

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **B.VEERAPPA J.**, MADE THE FOLLOWING:-

ORDER

All these writ petitions are filed by the medical students, who have allotted MBBS seats for the academic year 2017-2018 in respondent No.6 college in the Medical counseling conducted by respondent No.4-the Karnataka Examinations Authority (hereinafter referred to as 'the KEA' for short). The last date that was fixed for medical admissions for the academic year 2017-2018 is on 31.08.2017. In the month of September and October 2017, respondent No.6 college demands excess fee for the I year MBBS over and above that fixed by the Government and the KEA. The petitioners paid the excess fee since they were told by the college that it was a one-time payment. In July 2018, petitioners completed I year MBBS course and in August 2018, II year MBBS classes were commenced. All students/petitioners

paid the fees fixed by the Government. Respondent No.6-college once again demands excess fees over and above that fixed by the Government. Some of the petitioners/students have paid excess fee for II year MBBS as demanded by the college.

2. When things stood thus, the parents of the students submitted representation to the Principal of respondent No.6 college against collection of excess fee on 01.09.2018. Again on 04.09.2018 the parents of the students complained to the Admission Overseeing Committee regarding the collection of excess fee. The Admission Overseeing Committee issued notice to the Principal of respondent No.6 college on 18.09.2018. Some of the students have filed writ petitions before this Court challenging the payment of excess fee made by the students. On 31.10.2018, the Admission Overseeing Committee after hearing the college, passed a detailed order taking into consideration the fee fixed by the

Government with consensual agreement. The aforesaid order was subject matter before this Court in WP No.4244/2019 filed by respondent No.6- Rajarajeshwari Medical College and Hospital and about 35 students are the respondents, who are all final year students of MBBS course. The Co-Ordinate Bench of this Court has passed the order dated 15.03.2022 affirming the order passed by the Admission Overseeing Committee.

3. The present writ petitions are filed by all the students for a writ of mandamus directing respondent No.6 college not to collect the fees from the petitioners in excess of the amount prescribed by the Government as per the Medical Seat Fee Structure 2017-2018 at Annexure-C, direct respondent No.6 college to refund excess fee collected over and above fee prescribed and stipulated by the Government and the KEA, issue a writ of prohibition restraining respondent No.6 college from collecting the fee from

the petitioners/students over and above the fees fixed by respondent Nos.1 and 2 for the remaining period of MBBS Course and a writ of mandamus directing respondent No.1-Government to implement the recommendation made by the Admission Overseeing Committee as per the report in File No.KEA/AOC/87/2018-19 dated 31.10.2018 at Annexure-K and also directions to respondent No.5-University to implement, enforce and comply with the direction issued by respondent No.1-Government dated 18.01.2019 vide Annexure-L and a writ of mandamus directing respondent Nos.1 and 5 to impose a fine of Rs.10.00 lakhs on respondent No.6-college payable to each of the petitioners for demanding excess fees and causing harassment and mental agony to the petitioners and their parents and direct respondent No.6 college to pay the damages of Rs.5.00 lakhs to each of the petitioners for illegally demanding and collecting excess fees from the

petitioners and direct respondent Nos.3 and 5 to take appropriate action against respondent No.6 college including reduction of the intake capacity and prohibiting respondent No.6 college from making any admissions for the future Academic years and thereby, sought to allow the writ petitions.

4. Respondent No.6-college filed common objections in the present writ petitions on 11.02.2022 and stated that though the petitioners filed writ petitions for the relief sought for, they voluntarily paid the fees for the academic year 2017-18 without any demand and they have not objected for paying the said amount. At this length of time, they cannot object the same and therefore, they admitted the payment to be paid and accordingly, paid the fees and now, they cannot object the same and seek refund. The relief sought for is totally misconceived and liable to be rejected. It is stated that there is inordinate delay in filing the writ petition, the question of

granting relief at this point of time, does not arise and writ petition is filed an after thought and attempt was made to somehow seek relief along with the others, who have already filed writ petition. It is stated that the petitioners among others are aware of the fact of disclosing payment of fees along with the above said note at the time of counseling and the same has been displayed in the college website. The attempt, if any, or otherwise now at this point of time cannot be questioned because having accepted the conditions in the website apart from the above said payment having accepted and paid the same, now questioning the same would not be permissible. It is further stated that the order passed by the Admission Overseeing Committee on 31.10.2018 is in the nature of directions for refund of the amount by recommending the same to Rajiv Gandhi University of Health Sciences. The said relief having already been granted, the present writ petitions would not be maintainable

and it has become infructuous and accordingly, the same is liable to be dismissed. It is further stated in the additional statement of objections that as per Annexure-R2, Rs.30,000/- towards skill lab fees and Rs.15,000/- towards miscellaneous fees was collected from each students as per directions issued by the KEA. Thereby, sought to dismiss the writ petitions.

