

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

Presided over by Justice Alok Verma.

Appeal No. 13/2020

- (i) **People's College of Medical Sciences and Research,
Bhopal** **Appellant**

V E R S U S

**The Admission and Fee Regulatory Committee,
Bhopal** **Respondent**

Appeal No. 14/2020

- (ii) **R.D. Gardi Medical College, Ujjain.** **Appellant**

V E R S U S

**The Admission and Fee Regulatory Committee,
Bhopal** **Respondent**

Appeal No. 17/2020

- (iii) **Malwanchal University, Indore** **Appellant**

V E R S U S

**The Admission and Fee Regulatory Committee,
Bhopal** **Respondent**

(iv) **Chirayu Medical College & Hospital,
Bhopal**

Appeal No. 24/2020

..... Appellant

V E R S U S

**The Admission and Fee Regulatory Committee,
Bhopal**

..... Respondent

Appeal No. 22/2020

(v) **Dr. Harshul Arora, New Delhi**

..... Appellant

V E R S U S

1) **The Admission and Fee Regulatory Committee,
Bhopal**

2) **R.D. Gardi Medical College, Ujjain**

..... Respondents

ORDER

(Date: 1st October, 2020)

1. This common order shall govern disposal of Appeal Nos. 13/2020, 14/2020, 17/2020, 22/2020 and 24/2020.
2. These appeals are filed under Sec. 10 of Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk ka Nirdharan), Adhiniyam, 2007 (hereinafter referred to as "Act of 2007") against the order passed by the Admission and Fee Regulatory Committee (AFRC for short) No. Sectt/AFRC/MD/MS/2020/610 dated 24.07.2020, whereby the AFRC fixed the fee for academic session 2020-21 for the students

admitted under NRI quota in various private unaided professional institutions. It may be mentioned that the AFRC by the impugned order fixed the fees generally by making it three and half times of the base fee.

3. These appeals are filed to challenge impugned order passed by the AFRC fixing fee of NRI students in various colleges for the current academic session. Appeal No.(s) 13/2020, 14/2020, 17/2020 and 24/2020 are filed by appellant institutions Malwanchal University, Indore, R.D. Gardi Medical College, Ujjain, People's College of Medical Science & Research, Bhopal and Chirayu Medical College & Hospital, Bhopal, respectively. These institutes are running graduate and post-graduate course in medicine and surgery. Appeal No. 22/2020 is filed by Dr. Harshul Arora challenging enhancement of fee by AFRC from three to three and half times of base fees. It is pertinent to note that by the impugned order the AFRC has directed that fee for NRI students shall be three and half times of base fee which according to the impugned order would include the development fee and all other miscellaneous charges in Indian rupees.

Appeal No. 13/2020

This appeal is filed on the ground inter-alia:-

- I) That in state of Maharashtra, fee of NRI candidates is five times of basic fees. While, fixing the fees the AFRC has not taken this aspect into consideration. If fee is reduced to 3.5 times there shall be no surplus available to the institute, and therefore, it is prayed that order passed by AFRC should quashed and the institute should be allowed to fix fee to be charged from NRI candidates, according to its own requirements.

Appeal No. 14/2020

This appeal is filed on the ground inter-alia:-

- I) As compared to the academic session 2018-19, when the institute was allowed to fix fees for NRI candidates according to its own requirement, in the academic session 2020-21, there will be a loss of Rs. 1,11,20,000/-.
- II) According to the appellant fee charged in India for such courses as compared to fee charged by similar courses in foreign countries is much less. The NRI parents have capacity to pay higher amount, and therefore, the institute should be allowed to charge at least five times of basic fee for the academic session 2020-21.

Appeal No. 17/2020

This appeal is filed on the ground inter-alia:-

- I) The same fee is fixed for all the courses without taking into consideration the fact that for courses like dermatology and radiology, staff are easily not available and institute has to pay higher salary to the faculty for teaching these subjects. Three and half times fee fixed by AFRC is on lower side
- II) To run these courses advance and technologically upgraded infrastructure and equipments are required. To run these course equipments like MRI machine is required, which costs Rs. 7.5 Crores. Similarly Path labs cost Rs. 12 Crores. Cancer radiation therapy linear accelerator costs Rs. 25 Crores. To borne these expenses the fee should be at least 4.5 times, and therefore, it is prayed by the appellant for the dermatology and radiology the fee should be at least 4.5 times of basic fee.

