THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION (PIL) Nos.130 & 133 of 2017 and W.P.Nos.13852 of 2020 & 673 of 2022

COMMON ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common order.

The facts of W.P.No.673 of 2022 are reproduced as under:

The petitioners before this Court are aggrieved by G.O.Ms.No.41, dated 09.05.2017 issued by the State of Telangana in the matter of fee fixation in respect of students admitted into Professional Post Graduate Medical and Dental courses in Telangana Un-aided Non-Minority Medical and Dental Professional Institutions in the State for the academic year 2017-18.

The basis ground of challenge before this Court to the aforesaid Government order is that the Government of Telangana has issued the aforesaid Government order without there being any recommendation from the Fee Regulatory Committee (for short, "FRC") constituted for the purpose of fixation of fee and it is in violation of the judgments delivered by the Hon'ble Supreme Court in the cases of **Islamic Academic of Education and Another vs. State of Karnataka and others**[1] and **P.A. Inamdar and others vs. State of Maharashtra and others**[2].

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[1] 2003 (6) SCC 690
[2] AIR 2003 SC 3724

The facts of the case further reveal that pursuant to the judgments delivered by the Hon'ble Supreme Court in the aforesaid cases, the Government of Andhra Pradesh issued G.O.Ms.No.6, dated 08.01.2007 in exercise of powers conferred under Section 15 read with Sections 3 and 7 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and the FRC was constituted. The FRC, which is an expert body, was assigned with the job of fixing fee and from time to time the Committee was constituted. After bifurcation of the State, the FRC, which was constituted in the year 2015, fixed fees for a block period of 2016-2019. Pursuant to the order passed by the FRC, the State Government has issued notification dated 02.05.2016 fixing the fee.

In spite of the fact that though the FRC was constituted under Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, the State Government started taking steps for fixation of fee, as large number of representations were received from private medical colleges and the Special Chief Secretary to Government on 19.04.2017 wrote a letter to the FRC to examine the representations in respect of fixation of fee structure for minority and non-minority for PG Medical and Dental courses and the FRC vide letter dated 01.05.2017 informed the State Government that they have already fixed fee for a period of 3 years block period i.e., 2016-2019 and a notification was also enclosed in the matter of fixation of fee informing the Government that the fee has already been fixed by the FRC. Meaning thereby, the fixation of fee was done by FRC for

3 years block period i.e., 2016-2019. The letter dated 01.05.2017 of the FRC is reproduced as under:

"TELANGANA ADMISSION AND FEE REGULATORY COMMITTEE
2nd Floor, JNA & FAU Campus, Opp. Mahavir Hospital, Mahavir Marg,
Masab Tank, Hyderabad – 500028.
Ph. 040-23331120, 29802740, 29802741 e-mail: tsafrc@gmail.com,
Website: www.tafrc.cgg.gov.in

Lr.No.1517.2/TAFRC/HM(D)/2017 Dated: 01.05.2017

To

The Special Chief Secretary to Government,
HM & FW Department,
Telangana State Secretariat,
Hyderabad.

Respected Sir,

Sub: TAFRC – Fixing of fee structure for PG Medical and Dental Courses-Reg.

Ref: 1. Letter from HM&FW Department, Lr.No.4072/C1/2017, dt.19.04.2017
2. Notification for calling application for fee fixation, dt.24.11.2015.
3. Minutes of meeting held on 20.03.2017

* * * * *

With reference to the Letter No.4072/C1/2017, dt. 19.04.2017, I am by direction to inform that AFRC for fixing of fee for Medical Courses met on 20.03.2017 and resolved that the fee fixed is for the period of 3 years Block period i.e., 2016-2019. As was notified copy of resolution enclosed. In view of the above, the Government may be informed accordingly.

Thanking you,

Yours faithfully,

With regards."

