IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 11, 2018
Judgment delivered on: January 28, 2019

\+ LPA 733/2017, CM Nos. 41569-41574/2017 & 9883/2018

SHANKER DOON & ORS

..... Appellants

Through: Ms. Amita Singh Kalkal, Adv.,
Mr. Rahul Chaudhary, Adv.,
Ms. Aditi Gupta, Adv.,
Ms. Akriti Dewan, Adv. and
Mr. Avesh Chaudhary, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Ramesh Singh, SC for GNCTD
with Mr. Chirayu Jain, Adv. and
Ms. Nikita Goyal, Adv. for GNCTD
Mr. Rajiv Bansal, Sr. Adv. with
Mr. Namit Suri, Mr. Dipender
Chauhan, Mr. Kunal Kumar,
Ms. Parul Panthi,
Mr. Saaket Jain and
Ms. Aprajita, Advs. for Self Financing
Education Institutions Association.

AND

\+ LPA 734/2017, CM Nos. 41584-41587/2017
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ANR ..... Appellants

Through: Mr. Ramesh Singh, SC for GNCTD
with Mr. Chirayu Jain and Ms. Nikita
Goyal, Advs. for GNCTD
Mr. Anuj Aggarwal, ASC (Civil) for
GNCTD

versus

THE SELF FINANCING EDUCATIONAL INSITUTIONS ASSOCIATION ..... Respondent

Through: Mr. Rajiv Bansal, Sr. Adv. with Mr. Namit Suri, Mr. Dipender Chauhan, Mr. Kunal Kumar, Ms. Parul Panthi, Mr. Saaket Jain and Ms. Aprajita, Advs. for Self Financing Education Institutions Association.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 41572/2017 (for taking the additional documents on record) & CM No. 41573/2017 (for permission to file LPA against the judgment and order dated 31.8.2017 in WP(C) 2217/2016) in LPA 733/2017

For the reasons stated in the applications, the same are allowed and disposed of.

LPAs 733/2017 & 734/2017

1. These two appeals have been filed by the students, who are pursuing, their education in various colleges affiliated to the Guru Gobind Singh Indraprastha University and the Govt. of NCT of Delhi. The common respondent is the Self Financing Educational Institutions Association, who is respondent No.3 in

LPA 733/2017 and respondent No.1 in LPA 734/2017. The challenge is to the order dated August 31, 2017, passed by the learned Single Judge in W.P.(C) 2217/2016, whereby the learned Single Judge has allowed the writ petition filed by the Self Financing Educational Institutions Association, who had challenged the Notification dated March 10, 2016 of the Govt. of NCT of Delhi, whereby the Notification dated February 19, 2016 had been rescinded.

2. The notification dated February 19, 2016, had notified the acceptance of the recommendations made by the State Fee Regulatory Committee (in short 'SFRC') for the 2013-2016 sessions, as effective for the 2014-2017 academic sessions.

3. The facts leading up to the filing of the writ petition may be summed up as follows:

(i) The Govt. of NCT of Delhi (hereinafter "GNCTD") had promulgated the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence) Act, 2007, (hereinafter, "the

Act"), providing for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to SCs/STs and other socially and economically backward classes, and other measures to ensure equity and excellence in professional education in the NCT of Delhi, and for matters connected therewith.

(ii) Section 6 of the Act empowers the Govt. to constitute a 'Fee Regulatory Committee' by way of a notification in the official gazette, for determination of the fee for pursuing a course in an institution.

(iii) The Act provides that upon receipt of recommendations from the Committee so constituted and upon being satisfied, the Govt. shall accept the same, and notify the same for implementation. The fee as notified shall be effective for a period of three years, unless further extended through a separate notification.

(iv) In the alternative, the Government may send the recommendations so received, back to the Committee, for reconsideration, along with its own observations. The Act

provides that in such a situation, the fee as recommended by the Committee shall be charged by the Institutions, pending the reconsideration by the Committee.

(v) In the instant case, the Government had notified the Constitution of the SFRC in terms of Section 6 of the Act, for determination of the fee structure for the years 2013-2016, vide a notification dated February 01, 2013. The SFRC submitted its report in the year 2015.

(vi) It was only on February 19, 2016 that the Government notified its acceptance of the recommendations made by the SFRC, effective for the academic years 2014-2017. Consequently, the fee structure for the years 2014-2017, 2014-2018, and 2014-2019 for three, four, and five-year courses stood notified. Relevant extract of the aforesaid Notification reads as under:

> *"Now, in exercise of the powers conferred by sub sections (3) and (13) of section 6 of the said Act, the Government of National Capital Territory of Delhi notify that the proposed fees for the academic year 2013-2016 given by the State Fee Regulatory Committee for the academic year 2014-2017 and for the year 2014-2018 for four years course and 2014-2019 for five years course respectively"*

(vii) On March 10, 2016, the Notification dated February 19, 2016 stood rescinded. It is noted that the rescinding order had been issued within 25 days from the issuance of the original Notification. Relevant extract of the Notification issuing the rescinding order reads as under:

> *"And further in exercise of the powers conferred by sub sections (3) and (13) of section 6 of the said Act, the Government of National Capital Territory of Delhi had notified the proposed fees for the academic year 2013- 2016 given by the State Fee Regulatory Committee for the academic year 2014-2017 and for the year 2014-2018 for four years course and 2014-2019 for five years course respectively vide Extra Ordinary Gazette Notification NO. F.DHE4(68)/SFRC/14-15/9728 dated 19.02.2016.*
>
> *Considering the fact that thousands of students have been affected by the revision of the fee with retrospective effect, the Government of National Capital Territory of Delhi rescinds the aforesaid Gazette Notification NO. F.DHE4(68)/SFRC/14-15/9728 dated 19.02.2016"*

(viii) It was in this scenario that the Association challenged the impugned Notification, mainly contending that the SFRC recommendations once having been accepted, and notified, exercise of power rescinding the same was arbitrary and illegal, and therefore the rescinding order had necessarily to be set aside.