Appeal No. 24/2020

This appeal is filed on the ground that appellant institution was not granted benefit of inflation in accordance with section 9 of the Act of 2007 and clause 4 of regulations made there under and on this ground the appellant prays that fee should be fixed at five times of basic fees.

Appeal No. 22/2020

This appeal is filed on the ground inter-alia:-

- I) The order passed by AFRC is cryptic and it is a non-reasoned order. There are no reasons given, why 3.5 times fee of basic fee is fixed for NRI candidates.
- II) It was stated by the appellant that the counselling for admission for post graduate course of Orthopaedics in R.D. Gardi Medical College, Ujjain was done by Director, Medical Education, Madhya Pradesh, Bhopal in April, 2020 by that time fee was not fixed by AFRC. The appellant was further asked to submit a bond stating therein that last date to withdraw from admission is 17th July, 2020. The AFRC fixed the fees after that and enhanced the fees from three times to three and half times, due to which, the appellant is facing lot of inconvenience.
- III) The AFRC is failed to taking into account that such increase may be beyond financial capacity of many students.
- IV) The AFRC is also failed to take into consideration that the Covid-19 pandemic has adversely affected the economic activities and has financial impact on all section of the society.

V) Since, the appellant have no option now to withdraw from admission, it is an adverse influence on his rights.

VI) The AFRC also did not take into consideration the fact that private institutions are not allowed to indulge in profiteering or commercializing of education.

It is, therefore, prayed that the impugned order passed by AFRC should be quashed.

4. Before considering the points raised by appellants in these appeals, I would like to quote Hon'ble Apex Court's observations in case of P.A. Inamdar V/s State of Maharashtra (2205) 6 SCC 537. Court observed in respect of fees as under:-

"The Committee suggested by Islamic Academy and the procedure mentioned therein, appears to be the only safe method of ensuring that extortionate fees are not charged by the medical colleges. At the same time, it would be wrong to deny expenditure which the institution undertakes for ensuring excellence in education. Equally, a reasonable surplus should be permitted so that the fees charged cover the entire revenue expenditure and in addition leaves a reasonable surplus for future expansion. This alone would prevent the clandestine collection of capitation fees and would result in entrepreneurs investing in new medical colleges.

The Committee suggested by Islamic Academy appears to be the ideal one consisting of a chartered accountant, a representative of the MCI or AICTE as the case may be, with a retired judge of the High Court or the Supreme Court as the head.

The fee is to be fixed on the proposal of the institution supported by documents and the procedure of fee finalization should commence at least 6 months in advance of the commencement of the academic year."

5. In respect of question as to the seat allotted for Non-resident Indian or commonly known as NRI candidates, the Hon'ble Apex Court in case of P.A. Inamdar (Supra) observed as under:-

“131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indian (“NRI” for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain to a certain number of students under such quota by charging a higher amount of fee. In fact, the term “NRI” in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized*

for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate”.

In light of these observations, now, we may proceed to consider the points arose in different appeals:-

- I) The first point is that if fees is reduced from 3.5 times, it will not leave any surplus for development of the institution, the appellant institution submits that fee for NRI seats should be left to be decide by the institute according to the their requirements. In this regard, on due consideration, I am of the opinion that creation of surplus has no relationship with amount of fees charged from NRI students. According to the methodology adopted by AFRC and also before this Authority, 10% surplus is allowed to be created, while fixing fee of 85% of total seats. Fee for the NRI candidates as per the impugned order is 3.5 times, so naturally, 10% surplus shall also be multiplied by 3.5, and so, enough surplus shall be created, and therefore, this ground has no force and cannot be accepted.
- II) The appellant institutions also argued that they will suffer immense losses due to the reduced fees. This is also not correct, as while fixing fee for remaining 85% of seats,

the expenditure incurred by the institutions in the last academic session is taken into consideration. In this expenditure, 10% growth and development is added and also escalation for three years is also allowed. In this view of the matter, it is not possible that by limiting the amount of fees to 3.5 times, there will be loss to the institutes.