In spite of the aforesaid, the State Government kept on representing before the FRC and the FRC again informed the State Government that they have already fixed the fee for the block period i.e., 2016-2019 and the question of again fixation of fee does not arise. The resolution passed by the FRC is reproduced as under:

"TELANGANA ADMISSION AND FEE REGULATORY COMMITTEE
2nd Floor, JNA & FAU Campus, Opp. Mahavir Hospital, Mahavir Marg,
Masab Tank, Hyderabad – 500028.
Ph. 040-23331120, 29802740, 29802741 e-mail: tsafrc@gmail.com,
Website: www.tafrc.cgg.gov.in

Minutes of the meeting of the Medical Committee, constituted by the TAFRC to deal with medical courses, is held on 20.03.2017 in the Chamber of the Hon'ble Chairman, TAFRC.

Members Present:

1.	Hon'ble Sri Justice P. Swaroop Reddy	...	Chairman
2.	Prof. T. Papi Reddy	...	Member
3.	Sri Rajeshwar Tiwari, IAS, Spl. Chief Secretary to Government, Health, Medical and Family Welfare Department, Government of Telangana.	...	Member Secretary
4.	Dr. B. Karunakar Reddy, Vice Chancellor, KLNR UHS, Warangal.	...	Member
5.	Sri G.V. Laxmana Rao, Chartered Accountant, Financial Expert.	...	Member
6.	Smt. D. Vijayakumari, Dy. Secretary to Government, Finance Department, Secretariat, Hyderabad.	...	Member
7.	Dr. N. Srinivasa Rao, Secretary, TSCHE.	...	Spl. Invitee

1) Discussion with regard to fee for Private Medical and Dental Colleges for both P.G. and U.G. courses.

Resolution:

Discussion with regard to fee for Private Medical and Dental Colleges for both P.G. and U.G. courses was held and the Committee observed that the fee for the block period 2016-2019 is already fixed by the TAFRC for under graduate and post graduate medical, dental and other allied courses. However, the Government have issued orders indicating the fee only for one year at a time instead of three years. Therefore, the Committee resolved that there cannot be any question of again fixation of fee for any period of this block period for medical, dental and other allied courses.

2) Any other item with the permission of chair:

No other item came for discussion.

Member Secretary,
Spl. Chief Secretary to Government,
Health, Medical & Family Welfare Department."

In spite of the aforesaid fact that fee was fixed by the FRC, the State Government went ahead in clear violation of the judgments delivered by the Hon'ble Supreme Court in the cases of **Islamic Academic of Education and another** (1 supra) and **P.A. Inamdar and others** (2 supra) and issued G.O.Ms.No.41, dated 09.05.2017 fixing the fee once again in respect of same block period. The said Government order is the subject matter of challenge before this Court. The Hon'ble Supreme Court in paragraph 213 of the

judgment delivered in the case of **Islamic Academic of Education and another** (1 supra) has held as under:

> "213. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, mere are statutes/regulations which govern the fixation of fees and as this Court had, not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider

framing appropriate regulations, if not already, framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation."

Similarly, the Hon'ble Supreme Court in the case of **P.A. Inamdar and others** (2 supra), as a reference was made for constituting a Bench of the coram higher than Constitution Bench, in paragraphs 26, 27, 141, 144, 145 and 148 has held as under:

"Reference for constituting a Bench of a coram higher than Constitution Bench.

26. These matters have been directed to be placed for hearing before a Bench of seven Judges under Orders of the Chief Justice of India pursuant to Order dated July 15, 2004 in ***P.A. Inamdar and Ors. v. State of Maharashtra and Ors.***, MANU/SC/0482/2005 AIR 2005 SC 3226 and order dated July 29, 2004 in ***Pushpagiri Medical Society v. State of Kerala and Ors.*** (2004) 8 SCC 135. The aggrieved persons before us are again classifiable in one class, that is, unaided minority and non-minority institutions imparting professional education. The issues arising for decision before us are only three:

(i) the fixation of 'quota' of admissions/students in respect of unaided professional institutions;

(ii) the holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and

(iii) the fee structure.

The questions spelled out by Orders of Reference

27. In the light of the two orders of reference, referred to hereinabove, we propose to confine our discussion to the questions set out hereunder which, according to us, arise for decision:-

(1) To what extent the State can regulate the admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

(2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether direction made in ***Islamic Academy*** for compulsorily holding entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in ***Pai Foundation***?