4. Now, two appeals have been preferred against the impugned judgement.

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5. This appeal has been preferred by the Govt. of NCT of Delhi. It is their case that the Notification dated February 19, 2016 revised the fee structure for the sessions, as aforenoted, with retrospective effect. It is stated that such retrospective enhancement of the fee had adversely affected the interests of thousands of students. Following the issuance of the Notification dated February 19, 2016, the Government had received thousands of representations against the fee-hike from such aggrieved students who felt that their future career prospects had been jeopardised, on account of inability to continue their studies due to non-affordability.

6. It is also their case that even if the fee was increased retrospectively, as has happened in the instant case, the same would not translate into enhancement of scholarship amounts already disbursed and received by the respective students, as there was no such provision for such retrospective enhancement

of scholarships. This, according to them, would end up causing severe hardship to meritorious students who belonged to economically weaker sections of society.

7. It is further the case of the appellant that by virtue of Section 21 of the General Clauses Act, they were fully authorised to rescind a notification earlier issued. It is stated that the exercise of power to make a subordinate legislation, including the power to rescind the same, is clearly enumerated in Section 21 of the General Clauses Act, and that such power is without any limitations or conditions, and that the principle of promissory estoppel could not be permitted to be raised as a defense by the respondents. Reliance in this regard is placed on **Shree Sidhbali Steels Ltd.& Ors. Vs State of U.P. & Ors., (2011) 3 SCC 193; Rasid Javed & Ors. Vs State of U.P. & Anr., (2010) 7 SCC 781; and Supdt. Of Tasex, Dhubri & Ors. Vs Onkarmal Nathmal Trust & Ors., (1976) 1 SCC 766.**

8. It is further stated that the timeline for applicability of recommendation of the SFRC is determined by statutory provision i.e Section 6(3) of the 2007 Act. In terms of Section 6(3), the recommendation of the SFRC comes into effect only

after issuance of notification by the Government. The fee, so notified is valid for a period of three years in terms of Section 6(13). It is therefore evident that the applicability of the fee, so notified is explicitly futuristic and could not have been applied retrospectively. It is further stated that the Supreme Court in a catena of judgments has held that no retrospective subordinate legislation or a retrospective executive measure may be taken under a legislation unless the legislation itself explicitly provides for it. The Act of 2007 mandates the SFRC to recommend course wise-cum-institution wise fee only, and in the absence of an explicit provision enabling so, retrospective application could not have been given to such recommendations.

9. It is further the case of the appellant that there is no doubt that unlike legislation made by a sovereign legislature, subordinate legislation made by a delegate cannot have retrospective effect unless the rule making power in the statute expressly or by necessary implication confers powers in this behalf. Reliance in this regard has been placed on **Vice Chancellor, MDU University, Rohtak v. Jahan Singh 2007 (5) SCC 77**.

10. It is further the case of the appellant that the fee so recommended and implemented had been arrived at without giving an opportunity of being heard to the affected students. As such, there is a gross violation of principles of natural justice.

11. It is further stated that the defined objective of the Act is "to provide for prohibition of capitation fee, regulation of admission, fixation of non exploitative fee, allotment of seats to Scheduled Castes / Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the NCT of Delhi and for matters connected thereto". The primary subject of protection from capitation and non-exploitative fee under the Act are the prospective students of the professional education, and such protection has been sought to secure them against the Institutions which have, for variety of reasons, shown tendency to charge capitation and exploitative fee. It is also stated that a student's decision to take admission in any particular Institution is critically dependant on the fee charged by that Institution and retrospective increase in such fee would work adversely against such informed decision taken by the students.

12. It is the case of the appellant that the impugned notification dated March 10, 2016 was issued following receipt of several representations by the students against the proposed fee hike. It is the appellant's case that education is not a business; it is not an industry and therefore, the rescinding order has to be viewed in light of the above circumstances. It is further stated that the notification dated February 19, 2016 had a huge financial implication on lives of several students who had already enrolled themselves in respective Institutions and such a notification coming mid-term, at a time when they are about to complete their course, had forced several to even discontinue their studies.

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13. This appeal has been preferred by students who have been studying in one of the Colleges, namely Chander Prabhu Jain College of Higher Studies and School of Law, which is affiliated with Guru Gobind Singh Indra Prastha University.

14. It is the case of the appellants herein that after the issuance of the notification dated February 19, 2016, the concerned Colleges began to use several arm-twisting tactics

against the students to recover the fee that was retrospectively revised, such as not allowing them to take their exams until the fee was paid etc. It was upon being aggrieved with the said situation that several students had made representations before the Government against the aforesaid notification revising the fee structure. Consequently, the Government vide notification dated March 10, 2016 rescinded the earlier notification dated February 19, 2016 keeping in view larger public interest of the students and considering the fact that several thousand students were affected by the retrospective revision of fee.

15. Following the issuance of the rescinding order, a need was felt to carefully consider all the issues involved including the recommendations made by the SFRC and the views of the respective stakeholders. Thus, a meeting was called by the Government for holding discussions on April 04, 2016, wherein representatives of various associations of Institutions / Colleges provided suggestions for bringing out an appropriate notification on the subject matter of revision of fee. It is stated that during the pendency of such discussions, the respondent Association

approached this Court through W.P.(C) No. 2217/2016 challenging the rescinding the order dated March 10, 2016.

