10.04.2017 and 03.04.2017 sent to Chairman, AFRC.

Minutes of AFRC meeting dated 03.04.2017 are in 13 pages along with following enclosures:-

1. A Chart/Table with heading – "Chargeable fee re-regulated/regulated for medical institutions running MBBS course by AFRC in its meeting held on 03.04.2017."
2. Letter dated 10.04.2017 signed by Member (Tech.) and Member (Medical) regarding their objections to the draft minutes of meeting dated 03.04.2017 circulated by AFRC Secretariat.
3. Letter dated 13.04.2017 signed by Member (Tech.) and Member (Medical) regarding their objections to the draft minutes of meeting dated 03.04.2017 circulated by AFRC Secretariat.

AFRC in its meeting dated 03.04.2017 had considered three agenda items:-

1. Re-Regulation/Regulation of fee for MBBS course running in various medical institutions for the sessions 2017-18 & 2018-19 as per the order issued by Hon'ble Appellate Authority dated 17.11.2016 in appeal Nos. 58/2016,60/2016, 73/2016, 74/2016,75/2016, & 82/2016.
2. To take cognizance of the order passed on 16.03.2017 by Hon'ble Appellate Authority in appeal No. 96/2013, 116/2013 & 117/2013 for final fixation of fee for MBBS course for R.D.Gardi Medical College, Ujjain.
3. To take cognizance of the notice received from Hon'ble High Court of M.P. in W.P. No. 16299/2016 filed Chourasiya Paramedical Institute, Rewa Vs. State of M.P. and others.

Member-Technical and Member-Medical had declined to sign the Minutes of meeting dated 03.04.2017 owing to several objections



regarding above mentioned agenda item No.1 i.e. Re-Regulation/Regulation of fee for MBBS course.

Member-Technical and Member-Medical had not objected to the minutes regarding agenda item Nos. 2 and 3 above. Therefore, deliberations and decisions of AFRC in its meeting dated 03.04.2017 pertaining to above-mentioned agenda item Nos.2 and 3 are without any objection and therefore, valid in view of the confirmation of minutes of the meeting dated 03.04.2017 vide minutes of the meeting held on 08.04.2017.

The issue to be considered is whether minutes of AFRC meeting dated 03.04.2017 pertaining to above mentioned agenda item No.1 i.e. Re-Regulation/Regulation of fee for MBBS course is approved/confirmed or not approved/not confirmed. Draft minutes of AFRC meeting dated 03.04.2017 and the dissent letters of 10.04.2017 and 13.04.2017 signed by Member-Technical and Member-Medical were perused. Member-Technical and Member-Medical in their letters of 10.04.2017 and 13.04.2017 have mentioned that the fee fixation chart which had been prepared during the meeting dated 03.04.2017 and had been signed by all the four participating members including the Chairman, were not as per the discussions and deliberations held during the meeting. There had been no discussion or decision regarding application of increase of 10% or 14% over any "base" fee. Since the fee fixation chart was not in accordance with the deliberations of the AFRC meeting, Member-Technical and Member-Medical had requested for revision of the draft minutes of the meeting.

In their second dissent letter dated 13.04.2017 Member-Technical and Member-Medical have made certain very adverse



remarks regarding the conduct of the Chairman during the meeting held on 03.04.2017 alleging the Chairman's favouritism for one particular institution and prejudice for another institution. This is a very serious allegation levelled by two members of the Committee, who are also senior Government officials. The Chairman as well as every member of AFRC is required to be non-partisan, impartial and entirely objective while considering the matters that come up before the Committee. The Chairman and every member is duty bound to participate in the deliberations and to take decision strictly in accordance with the provisions of the Act and Regulation without being influenced by any other subjective consideration. It is notable that AFRC in its meeting dated 08.06.2017 have taken note of the dissent letters dated 10.04.2017 and 13.04.2017 signed by Member-Technical and Member-Medical. It is further noted that the Chairman of the Committee has not denied the serious allegations made by Member-Technical and Member-Medical.