(3) Whether ***Islamic Academy*** could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by ***Islamic Academy***?"

> 141. The two committees for **monitoring admission procedure** and **determining fee structure** in the judgment of ***Islamic Academy***, are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.
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> 144. In our considered view, on the basis of judgment in ***Pai Foundation*** and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in ***Islamic Academy*** cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.
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> 145. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or adhoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with ***Unni Krishnan*** Committees which were supposed to be permanent in nature.
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> 148. On Question-4, our conclusion, therefore, is that the judgment in ***Islamic Academy***, in so far as it evolves the scheme of two Committees, one each for ***admission*** and ***fee structure***, does not go beyond the law laid down in ***Pai Foundation*** and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in ***Islamic Academy***, therefore, fails. However, the observation by way of clarification, contained in the later part of para 19 of ***Islamic Academy*** which speaks of quota and fixation of percentage by State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question No.1."

The aforesaid judgments of the Hon'ble Supreme Court make it very clear that the State Government has got no role in the matter of fee fixation and the determination of the fee has to be done by a Regulatory Committee in respect of Unaided Private Professional Institutions. The Hon'ble Supreme Court in the case of **Vasavi Engineering College Parents Association vs. State of Telangana and others**[3] has again looked into the aforesaid issue. Paragraphs 15 to 30 of the said judgment read as under:

[3] (2019) 7 SCC 172

"15. In our considered opinion, the crux of the controversy is the jurisdiction and the extent to which the court can examine the determination of the fee structure by the TAFRC and approved by the State Government, in exercise of the powers of judicial review. TAFRC, a statutory body headed by a retired High Court Judge, consists of domain experts from various fields including two from the finance sector, one of which is from the Government. Rule 3(vii) vests the TAFRC with the power to frame its own procedure in accordance with regulations notified by the Government in that regard and pursuant to which the guidelines for fee fixation have been framed by it. The recommendations of the TAFRC being the resultant of a quasi-judicial decision-making process, it will undoubtedly be amenable to the jurisdiction of the court for scrutiny by judicial review, so as to ensure adherence to the constitutional principles of reasonableness, fairness and adherence to the law under Article 14 of the Constitution.

16. Judicial review, as is well known, lies against the decision-making process and not the merits of the decision itself. If the decision-making process is flawed inter alia by violation of the basic principles of natural justice, is ultra vires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance with the law. The court, in the garb of judicial review, cannot usurp the jurisdiction of the decision maker and make the decision itself. Neither can it act as an appellate authority of the TFARC.

17. In *Fertilizer Corporation Kamgar Union (Regd.), Sindri v Union of India, (1981) 1 SCC 568*, it was observed:

> "35. ....We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

18. Judicial restraint in exercise of Judicial review was considered in the *State (NCT of Delhi) vs. Sanjeev, (2005) 5 SCC 181* as follows:

> "16....One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case) (1985 AC 374). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do

> not exist and which are patently erroneous, such exercise of power will stand vitiated."

19. It needs no emphasis that complex executive decisions in economic matters are necessarily empiric and based on experimentation. Its validity cannot be tested on any rigid principles or the application of any straitjacket formula. The court while adjudging the validity of an executive decision in economic matters must grant a certain measure of freedom or play in the joints to the executive. Not mere errors, but only palpably arbitrary decisions alone can be interfered with in judicial review. The recommendation made by a statutory body consisting of domain experts not being to the satisfaction of the State Government is an entirely different matter with which we were not concerned in the present discussion. The court should therefore be loath to interfere with such recommendation of an expert body, and accepted by the government, unless it suffers from the vice of arbitrariness, irrationality, perversity or violates any provisions of the law under which it is constituted. The court cannot sit as an appellate authority, entering the arena of disputed facts and figures to opine with regard to manner in which the TAFRC ought to have proceeded without any finding of any violation of rules or procedure. If a statutory body has not exercised jurisdiction properly the only option is to remand the matter for fresh consideration and not to usurp the powers of the authority.