16. It is further stated that the Government on July 04, 2016 issued a notification wherein the fee structure as notified for the session 2012-13 was extended for the years 2014-15 and 2015-16. The said notification however was not assailed by the Association in the writ petition. It is their case that the impugned judgment has been passed completely ignoring the fact that the Govt. had already issued the notification dated July 04, 2016 and which had not been assailed by the respondent Association.

17. The learned Single Judge had allowed the writ petition, inter-alia on the following grounds:-

(i) The question as to whether a fee hike was permissible in the Institutions or not was to be considered by the SFRC and for this purpose, several hearings were held before the Committee. The object of the Act of 2007 was to prevent prohibition of capitation fee, regulation of admission, and fixation of non-exploitative fee. It was in light of this latter aspect that the Committee had made certain recommendations and forwarded the

same to the Government. The procedure before the Committee envisages an opportunity of being heard to the Institutes before determining the fee that could be fixed by such an Institute. This was a detailed fact-finding inquiry and entailed several hearings before the Committee, and the physical inspection of the aforenoted Institutes was also mandated. In terms of provisions of the Act, the Committee was free to adopt its own procedures for the conduct of its business. Proviso to Section 6(3) provides that the Government may refer the matter back to the Committee for a re-consideration if it chooses not to accept the recommendations made by the Committee. But in this intervening period, the Institution would charge the fee as determined by the said Committee.

(ii) It was a matter of record that the recommendations made by the Committee with respect to 2013-2016 session were accepted by the Government and notification dated February 19, 2016 was issued conveying the fee structure applicable for 2014-2017 session only after due satisfaction on the part of the Government. However, the rescinding notification was issued within 25 days of the aforesaid notification i.e on March 10, 2016

only after due consideration was accorded to the thousands of representations received from the students against the notification dated February 19, 2016.

(iii) It was also noted that the State Government undoubtedly had the power to withdraw any notification issued by it, in terms of Section 21 of the General Clauses Act. However, the question to be determined was whether such a power could have been exercised by the appellant herein, in the present matter. Dealing with the aforesaid aspect, the learned Single Judge relied on ***State of Bihar v. D.N. Ganguly & Others AIR 1958 SC 1018*** to conclude that the issuance of the impugned rescinding Notification was a power vested in the Government, in terms of Section 21 of the General Clauses Act, and that such a notification could pass the test of validity only if it was held that the relevant provisions of the Act of 2007 were repugnant to the application of the aforesaid rule of construction. This would necessarily have involved a careful examination of the scheme of the Act to determine whether application of the aforesaid rule was justified in the present case.

(iv) The learned Single Judge has noticed the object of the Act is to promote equity and excellence in education in the NCT of Delhi. It was further noted that keeping this object in mind, as also the admitted position that all the aforenoted institutes had issued their relevant prospectus bringing it to the knowledge of all the incumbent and prospective students that the fee structure was under consideration and that the fee structure already given to the students was only provisional in nature (qua academic session 2011-2012) and the fee hike in the subsequent years 2012-2013, 2013-2014 & 2014-2015 was pending consideration of the State Fee Regulatory Committee, and in such an eventuality the candidate would have to pay a revised fee. The fact that such information was part of Brochure of the Institutes was not disputed.

(v) It was held that inclusion of such information in the prospectus and respective brochure imputed specific knowledge to the students that the fee that they were currently paying (for the year 2011-12) was only a provisional fee and that the fee structure was currently under consideration by the SFRC and that the students would have to pay the revised fee in case of the

recommendations being accepted by the Government. It was therefore held that, the main ground for issuance of the impugned notification, namely, that several representations were received from affected students who were unhappy with the said fee hike, had little strength.

(vi) The learned Single Judge has also noted that the Committee while laying down the fee structure had kept in mind the object of the Act, however it was never the case of the appellant herein that the Committee had acted contrary to said object, which was to ensure charging of non-exploitative fee by the Institutions. Had it been the case of the Government that it was unhappy with the recommendations of the Fee Regulatory Committee, it would not have notified the recommendations. In such a scenario, it would have been open to the Government to return the said recommendations to the Committee for re-consideration along with its own observations. In the present case, however, and as noted by the learned Single Judge, the Government chose to accept the said recommendations which were to its satisfaction.

(vii) The learned Single Judge has also noted that the notified fee structure would come into force for a period of three years. It has also been noted that the fees of educational institutions have to be enhanced like all other fee structures; inflation and growth of the economy with the passage of time also had to be kept in mind. The fact that the fee being paid by the students of the aforenoted institutions was a provisional fee was also known to them as was duly notified in the prospectus. As such, issuance of the impugned rescinding notification also was held to be in non-conformity with the satisfaction of the Government, as inferred from the issuance of the notification dated February 19, 2016.

(viii) In conclusion the learned Single Judge has noted that the petitioner Institutions had not been permitted to hike their fee since 2011-12 and that they, not working on charity, had to make ends meet. Therefore, a case was clearly held to have been made out in their favour.

18. The impugned judgment has been challenged by the Government mainly on the ground that the learned Single Judge has failed to appreciate the import of the phrase "a fee regulatory committee, for determination of the fee, for pursuing a course in

an Institution" in Section 6(1) of the Act. It is their case that the scope of mandate of SFRC is clearly limited to determining course wise fee for an Institution and not on year to year basis. According to them, the Committee had no mandate to determine the timeline for the payment of fee. It is further stated that under Section 6(3) of the Act, after receipt of the recommendation of the Committee, it is for the Govt. to either notify the same or refer them back to the Committee for re-consideration in terms of proviso to Section 6(3). Nowhere in the Act has the Committee been given the power to fix the timeline for implementation of the fee recommended by it, nor can such a power be inferred from any other provision of the Act. Reliance in this regard has been placed on ***Ahmedabad Urban Development Authority v. Sharad Kumar Jayantikumar Pasawalla and others 1992 (3) SCC 285***.