Therefore, the proceedings and minutes of AFRC meeting dated 03.04.2017 pertaining to agenda item No.1 i.e. 'Re-Regulation/Regulation of fee for MBBS course' are vitiated. Further, since two of the four participating members of the Committee have objected to the basis on which the fee fixation chart had been prepared and signed on 03.04.2017, it is held that there was no consensus regarding the fee to be fixed for MBBS course by AFRC in its meeting dated 03.04.2017. AFRC meeting dated 03.04.2017 had been attended by four members of the committee including the Chairman. As per the Act, Sec. 16, deliberations of the Committee have to be signed by all the members who had heard the matter. In this case, two of the four participating members who had heard the matter of Re-Regulation/Regulation of fee for MBBS fee during AFRC meeting dated



03.04.2017 had declined to sign the minutes and had raised several objections regarding the basis on which fee has been fixed. Thus, though the fee fixation chart dated 03.04.2017 had been signed by all the four participating members including the Chairman, it is evident that two members had objected to the non-transparent manner in which the fee fixation chart had been prepared and got signed by the members.

To sum up, the minutes of AFRC meeting dated 03.04.2017 pertaining to agenda item No.1 i.e. 'Re-Regulation/Regulation of fee for MBBS course' has not been confirmed by all the participating members of the meeting. Nor have the minutes been confirmed by a majority of the four members participating in the Committee meeting.

5.2 Whether the chart uploaded by the Secretariat, AFRC on 03.04.2017 constituted a valid order under the Act and the Regulations?

The Act and the Regulations empower AFRC to consider fee proposals submitted by the college, consider the CA's verification report, the assessment report submitted by the AFRC Secretariat, provide an opportunity of hearing to the concerned institution and thereafter pass appropriate fee fixation orders in consonance with Sec. 9 of the Act and Sec. 5 of the Regulations. The impugned chart dated 03.04.2017 makes no mention of compliance with the above-mentioned provisions of the Act and Regulations, the reasons why fee proposals submitted by the appellant colleges had been rejected by AFRC and the basis on which fee substantially lower than the fee proposed by each appellant college had been fixed vide the impugned chart. As per established procedure regarding fee fixation, AFRC's decisions are recorded in detailed minutes to which the fee fixation chart for concerned colleges is



enclosed. After the minutes are finalised and signed by all the participating members including the Chairman, the AFRC Secretariat issues institution-wise fee fixation orders along with detailed terms and conditions which each institution is required to follow. It is not clear why AFRC decided to upload fee fixation chart dated 03.04.2017 on AFRC's official website, even without finalising the minutes of the meeting dated 03.04.2017 and why an institution-wise detailed fee fixation order as per AFRC Secretariat's established procedure, was not issued for the appellant colleges.

In their joint letter dated 10.04.2017, two participating members of AFRC's meeting dated 03.04.2017 i.e. Member-Technical and Member-Medical have alleged that the minutes of AFRC meeting dated 03.04.2017 were approved and signed by the Chairman on 07.04.2017. Member-Technical received AFRC Secretariat's letter on 10.04.2017 along with the minutes of meeting dated 03.04.2017 which had already been signed by the Chairman and one other member of the AFRC. These members had raised substantial procedural issues regarding the manner in which minutes were attempted to be finalised. The two members have raised valid objections. AFRC Secretariat was required to prepare draft minutes and circulate it to all the participating members for their comments, if any, and consent before finalising the minutes and obtaining the signature of the Chairman and other participating members. Procedure adopted by the AFRC Secretariat to get the minutes approved and signed by the Chairman and thereafter merely requiring other participating members to affix their signature was incorrect and inappropriate.

The substantive issue is whether all participating members had consented to the decisions taken in meeting dated 03.04.2017. It is evident that two Members (Member-Technical and Member-Medical)



had serious disagreement regarding the discussions, decision and the draft minutes of AFRC's meeting dated 03.04.2017. Therefore, it is held that there was substantial difference of opinion amongst members and no consensus had been arrived at regarding fee fixation for MBBS course during the meeting dated 03.04.2017.

Therefore, for want of agreed minutes of meeting dated 03.04.2017, there is no justification for fixation of fee as mentioned in the chart dated 03.04.2017. The mere fact that all the four participating members had appended their signature to the chart/tabulation, does not by itself amount to a valid fee fixation order which could be made only on the basis of factors mentioned in the Act and the Regulations and not in isolation. Fee fixation is not a mere mechanical or quantitative exercise. The Act and the Regulations require application of mind by AFRC on the basis of factors of fee fixation as detailed in Sec. 9 of the Act.