20. In *Peerless General Finance and Investment Co. Ltd., vs. Reserve Bank of India, (1992) 2 SCC 343,* it was observed:

> "31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

21. In the context of Indian jurisprudence, the Constitution is the supreme law. All executive or legislative actions have to be tested on the anvil of the same. Such actions will have to draw their sustenance as also their boundaries under the same. Any action falling foul of the constitutional guarantees will call for corrective action in judicial review to ensure adherence to the constitutional ethos. But so long as the fabric of the constitutional ethos is not set as under, the court will have to exercise restraint, more particularly in matters concerning domain experts, else the risk of justice being based on individual perceptions which may render myths as realities inconsistent with the constitutional ethos. Courts often adjudicate disputes that raise the question of how strictly should they scrutinise executive or legislative action. Therefore, courts have identified certain questions as being inappropriate for judicial resolution or have refused on competency grounds to substitute their judgment for that of another person on a particular matter.

22. The need for judicial restraint with regard to recommendations of Expert Committees, more particularly in

matters relating to finance and economics, was considered in *BALCO Employees' Union (Regd.) vs. Union of India, (2002) 2 SCC 333*, it was held:

> "65...Nevertheless, contention is sought to be raised that the method of valuation was faulty, some assets were not taken into consideration and that Rs 551.5 crores offered by M/s. Sterlite did not represent the correct value of 51% shares of the Company along with its controlling interest. It is not for this Court to consider whether the price which was fixed by the Evaluation Committee at Rs.551.5 crores was correct or not. What has to be seen in exercise of judicial review of administrative action is to examine whether proper procedure has been followed and whether the reserve price which was fixed is arbitrarily low and on the face of it, unacceptable.
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> 98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

23. Similar view was taken in *State of A.P. v. P. Laxmi Devi*, (2008) 4 SCC 720, observing as follows:

> "80. ....As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts. It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (*sic* legislature) and try to enforce its own views and perceptions."

24. The need for judicial restraint in economic and financial matters based on reports of domain experts was again considered in *TANGEDCO LTD., v. CSEPDI- Trishe Consortium*, (2017) 4 SCC 318, holding as follows:

> "36.... At this juncture we are obliged to say that in a complex fiscal evaluation the Court has to apply the doctrine of restraint. Several aspects, clauses, contingencies, etc. have to be factored. These calculations are best left to experts and those who have knowledge and skills in the field. The financial computation involved, the capacity and efficiency of the bidder and the perception of feasibility of completion of the project have to be left to the wisdom of the financial experts and consultants. The courts cannot really enter into the said realm in exercise of power of judicial review. We cannot sit in appeal over the financial consultant's assessment. Suffice it to say, it is neither ex facie erroneous nor can we perceive as flawed for being perverse or absurd."

25. *Islamic Academy of Education v. State of Karnataka* ((2003) 6 SCC 697) was a sequel to *T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481*, which was being understood in different perspectives leading to several litigations. The fixation of fee by the TAFRC is not an adversarial exercise but is meant to ensure balance in the fee structure between the competing interest of the students, the institution and the requirement and desire of the society for accessible quality education. It is but a

part of the high concept of fairness in opportunities and accessibility to education, which is an avowed constitutional goal. But to equate it to the extent of a right to challenge and interference only on basis of a different view being possible, cannot be a justification to interfere with the recommendation of an Expert Committee. It is nobody's case that the TAFRC has acted contrary to principles of accounting and economics or any fundamental precincts of the same. In this context, the following observations in *Modern School vs. Union of India*, (2004) 5 SCC 583, are considered relevant in the necessary extract.