19. It is further their case that the learned Single Judge has failed to appreciate that there is nothing in the Act, which stipulates a retrospective determination or application of the fee by the Committee and its consequent implementation. It is also stated that the learned Single Judge erred in heavily relying upon

the information contained in the respective admission brochure and prospectus of the Institutions to the effect that the fee was under consideration by the Committee and in case of any revision being recommended and notified, the same would be liable to be paid by the concerned students. It is their case that such a stipulation in the brochure was contrary to the statutorily prescribed mandate of the Committee. Further, such a stipulation would be legally enforceable only to the extent that they are in consonance with the statutorily prescribed mechanism. It is their case that when the mechanism of fee determination and notification as envisaged in the Act does not provide for retrospective determination and implementation of fee, no College could have legally bound the students to such a determination.

20. It is further stated that the imputation of knowledge to the students as regards the fee quoted in the respective brochures being temporary in nature and payment of revised fee as and when the occasion arose, could not have been done without the express and specific declaration or undertaking by the students regarding acknowledgement of such a liability to pay the

increased fee with retrospective effect in the future. It is therefore their case that the students being the actual aggrieved party, should have been made party to the writ petition in the instant matter and given a chance to make their case before the Court.

21. It is stated that the learned Single Judge has also heavily relied on the concept of 'provisional fee' to conclude that the students being imputed with appropriate knowledge were liable to pay the increased fee as and when recommendations of the Committee were accepted and notified by the Govt. It is their case that under the Scheme of the Act, the concepts of 'provisional fee' or 'final fee' do not exist. The Act only stipulates two kinds of fee; (i) the fee as recommended by the Committee, which can be charged by the Institutions, if the recommendations are referred back to the committee for re-consideration in terms of proviso to Section 6(3); and (ii) being the notified fee, which the Institution may charge in terms of Section 6(13). It is their case that the concept of 'provisional fee', being alien to the scheme of the Act, charging any such enhanced fee from the students and that too retrospectively under

such notion would be expressly and brazenly exploitative and thus prohibited by the Act. Giving effect to anything like provisional fee, which is beyond the ambit of Section 22 (which was applicable only for the session 2007-08) is violative of the scheme of the Act.

22. It is further stated that the learned Single Judge has erred in negating the statutory protection afforded to the students under the Act by subjecting them to huge financial liability under the guise of contestable retrospective fee and that too in litigation in which they are not a party. In doing so, the learned Single Judge has also failed to appreciate that the decision of the students to take admission in a course or in an Institution, being critically dependent on the fee being charged by such an Institution, has been negated in all manner, thereby exposing them to an unknown amount of higher fee retrospectively.

23. Mr. Ramesh Singh, learned Standing Counsel appearing for GNCTD would submit that after the issuance of the impugned rescinding order dated March 10, 2016, two other notifications were issued, both on July 04, 2016. Under the first of these, the validity of the last fee fixation i.e. for the period 2012-13 was

extended for 2014-15 and 2015-16. The second of these notifications was issued to give prospective effect to the recommendation of the SFRC having accepted them for the academic year 2016-17. He states that, even though both the notifications dated July 04, 2016 were challenged in the writ petition, the same was however not argued / pressed before the learned Single Judge.

24. He would further submit that even if the impugned rescinding order is held to be bad in law, the aforesaid two notifications dated July 04, 2016 would continue to operate and therefore, the question of implementation of the earliest notification dated February 19, 2016 does not arise. He states, that the quashing of the rescinding order would not automatically revive the aforesaid notification. In this regard, he would rely on ***Firm ATB Mehtab Majid & Co. v. State of Madras and Anr 1963 Supp 2 SCR 435*** and ***State of U.P. and Ors. v. Hirendra Pal Singh & Os (2011) 5 SCC 305***. He would also state that even on merits, the impugned notification is valid in law inasmuch as it is in terms of, and in accordance with provisions of the Act of 2007.

25. Mr. Singh would refer to Section 6 (12) (a) to state that under the Scheme of the Act, the exercise of fixation of fee structure is to be done well in advance of the academic year and no later than 31st of December of the previous academic year. He would also rely on Section 3(i) to state that the said Committee has been constituted for "determining fee for admission to an Institution". According to him, a combined reading of Section 3(i) and Section 6(12)(a) of the Act shows that the provisions of the Act do not contemplate fee fixation / notification after the commencement of the academic year. It is therefore, his submission that the statutory scheme of the Act is such that once the recommendations of the Committee are accepted by the Government, the notification for implementation of the same should be only for the future academic year. Hence, the period prior to the date of notification of the said recommendations, if accepted and notified by the government, would fall foul of the aforesaid scheme of the Act.

26. It is his submission that instead of issuing the impugned rescinding notification for the academic year 2013-16, the Government ought to have resorted to the proviso to Section

6(13) of the Act and accordingly issued notification extending validity of the earlier notified fees to that period. Without prejudice, he would state that in any event the notification dated February 19, 2016 to the extent that it sought implementation of recommendations of the Committee retrospectively for the academic years 2014-15 and 2015-16 would be in the teeth of the scheme of the Act on account of the Government being not vested with power to issue notification with retrospective effect. In this regard, he would rely on ***Vice Chancellor, MDU, Rohtak (supra)*** and ***Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin & Ors. (1978) 2 ELT J 375.***

27. He states that the issuance of the earlier Notification was therefore clearly a case of mistake on the part of the Govt. and the same was sought to be corrected through issuance of the impugned rescinding order and subsequently the two notifications dated July 04, 2016. He would rely on ***Videsh Sanchar Nigam Ltd. and Anr. v. Ajit Kumar Kar & Ors. (2008) 11 SCC 591*** to state that in case of a mistake, the same would not confer any right on any party and that the same can be corrected.