- III) It is also argued that fee in India for medical education is much less than the fee in most of the foreign countries. It is apparent that fee is directly related to quality of education that we impart to our students. In some of the institutions in foreign countries, especially in developed countries, quality of education is much higher than what we have in India. Apart from this it is not proper to say that NRI parents have higher capacity to pay. If they earn more in foreign countries, their cost of living is also much higher in such countries. Even if they have higher capacity to pay, the institutes cannot charge the extortionate fees as directed by the Hon'ble Apex court as, as quoted above.
- IV) Next argument is that there are some subjects like dermatology and radiology, in which faculty demand higher remuneration. To run these courses they require costly equipments and the institutes have to spend large sums in purchase of equipments. Again, payment to faculty and cost of equipment is taken by AFRC into consideration, while fixing fee of 85% of students.

Depreciation is granted on all capital expenditures like purchase of equipments, construction of building, etc. And therefore, if they spend more on purchase of instruments other expenditure will be incurred due to depreciation. Similarly, inflation also considered by AFRC while fixing the basic fee. So, in fact for NRI candidates, the institute gets 3.5 times of amount of inflation also.

- V) Therefore, so far as, grounds taken by the appellant institutions are concerned, there appears no force in them.
- VI) Now, we come to the points taken in appeal no. 22/2020, which is filed by Dr. Harshul Arora, who is pursuing MD/MS course in R.D. Gardi Medical College, Ujjain. According to this appeal, while taking admission, fee was not fixed by AFRC, which was fixed during middle of session. A bond was got filled by the institution from all the students stating that if they want they can withdraw from the admission up to 17th July, 2020, after which they could not withdraw the admission. The fee was fixed by AFRC in August 2020, it enhanced by point five times making it 3.5 times, while earlier fee was three times, and therefore, now the students are adversely affected. Apart from this he also prays that no ground is given in the impugned order for fixing fee for 3.5 times of fee basic fee.
- VII) I have considered his arguments. So far as, fixing of the fees after 17th July, 2020 when time for withdrawal was

passed, was beyond anybody's control as due to Covid-19 pandemic and lockdown in March to May, 2020. The schedule for fixing of fee was disturbed. Apart from this, it was a well known fact that this Authority remanded the matter back to AFRC for re-consideration, and therefore, it was expected that after due consideration the AFRC may enhance the fees. So far as, passing of the date of withdrawal is concerned, to continue the course or not is not solely dependent upon quantum of fees. If they want to pursue the course, the fee fixed by legally competent Authorities should be paid to the institutions and this create no adverse circumstances for the appellant, and therefore, in my opinion, the ground taken by him also has no force and liable to be dismissed.

VIII) He also submits that the impugned order is cryptic and non-reasoned. However, I have gone through the record of AFRC. In the detailed minutes of the meeting, every argument put forth by various institutions was dealt with by AFRC and on the basis of these minutes, which were signed by all the members, the impugned order was issued. In such situation, there appears to be no ground in that argument.

6. This brought us to the main question that fixing of fee at 3.5 times of the base fee is proper or not? Fixing of fee is sole discretionary power of the AFRC, unless there are grounds to interfere in that exercise of discretion, this Authority cannot interfere in discretion exercise by it. The AFRC is five member

committee and five persons sit together to deliberate and decide. The points raised by appellants does not make any case for any interference in the discretion exercised by the AFRC, and therefore, in my considered opinion, the decision taken by AFRC is proper and requires no interference.

7. This apart, no institution has placed any record before this Authority to show that they utilised the surplus created by amount of fees, they received from NRI students, to admit student from economically backward class on subsidized payment of fee. This was against the direction of Hon'ble Supreme Court. This also goes against their prayer of enhancing the fee to be charged from NRI students.
8. On the basis of above discussion, these appeals have no force and liable to be dismissed and dismissed accordingly. The impugned order passed by AFRC dated 24.07.2020 is hereby affirmed.

The appeals stand disposed off.

(Justice Alok Verma)
Appellate Authority