> "20. We do not find merit in the above arguments. Before analysing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialisation of education has been a problem area for the last several years. One of the methods of eradicating commercialisation of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organisations/non business organisations....
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> xxx xxx xxx
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> 51. Indisputably, the standard of education, the curricular and cocurricular activities available to the students and various other factors are matters which are relevant for determining of the fee structure. The courts of law having no expertise in the matter and/or having regard to their own limitations keeping in view the principles of judicial review always refrain from laying down precise formulae in such matters. Furthermore, while undertaking such exercise the respective cases of each institution, their plans and programmes for the future expansion and several other factors are required to be taken into consideration. The Constitution Bench in Islamic Academy of Education which as noticed hereinbefore subject to making of an appropriate legislation directed setting up of two Committees, one of which would be for determining fee structure. This Court, both in *T.M.A. Pai Foundation and Islamic Academy of Education* had upheld the rights of the minorities and unaided private institutions to generate a reasonable surplus for future development of education."

26. Before concluding the discussion, in view of the reasons stated by the High Court for fixation of the appropriate fee structure by itself, reference may usefully be made to the observations in *D.N. Jeevaraj vs. Chief Secretary, Government of Karnataka*, (2016) 2 SCC 653, as follows:

> "43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to bypass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so. However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine."

27. The High Court relied on *CAG v. K.S. Jagannathan* (1986) 2 SCC 679 and *Badrinath v. State of T.N* (2000) 8 SCC 395 to justify the taking over of the decision-making process by itself from the TFARC on four grounds. In our opinion, both the judgments are completely distinguishable on their own facts and have no relevance to the question for consideration in the present case. *K.S. Jagannathan (supra)* concerned promotion to the Subordinate Accounts Service. *Badrinath (supra)* related to a claim for promotion to supertime scale. Both the cases have no relevance to the present controversy concerning economic recommendations made by a statutory committee consisting of domain experts, and approved by the Government. We are, therefore, of the considered opinion in the facts of the present case, as demonstrated from the available records that none of the four grounds set out by the High Court can be considered as making out an exceptional case to warrant usurpation of the decision making jurisdiction of the TFARC by the High Court.

28. We, therefore, hold that the High Court exceeded its jurisdiction in interfering with the recommendation of the TAFRC for reasons discussed. The orders of the High Court are set aside. The recommendation of the TAFRC dated 04.02.2017 for the block period 2016-2017 and 2018-2019 is restored.

29. In view of the interim order dated 27.06.2017 passed by the High Court, the bank guarantees furnished by the respondent institutions and directed to be kept alive are required to be activated and action taken accordingly in accordance with law for protection of the interest of the students.

30. The appeals are allowed. No costs."

In the considered opinion of this Court that once the FRC was constituted by the State Government and the fee was fixed by the FRC, the State Government has certainly transgressed its jurisdiction by fixing fee for the block period 2016-2019 and therefore, the Government order issued by the State Government vide G.O.Ms.No.41, dated 09.05.2017, which is not in consonance with the statutory provisions, deserves to be struck down and accordingly, the same is struck down. The net result is that the colleges are entitled only to charge fee, which has been fixed by the FRC for the block period 2016-2019 in terms of G.O.Ms.No.41.

The State Government has issued notification dated 02.05.2016, which is based upon the recommendations of the FRC,

and it is undisputed fact that the FRC has fixed fee for the block period 2016-2019. The notification dated 02.05.2016 is reproduced as under:

"**GOVERNMENT OF TELANGANA**
ABSTRACT

TS – HM&FW Department – Telangana Private Medical/Dental Un-aided Non-Minority Professional Institutions (Admissions into Post Graduate Medical/ Dental Courses) Rules, 2003 – Recommendations of the Admission and Fee Regulatory Committee – Accepted – Orders – Issued.

HEALTH, MEDICAL AND FAMILY WELFARE (C1) DEPARMENT

G.O.Ms.No.29 Dated: 02.05.2016
Read the following:

1. G.O.Ms.No.116, HM&FW (E2) Department, dated 14/05/2010
2. G.O.Ms.No.32, HM&FW (C1) Department, dated 30/04/2015.
3. From the Administrative Officer, TAFRC, Hyderabad, Letter No.TAFRC/Medical(PG)/2016, dated 26/04/2016

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ORDER:-

In the G.O. 1st read above, the Government have fixed the tuition fee per annum for each student for Competent Authority seats (50% of the total intake) and for Management Seats (50% of the Total intake) for PG Medical Courses in Private Medical/Dental Un-aided Non-Minority Institutions for the academic years 2010-11, 2011-12 and 2012-13.