28. To conclude, he would rely on Section 21 of the General Clauses Act to state that the power to issue a notification / order would necessarily and complementarily include the power to rescind such a notification / order. He would also draw our attention to the impugned judgment to state that the learned Single Judge had also arrived at a similar conclusion.

29. Being aggrieved by the impugned judgment, the students have also preferred an appeal mainly on the ground that the said judgment fixes an onerous liability on them without having been given an opportunity to make their case. It is further stated that the impugned judgment has been passed completely ignoring the fact that the Govt. had already issued the notification dated July 04, 2016 wherein the fee structure as notified for the year 2012-13 was extended for the years 2014-15 and 2015-16. It was pursuant to this judgment that the College of the appellants had issued the letter dated September 12, 2017 to the students, therein stating that they were required to pay the increased fee of Rs.55,800/- for BBA & BBA (CAM) courses and Rs.51,900/- for BCA courses failing which their degrees would not be issued to them. They are therefore aggrieved by the action of their College

in revising the fee with retrospective effect without having duly informed the students of such an increase or pending revision at the time of taking admission. It is their case that no such disclosure of information was ever made in the prospectus of the College.

30. It is also stated that the College of the appellants has been charging revised fee for the last two years from the students, who joined from the academic session 2015-16 and therefore the finding of the learned Single Judge that the Colleges had not been allowed to hike their fee since the 2011-12 session, is erroneous.

31. It is further their case that even if the rescinding order is held to be bad in law, it would not lead to revival of the earlier notification dated February 19, 2016 but the present fee structure would actually be governed by the subsequent notification dated July 04, 2016. Reliance in this regard has been placed on B***.N.Tewari v. Union of India AIR 1965 SC 1430*** and ***Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and Ors. 1985 (1) SCC 641***. It is therefore their case that without a challenge being laid to the notification dated July 04, 2016, the same would continue to remain effective for all

intent and purposes. It is also their case that issuance of the rescinding order was within the powers of the government as conferred by Section 21 of the General Clauses Act.

32. It is stated that the learned Single Judge has failed to appreciate that the retrospective revision of the fee structure in terms of the earlier notification pursuant to recommendation of the Committee has led to an onerous liability being fastened to the students and in many cases have caused great hardships in the form of inability to pay the increased fee. This burden has further been enhanced on account of the fact that the concerned Institutions are now demanding accumulated arrears of fee stretching over the past few years, failing which the issuance of their respective degrees has been stalled.

33. Ms. Amita Singh Kalkal, learned counsel appearing on behalf of the appellants / students would submit that the legislative intent behind enactment of the Act of 2007 was that the students enrolling in any academic session would have specific knowledge of the fees, which would be charged from them and the same must clearly be specified in the prospectus issued by the respective Institutions. She would rely on ***Islamic***

Academy of Education v. State of Karnataka (2003) 6 SCC 697 and Section 6 (12)(a) of the Act of 2007 to state that the exercise of determining fee structure of an academic year is to be carried out well in advance before the commencement of such session. Even under Section 6(12) of the Act, the Committee has the power to require each of the Institutions to place before it, the proposed fee structure along with the relevant documents as well as books of accounts.

34. She would draw our attention to various provisions of the Act to state that the Committee has the power to recommend the proposed fee to be charged by each Institution for each academic year. The Govt. has the power to accept the recommendations of the Committee and notify the same, and the fee so being notified would remain valid for a period of three years for a student taking admission during that academic year. The Govt. also has the power to refer the matter back to the Committee for re-consideration along with its own observations, in case the same is not found acceptable. In such a situation, the Institutions would continue to charge the fee as determined by the Committee. She states that the Act came into force from May 29, 2007 and it was

only under Section 22(a) of the Act that the Committee was given the power to fix the fee for the academic year 2007-08 'provisionally', subject to final adjustments later. It is therefore her submission that, nowhere in the Act, is the Committee empowered to fix, or recommend, fee provisionally for any subsequent academic year. She further submits that it is clear from the scheme of the Act that retrospective determination of fee is not provided for, or permitted. On the contrary, the Act specifically provides for determination of fee in advance prior to commencement of an academic session. She would state that the notification dated February 19, 2016 implementing the revised fee structure for the academic session 2014-15 and 2015-16 would be contrary to the provisions of the Act, inasmuch as it provides for retrospective revision of fee structure, without a specific power in that regard being provided for. In this regard, she would rely on ***Income Tax Officer v. IMC Ponnoose & Ors. AIR 1970 SC 385***.

35. She would further rely on ***B.N. Tewari (supra)*** and ***Indian Express Newspapers (supra)*** to state that even if the rescinding order is held to be bad in law, the same would not

amount to automatic revival of the notification dated February 19, 2016. She further states that during the pendency of the writ petition, the Govt. had also issued notification dated July 04, 2016 extending the validity of the fee structure fixed for 2012-13 to 2014-15 and 2015-16 and that the learned Single Judge has failed to take cognizance of this fact in the impugned judgment.

36. In conclusion, she would draw our attention to the object of the Act, namely, providing benefit to the students taking admission in various degree / diploma and certificate courses in unaided Institutions against the malpractices of profiteering by charging capitation fee and for promoting fixation of non-exploitative fee. It is her submission that the provisions of the Act should therefore be interpreted so as to advance the aforesaid objective.