5. We have heard the learned counsel for the parties to the *lis*.

6. Sri. Ajoy Kumar Patil, learned counsel for the petitioners contended that collection of excess fee from the students is illegal, arbitrary and violation of Articles 14 and 21 of the Constitution of India. He further contended that the collection of excess fee amounts to extortion and unjust enrichment on the part of respondent No.6 college and same is illegal. Respondent No.6 is only entitled to collect the fees fixed by the Government and the KEA for the

respective category of seats. Any demand for fees in excess of the fees fixed, is arbitrary and contrary to the provisions of the Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) Act, 2006 (hereinafter referred to as 'the KPEI Act, 2006' for short) and that the provisions of 6 (4) of the KPEI Act, 2006 stipulates that the fee determined by the Regulating Committee shall be binding on the professional educational institution for a period of three years and Section 7(2) of KPEI Act, 2006 stipulates the factors for determination of fee and submits that no professional educational institution shall collect any excess fee over and above determined by the Fee Regulatory Committee. However, respondent No.6 - college demanded and collected excess fee over and above fixed by the Government from the petitioners, who are all general merit private students. A sum of Rs.1,48,000/- each for the academic years 2017-2018

and 2018-2019 over and above determined by the Fee Regulatory Committee. He further contended that when the State Government appointed the Admission Overseeing Committee and the Committee now fixed the fee and directed respondent No.6 college to refund the amount excess recovered over and above, it is the duty of respondent No.6 to obey the order passed by the Admission Overseeing Committee and thereby, sought to allow the writ petitions.

7. Sri. C.R. Goulay, learned counsel for respondent No.6 reiterating the objections and the additional statement of objections has contended that the present writ petitions filed by the petitioners are not maintainable as the amount collected in view of the permission granted by the KEA and collection of Rs.30,000/- and Rs.15,000/- from each student is as per the directions of the KEA. Thereby, he contended that after issuance of directions by the Admission Overseeing Committee, respondent No.6 college now

stopped collecting the fees and therefore, payment of refund of amount, which was voluntarily paid by the students would not arise and cannot be recovered by way of writ petitions and sought to dismiss the writ petitions.

8. Sri. N.K. Ramesh, learned counsel for respondent Nos.4 and 5 submits that in view of the order passed by the Admission Overseeing Committee dated 31.10.2018, respondent No.6 is bound to refund the amount, which is collected in excess of fee fixed over and above and further contended that in an identical circumstance, in **W.P. No.4244/2019** in the case of **Rajarajeshwari Medical College and Hospital Vs. About 35 students of II year MBBS Course**, the very respondent No.6 institution challenged the very same order dated 31.10.2018 before this Court and this Court upheld the order passed by the Admission Overseeing Committee. Therefore, sought to dispose of the writ petitions in

order to do the justice to the students, who have paid excess amount over and above fee fixed by the Government. He further contended that Annexures-R2 and R3 produced by respondent No.6 along with the additional objections, is meant only for dental and not for MBBS.

9. Sri. Laxminarayan, learned Government Advocate while supporting the case of the petitioners has contended that in order to curb collection of excess amount over and above fee in the State, the State Government appointed Admission Overseeing Committee and the Committee after hearing all the parties including respondent No.6 college, by order dated 31.10.2018 fixed the fee and passed the order and the said order passed by the Admission Overseeing Committee has been upheld by the Co-Ordinate Bench of this Court in WP No.4244/2019 dated 15.03.2022 and the same has reached finality. Therefore, respondent No.6 is bound by the order

passed by the Admission Overseeing Committee. He further contended that the State Government already directed the Rajiv Gandhi University and Health Science on 18.01.2019 to take action against respondent No.6 institution and sought to dispose of the writ petitions granting the leave as prayed for as the order passed by the Admission Overseeing Committee dated 31.10.2018 has been upheld by this Court.

10. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in the writ petitions are:

"1. Whether the petitioners/students have made out a case to direct respondent No.6 not to collect excess fee prescribed by the State Government for the Medical Seat Fee Structure 2017-18 as per Annexure-C?

2. Whether the petitioners have made out a case to issue directions to respondent No.1-

Government to implement the recommendations of the Admission Overseeing Committee on 31.10.2018?