As per respondent's submission the CA's verification report and the assessment report by the AFRC Secretariat, had not been submitted for consideration of AFRC in its meeting dated 28.03.2017 and 03.04.2017. As per Sec. 5 (14) of the Regulation, AFRC must necessarily consider CA's verification report and the assessment report of the AFRC Secretariat. Since AFRC in its previous fee fixation order dated 02.09.2016 had failed to comply with these mandatory provisions under the Regulations, the Appellate Authority in its order dated 17.11.2016 had highlighted this serious lapse and had directed AFRC to fix fee for 2017-18 and 2018-19 as per the provisions of the Acts and Regulations. In spite of the mandatory requirement under the Act and the Regulations and the specific directives of the Appellate Authority, AFRC had considered the fee fixation for eight medical colleges



including four appellant colleges without complying with the mandated procedure.

In light of the above-mentioned discussions, it is held that the impugned chart dated 03.04.2017 was merely a tabulation indicating fee fixed for eight medical colleges for academic sessions 2017-18 and 2018-19 and was not a valid order under the Act and the Regulations. AFRC is vested with the power to fix fees for Private Unaided Professional Colleges. However, these powers cannot be exercised arbitrarily and in a capricious manner. The impugned chart or tabulation does not provide any reason whatsoever, as to why the fee proposals submitted by concerned institutions were not found acceptable to the AFRC and the basis on which the fee fixed for academic sessions 2017-18 and 2018-19 were determined.

5.3 Appellant institutions have funded capital cost for MBBS Course and Teaching Hospital through contribution from the parent Society as well as through substantial debt. The debt has to be repaid by the MBBS college and Hospital. Sec. 9 of the Act includes 'cost of land and building' 'infrastructure' and 'equipments' as relevant factors for fee fixation. The Committee in its meeting dated 03.04.2017 had decided upon fee fixation for academic session 2017-18 and 2018-19 without considering the factors mentioned in Sec. 9 of the Act. Further, as per directives of the Supreme Court an institution may be permitted a surplus of upto 15% to cater to the need for investment for new capital assets as well as for renewal/replacement of capital assets. The Committee had not fixed appropriate fee which would generate reasonable surplus for each appellant institution. The Committee had ignored the substantial recurring deficit incurred by specific appellant institutions. The Committee had not alleged or concluded that the



appellant institutions had indulged in commercialisation of education and were profiteering by running MBBS course. Yet the Committee had ignored audited accounts and the fee proposal submitted by the appellant institution without assigning any reason. Appellant Authority's specific directive to the Committee to consider the verification report by the CA and the assessment report by the AFRC Secretariat had also been ignored.

Thus, it is evident that the Committee had decided upon fee fixation without following the provisions of the Act and the Regulations, the directives of the Supreme Court and the specific directives of the Appellate Authority.

To sum up, the AFRC had not called for or considered the CA's verification report and the assessment report of the AFRC Secretariat which are mandatory requirements under the Act and the Regulations; the AFRC had not finalised and issued the Minutes of its Meeting dated 03.04.2017; AFRC had uploaded a mere chart or tabulation in undue haste even before the Minutes had been finalised; AFRC had not assigned any reason for rejection of fee proposal submitted by concerned institution and it neither provided any basis on which the fee fixed for 2017-18 and 2018-19 were determined by AFRC. Therefore, it is held that the chart uploaded on 03.04.2017 pertaining to eight medical colleges including the four appellant colleges was not a valid fee fixation order under the Act and the Regulations and is therefore, declared null and void.

6.

Fee fixation for MBBS course vide AFRC's order dated 02.09.2016 had been held as vitiated by Appellate Authority's order dated 17.11.2016, since the said order of AFRC had been passed without compliance with the provisions of the Act and the Regulations. In spite of Appellate Authority's detailed order dated 17.11.2016 and



the directives to the AFRC to fix fees for academic sessions 2017-18 and 2018-19 as per the provisions of the Act and Regulation, and the relevant pronouncements of the Hon'ble Supreme Court, AFRC has once again failed to pass fee fixation order as under law. NEET 2017 results have already been declared. Counselling for admission for academic session 2017-18 would commence shortly. Since the AFRC had repeatedly failed to fix fee for MBBS course as per law, and particularly in view of admission for academic session 2017-18 commencing soon, it is necessary to proceed with fixation of fee for the appellant colleges for academic session 2017-18.

Therefore, for fee fixation for academic session 2017-18, a separate order will be passed for each appellant college after scrutiny of the fee proposal submitted by the institution.


(P.K.Dash) 07.07.2017
Appellate Authority