37. Mr. Rajiv Bansal, learned Senior Counsel appearing on behalf of the common respondent Association would submit that the only question arising out of the present batch of appeals is whether the Govt. could determine / fix the fee to be charged by private Institutions under Section 6(3) of the Act of 2007 by issuing the impugned notification dated March 10, 2016, thereby

rescinding / withdrawing the earlier notification dated February 19, 2016, which allowed self financing Institutions to charge fee for the academic years 2014-17 as determined and recommended by the Committee for the years 2013-16. He states that the fee structure for the subject Institutions had remained stagnant for the last several years ever since the previous determination for the period 2009-12 and which was extended to 2012-13. By effect of the impugned rescinding order and subsequent notifications dated July 04, 2016, the Govt. has rejected the determination of fee by the Committee for the year 2013-16 and has decided to keep the fee stagnant upto 2016-17.

38. It is his submission that the Govt. does not have the power to rescind or withdraw the notification of the fee structure as recommended by the Committee once having been accepted. He would draw our attention to Section 6(3) of the Act to state that only the Committee under the Act can determine the fee and not the Govt. Once the Committee has determined the fee, the Govt. can either notify the same or refer it back for re-consideration. There is no other option. Under the proviso to

Section 6(3), pending such re-consideration the Institutions would continue to charge fee as determined by the Committee.

39. He would further refer to Proviso to Section 6(2) of the Act to state that the Committee while determining the fee structure to be charged by the Institutions has to give an opportunity of hearing to the said Institutions before final fixation. It is his submission that the Govt. cannot bypass / circumvent the procedure as provided for by the Act. He further states that this procedure is in furtherance of principles of natural justice and the impugned rescinding order is in complete disregard of such principles having completely dispensed with the requirement of giving a hearing to the subject Institutions. He also stated that the Committee, having been appointed for specific purpose under the Act cannot be rendered redundant or otiose on account of actions of the Govt. which were exercised beyond jurisdiction under the Act.

40. It is his submission that Section 6(1) of the Act specifically provides for Members who would constitute the Committee for the purpose of determination of fee. He therefore states that the impugned rescinding order apart from being

violative of the Statute also tantamounts to second guessing the wisdom of highly qualified individuals, who have specifically been appointed under the Act for a specific purpose. He states that, it is a well settled proposition of law that when law provides for something to be done in a particular manner, the same has to be done in that manner alone and no other. Applying the same principle to the facts of the case, it is his submission that the legislature had intended for only the Committee constituted under the Act to fix / determine the fee to be charged and in case, the Govt. chose to differ with the said recommendations, the matter was to be referred back to the Committee for re-consideration. It is therefore the Committee alone that shall re-consider the fee structure and fix the same. In this regard, he would rely on ***I.T.C. Bhadrachalam Paperboards and Another v. Mandal Revenue Officer A.P. and Ors (1996) 6 SCC 634, Nazir Ahmad v. The King-Emperor, AIR 1936 PC 253 (2), Babu Verghese and Or v. Bar Council of Kerala and Ors 1993 (3) SCC 422*** and ***State of Tamil Nadu and Others v. K. Shyam Sunder and Ors (2011) 8 SCC 737.***

41. He would submit that even as per equity, the fee increase should not have been blocked as the last occasion when the fee hike was allowed was in the year 2009 and the fee had remained stagnant for the last seven years. He states that the last fee determined by the Committee for the years 2009-12 was also implemented retrospectively for the years 2009-12 by way of a notification dated February 7, 2012. Retrospective implementation of the revised fee to be charged is not due to any fault of the institutions and therefore cannot be any basis whatsoever for the Government to contravene the provisions of the statute and exercise powers ultra vires the Act.

42. Mr. Bansal would also submit that the argument of retrospective revision of fee as raised by the appellants is ill-founded and misplaced inasmuch as the Government, while exercising its right under the Act, firstly issued a notification earmarking the period for which the Committee was constituted to determine the hike in fee and it was thereafter that the Committee made its recommendations revising the fee for the period so earmarked. It is also his submission that the students were made aware of the constitution of the Committee and the

consequent pendency of the revision of the fee structure. The students therefore, at the time of notification of constitution of the Committee, are made well aware through the respective institutions' prospectus of the fact that they would have to pay enhanced fee in term of the recommendations of the Committee having been accepted and notified by the government. It is his submission that a bare perusal of the application forms for different years of the subject institutions would show that the students were adequately made aware of the pendency of consideration of revision of the fee structure before the Committee and their consequent liability to pay the revised amounts as and when applicable.

43. He would fault the appellants' reliance on proviso to Section 6 (13) of the Act which empowers the Government to extend the validity of any extant fee structure for further periods as notified, mainly on three grounds, (i) the said Proviso comes into effect only after the fee as notified by the Government holds the field for a period of three years. In the instant case, the fee as notified on February 19, 2016 has not been in operation for the said period and therefore, the Proviso would not come into

operation; (ii) Section 6(13) has to be read harmoniously with the rest of Section 6 and specifically Section 6(1), 6(2) and 6(3) and therefore, once the Committee has determined the fee for particular period, the Government has no power to reject this determination and instead continue the determination of a previous period; and (iii) the Government, under the Act, had the option to either extend the last fee determined by the Committee in 2009 or to constitute a Committee and notify the revised fee structure as determined by it. The government having exercised the latter option is now estopped from acting on the former.

44. Mr. Bansal would also challenge the appellants' reliance on Section 21 of the General Clauses Act in support of their power to issue the impugned rescinding order. He states that Section 21 of the Act of 1897 embodies a rule of construction, the application of which is not absolute. Application of this rule of construction to a particular statute depends on the subject matter, context, scheme, effect and object of the said Act. Applying the said principle of law to the facts of this case it is his submission that Section 21 of the General Clauses Act would be inapplicable as the Act never envisaged a role of the fixation / determination

of fee for the Government and under the Act it only had a role to notify the fee as determined by the Committee. In this regard, he would rely on ***State of Bihar v. D.N. Ganguly and Ors. AIR 1958 SC 1018*** and ***State of Madhya Pradesh v. Ajay Singh and Ors. AIR 1993 SC 825.***

45. As regards the Government's justification for the impugned rescinding order in terms of the several thousand representations received from the students against the subject fee hike, Mr. Bansal would submit such a stand on behalf of the Government would be absolutely unsustainable as complaints received from students cannot be a reason to nullify the mandatory requirements of law. It is a settled proposition of law that where the field is occupied by an enactment, the executive has to act in accordance therewith, particularly when the provisions are mandatory in nature.