2. In the G.O. 2nd read above, the Government have retained the existing fee structure for PG Medical & Dental Courses in Private Un-aided Non-Minority and Minority Medical & Dental College for the academic year 2015-2016.

3. In the letter 3rd read above, the Administrative Officer, TAFRC, Hyderabad has reported that Telangana Admission and Fee Regulatory Committee for Private Un-aided Professional Colleges in the State of Telangana have finalized the fees for PG Degree/Diploma Courses in Telangana Private Un-aided Non-Minority Medical Colleges.

"The tuition fee per annum for each student fixed for Competent Authority seats (50% of the total intake) and for Management seats (50% of the total intake) for P.G. Medical Courses in Non-Minority Institutions for the academic year 2016-2017."

Nature of seats	Nature of course	Tuition fee per annum
Competent Authority Seats	Clinical Degree Clinical Diploma	Rs. 3,20,000/- Rs. 3,20,000/-
Competent Authority Seats	Para Clinical Degree Para Clinical Diploma	Rs. 88,000/- Rs. 88,000/-
Competent Authority Seats	Non-Clinical Degree Non-Clinical Diploma	Rs. 33,000/- Rs. 33,000/-
Management Seats	Clinical Degree Clinical Diploma	Rs. 5,80,000/- Rs. 5,80,000/-
Management Seats	Para Clinical Degree Para Clinical Diploma	Rs. 1,90,000/- Rs. 1,90,000/-
Management Seats	Non-Clinical Degree Non-Clinical Diploma	Rs. 66,000/- Rs. 66,000/-

4. The Government after careful examination of the matter hereby accept the fee structure as recommended by the Admission and Fee Regulatory Committee as indicated in para 3 above for the Post Graduate Medical Courses in Private Un-aided Non-Minority Medical Colleges in the State for the academic year 2016-2017.

5. The following conditions shall be followed scrupulously by all the private Un-aided Non-Minority Post Graduate Medical Colleges for the P.G. Medical Degree and Diploma Courses:-

(a) The students admitted to the course during the academic year 2016-17 shall pay every year the same annual tuition fee as paid at the time of their admission till they complete the course.

(b) The students who were admitted to the course prior to the academic year 2016-17 shall continue to pay every year the same annual fee at the rate existing at the time of their admission till they complete the course.

(c) The Institutions shall collect the annual tuition fee every year in advance only for that particular year either in lumpsum or in instalments, if it so opts.

(d) The Management of the Institution shall not charge any Capitation fee and there shall not be any profiteering. Except the above fee fixed by the Committee, no other amount, either directly or indirectly, can be charged unauthorizedly or illegally by the Management. If any such other amount is charged under any other head or guise (e.g. donation etc.) it would amount to charging of Capitation fee. The surplus (profit) that is generated from the collection of the fee must be for the benefit of the Institution and cannot be diverted for other purposes or for personal gain.

6. The Registrar, KNR University of Health Sciences, Warangal and Registrar, Dr. NTR University of Health Sciences, Vijayawada shall take necessary action in the matter accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

RAJESHWAR TIWARI
PRINCIPAL SECRETARY TO GOVERNMENT."

In the light of the aforesaid notification, the colleges shall be permitted only to charge the fee, which is notified in the notification for the block period 2016-2019, which is the fee fixed by the FRC.

Resultantly, the writ petitions are allowed and the G.O.Ms.No.41, dated 09.05.2017 is quashed. The students shall pay the fee fixed by the FRC and notified by notification dated 02.05.2016 and in case the fee has been paid as per the notification dated 02.05.2016 for the block period 2016-2019, the colleges shall return all original certificates forthwith to the students. The excess fee, if any charged from the students, be also refunded along with the certificates within a period of 30 days from

today. The colleges are hereby directed not to charge any single rupee extra in respect of any category of fee fixed by the FRC.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

DR. SHAMEEM AKTHER, J

19.01.2022
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