46. In conclusion, he would submit that if the present appeals are not dismissed and the validity of the notification dated February 19, 2016 is not upheld, the respondent Association would suffer a loss to the tune of Rs.232.78 Crores. He also states that the fee structure having remained stagnant for the last 7

years, the salaries of teachers employed have constantly increased on account of the 5th and the 6th Pay Commission which has been duly given effect to by the respondent Association.

47. Having heard the learned counsel for the parties, the issue which arise for consideration is whether the learned Single Judge was justified in allowing the petition filed by the Institutions and set aside the Notification dated March 10, 2016 issued by the Govt. of NCT of Delhi rescinding its earlier Notification dated February 19, 2016 on applicable fee structure.

48. Before we deal with the submissions made by the learned counsel for the parties, it is necessary to record, in brief, certain relevant facts. As noted from the record, it was on February 01, 2013 that the Govt. of NCT of Delhi had under Section 6(1) of the Act appointed a State Fee Regulatory Committee for determining the fee structure for the academic years 2013-2016. The report was submitted by the Committee to the Government on November 24, 2014. Pursuant thereto, the Government on February 19, 2016 issued Notification notifying the fee for the period 2014-2017 and also for the courses of duration four years and five years. It transpired that the Govt. of NCT of Delhi

issued Notification dated March 10, 2016 rescinding / withdrawing the Notification dated February 19, 2016. It was this Notification dated March 10, 2016, which was challenged by the Institutions by filing writ petition before the learned Single Judge in which the impugned order was passed. It may be stated here that during the pendency of the writ petition, Govt. of NCT of Delhi issued two Notifications dated July 04, 2016 whereby the fee structure of 2012-2013 was extended for the years 2014-15 and 2015-16 and, the new fee structure was made effective from 2016-17. The impugned order of the learned Single Judge is dated August 31, 2016.

49. Having noted the facts, the following is the position which emerges on the reading of the provisions of the Act, particularly, relatable to the Fee Regulatory Committee.

(i) The Government by Notification "*shall constitute a Fee Regulatory Committee for determination of the fee for pursuing course in an Institution".*

(ii) The "*Committee shall conduct its own procedure for the conduct of its business and shall give reasonable opportunity of*

being heard to an Institution before determining the fee" to be fixed for a course of study.

(iii) The "*Government after receipt of the recommendations"* and subject to its satisfaction *"shall notify the fee determined by the Committee".*

(iv) "*The Government may refer back the matter to the Committee along with its observations for reconsideration and during the intervening period, the Institution shall charge the fee as determined by the Committee".*

(v) The terms of the Members of the Committee may be extended by the Government for a period not exceeding six months at a time. In any case, not exceeding beyond a total period of one year.

(vi) The Committee shall have the power requiring each Institution to place before it proposed fee structure of such an Institution with all relevant documents and books of accounts for scrutiny well in advance before the commencement of the academic year *"but not later than 31st December of the previous academic year"*.

(vii) Verify the fee proposed by such Institution and also ensure that the same does not amount to profiteering or charging of capitation fee.

(viii) "*The Committee shall approve the fee structure or determine some other fee, which can be charged by an Institution".*

(ix) "*The fee notified by the Government shall be valid for three years".*

50. One of the pleas of Mr. Ramesh Singh and Ms. Amita Singh Kalkal was that the Government has no power to retrospectively determine the fee structure. We may state here at the outset that such a plea was not taken by the Government before the learned Single Judge but such a plea being a legal plea needs to be decided by us by looking into / interpreting the provisions of the Act. Moreover, Mr. Bansal has also made his submission on this aspect, which we shall deal with.

51. The aforesaid submission of Mr. Singh and Ms. Kalkal, is appealing. On perusal of the provisions of the Act, as reproduced above, it is clear that the Act contemplates that the

recommendations and notification with regard to fee structure have to be for ensuing year. This we say so, for the reason, of presence of the words in the provisions of Section 6 of the Act like "*for determination of the fee for pursuing course in an Institution;" "the Government may refer back the matters to the Committee along with its observations for re-consideration and during the intervening period, the Institution shall change the fee as determined by the Committee;" "but not later than 31st December of the previous academic year;" and "the fee notified by the Government shall be valid for three years".*

52. The argument of Mr. Rajiv Bansal, learned Senior Counsel for the respondents was that, the Government while exercising its right under the Act first issued a Notification earmarking the period for which the Committee was constituted to determine the hike in fee and it was thereafter that the Committee had made recommendations revising the fee for the period so earmarked; the students were made aware of the constitution of the Committee and the consequent pendency of the revision of the fee structure. He would also fault the reliance placed by the learned Counsel for the appellants on proviso to

Section 6(13) of the Act, which empowers the Government to extend the validity of the fee structure for further periods as notified mainly on three grounds:-

(i) The said proviso comes into effect only after the fee as notified by the Government holds the field for the period of three years. In the instant case, the fee as notified on February 19, 2016 has not been in operation for the said period and therefore, the said proviso would not come into operation.

(ii) Section 6(13) has to be read harmoniously with rest of the Section 6 and specifically Sections 6(1), 6(2) and 6(3) and therefore once the Committee has determined the fee for a particular period, the Government has no power to reject this determination and instead continue the determination of a previous period.

(iii) The Government under the Act had the option to extend the last fee determined by the Committee in 2009 or to constitute a Committee and notify the revised fee structure as determined by it.

53. The submissions made by Mr. Bansal are appealing on a first blush, but on a deeper consideration, it is seen that the Act (vide Section 6) stipulates a procedure for determination of fee structure. Such a procedure must be adhered to, i.e., fee structure necessarily has to be in place before students take admission in a particular course rather than keep them in suspense and claim a higher amount from a back date. We also say that we want to put this interpretation of the provisions of the Act in place for future reference, so that the Government take timely action on fee structure strictly in accordance with the mandate of the Act, which will be beneficial not only to the students but to the Institutions instead of delaying the process, which results in a situation, which we have seen in the present case.

54. Insofar as the plea of Mr. Bansal that the students were put to notice and as such they cannot object to the fee structure is concerned, suffice it to state, this argument is more of an argument of estoppel. The representation to the students that the fee is provisional, in no way, can be taken against the students, in view of the provisions of the Act, which according to us stipulates the fee so determined has to be prospectively

implemented. That apart, we also find that a student must have an informed choice of opting for an institution with a more beneficial fee structure.

55. Having said that, on a careful consideration of the facts in the case, we find, the issue of fee structure primarily relates to two years i.e 2014-15 and 2015-16. This we say so, as in any case the fee structure has been made effective from 2016-17 vide notification dated July 06, 2016.

56. Insofar as the academic year 2014-15 is concerned, the recommendation and notification of February 19, 2016 shall be unimplementable / inapplicable being retrospective in view of our above finding. So for that academic year, the fee structure as recommended on November 24, 2014 (which is during the academic year) could not have been given effect to.

57. Insofar as the academic year 2015-16 is concerned, the recommendations were in place when the academic year started (which were submitted during academic year). The recommendations were submitted by the Committee to the Government on November 24, 2014. On receipt of the

recommendations, the Government has two options either to accept the recommendations and notify the same (surely the next academic year 2015-16) or send the recommendations back to the Committee for re-consideration with its views. The Government sat over the matter and after one and a half year, on February 19, 2016 issued the Notification notifying the fee structure but immediately rescinded the same on March 10, 2016 and is now taking the stand that such notification needs to be prospective. Had the Government issued the notification, in any manner as deem fit, immediately after November 24, 2014, the same would have governed the fee structure for the academic year 2015-16. No reasons have been given for the delay. No doubt, there is no period mentioned for issuance of notification but the delay on the part of the Government cannot be to the prejudice of the Institutions. We are also conscious that the recommendations were also not sent back to the Committee, but the Government also cannot sit over them. So, with effect from academic year 2015-16, the Institutions were within their right to charge the fee as recommended by the Committee for a particular course. This would have been in conformity with the spirit underlying the provisions of the Act, as noted above i.e., if the recommendations

are sent back, the Institutions are within their rights to charge the recommended fee. So, for 2015-16, the Institutions could have charged fee as recommended.

58. Further, a plea has been taken by the Government, that having issued the notification dated February 19, 2016, it had also the power to rescind the same in view of Section 21 of the General Clauses Act. The learned Single Judge by referring to the judgment of the Supreme Court in ***B.N. Ganguly (supra)*** and after noting the object of the Act to be prohibiting capitation fee; regulation of admission and fixation of non-exploitative fee, and to promote equity and excellence in education in NCT of Delhi held that, the Government cannot take the umbrella protection under Section 21 of the General Clauses Act.

59. In ***B.N. Ganguly (supra),*** the Supreme Court held that Section 21 of the General Clauses Act can be invoked only if, and to the extent if any, the context and the scheme of the Act so permits. In other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether, by the application of the rule of construction enunciated by Section 21, the power to

cancel the notification can be said to vest in the appropriate Government by necessary implication. If the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, assistance of the said section cannot be invoked.

60. Having noted the scope of Section 21 of the General Clauses Act, it must be held, in the facts of this case, the power to rescind the notification dated February 19, 2016, is only to the extent, to make the said notification prospective in the manner concluded by us above, i.e., for the Academic Year 2014-15.

61. Insofar as the judgments in ***Islamic Academy of Education V. State of Karnataka, IT Officer v. IMC Ponnoose, B N Tewai v. Union of India, Firm ATB Mehtaab Majid & Co. v. State of Madras & Anr., Uttar Pradesh v. Hirendra Pal Singh, Vice Chancellor MDU Rohtak v. Jahan Singh, Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise and VSNL Ltd. v. Ajit Kumar Kar,*** relied upon by the appellants in these appeals are concerned, in view of our conclusion above, in the peculiar facts of this case, the same may not be relevant.

62. Suffice it to state, in view of our above conclusion, the appeals are partially allowed by holding that; (i) Government could not have notified the fee structure for a particular course for the year 2014-15 to that extent the order of the learned Single Judge is set aside; (ii) the notification dated March 10, 2016 could not have been issued rescinding the earlier notification dated February 19, 2016 to the extent of fee structure for the year 2015-16 onwards. In other words, to that extent the notification dated March 10, 2016 shall be illegal. The Institutions shall be within their right to claim the fee structure as recommended for a particular course for the year 2015-16 only. The appeals are partially allowed in terms of the above. No costs.

CM Nos. 41569/2017 (for stay) & 9883/2018 (for directions) in LPA 733/2017

CM No. 41584/2017 (for stay) in LPA 734/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

JANUARY 28, 2019*/aky*

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
SECTOR 16-C, DWARKA, NEW DELHI – 110 078

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

GGSIPU/EXAM/COE/2019/ 10412-L

Dated: February 6, 2019

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Pravin Chandra
Controller of Examinations (Operations)

GGSIPU/EXAM/COE/2019/ 10412-L

Dated: February 6, 2019

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