3. Whether the petitioners are entitled for refund of excess fee amount from respondent No.6?

4. Whether the petitioners have made out a case to impose a fine of Rs.10.00 lakhs on respondent No.6 institution and Rs.5.00 lakhs to each of the petitioners for damages in the peculiar facts and circumstances of the present case?

11. We have given our anxious consideration to the arguments advanced by the learned counsel for the parties and perused the materials on records carefully.

12. It is undisputed fact that the petitioners in the present writ petitions were admitted to respondent No.6 college for MBBS Course for the Academic Year 2017-2018 in the counseling conducted by the KEA. It is also not in dispute that the Medial Seat Fee

Structure was fixed by the State Government and the KEA. For the academic year 2017-18, Government Fee fixed at Rs.77,000/- and Private Fee fixed at Rs.6,32,500/- in respect of Rajarajeshwari Medical College and Hospital, Bangalore – respondent No.6 in the present petition. About three students were admitted on Government quota and other students, were admitted to respondent No.6 on private quota. However, some receipts produced in one of the writ petition as per Annexure-A6, the KEA had collected Rs.6,33,000/- instead of Rs.6,32,500/- and same is not disputed. It is the specific case of the petitioners that after the fee fixed by the Government and the KEA for the academic year 2017-2018 at the time of admission, the institution has demanded and collected the excess amount over and above fee fixed by the Government and it was informed that it is a one-time payment and the same has to be paid. Believing the Management, the petitioners paid the amount in

excess as demanded by respondent No.6 for I year MBBS and when the same was repeated for subsequent years, the parents of the petitioners approached respondent No.6 college against the collection of excess fee and also approached the Admission Overseeing Committee in the year 2018.

13. On the representation made, the Admission Overseeing Committee issued notice to respondent No.6 college and others and ultimately, the Admission Overseeing Committee exercising the power under Section 5 (8) of the KPEI Act, 2006 determined the medical seat fee structures for private seats and Government seats at Rs.1,48,000/- and Rs.48,800/- respectively and passed a detailed order:

"In view of the admission on the part of the institution that they have demanded and collected excess fee under several heads which attract the provisions of Karnataka Educational institutions (Prohibition of Capitation Fee) Act, 1984 and acted contrary to consensual

agreement entered into between the State Government and Association of Minority Professional Institutions. We make it clear that the institution entitled to collect only a sum of Rs.15,000/- towards the Misc.fee in addition to the tuition fee and the university registration fee. Therefore the institution is bound to refund the excess fee collected for the academic years 2017-18 and 2018-19 to the students with 6% interest.

In the light of the above this committee recommends to State Government to direct Rajiv Gandhi University Health Sciences to order for refund of excess fee collected by Rajrajeswari Medical College and Hospital from each of the students for the academic years 2017-18 and 2 year MBBS students for the academic year 2018-19 with 6% interest within the period of 30 days from the date of receipt of said direction, failing which the university may be directed to impose a fine of twice the amount collected and also make necessary recommendations to the Medical Council of India for withdrawal of recognition and affiliation

granted to it and also take necessary action under the provisions of The Karnataka Education Institutions (Regulation of admission determination of Fee) Act, 2006.”

14. Before taking any action, respondent No.6 college filed WP No.4244/2019 before this Court challenging the very order dated 31.10.2018 passed by the Admission Overseeing Committee and to declare the proceedings before the Admission Overseeing Committee is not maintainable and same is impermissible and sought to dismiss the complaint before the Admission Overseeing Committee with exemplary costs and sought to allow the writ petition.

15. The Co-Ordinate Bench of this Court after hearing both the parties by order dated 15.03.2022 dismissed the writ petition filed by respondent No.6 college and observed as under:

“8. The issue, which arises for consideration in this writ petition in substance is, whether

the petitioner is entitled to recover any amount from the students over and above the amount fixed by the Fee Fixation Committee. The Constitution Bench of Supreme Court in Islamic Academy of Education supra in paragraph 6 has held that once fees are fixed by the Committee, an institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. Thus, in view of aforesaid enunciation of law, it is evident that the petitioner is not entitled to recover any amount over and above the fee fixed by the Committee. It is also not in dispute that petitioner has recovered the excess amount from the students over and above the amount fixed by the committee. Therefore, it has to be held that the petitioner is not entitled to recover any amount from the students over and above the amount fixed by the Fee Fixation Committee.

9. Section 4A of the Act deals with method of admission in case of consensual agreement. The Committee has made a recommendation for refund of excess fee charged by the petitioner, on the basis of admitted facts and in view of the complaint made by the students. The recommendation made by the Committee

is in fact based on the agreement executed between the Association of Minority Professional Colleges. It is trite law that mere quoting of wrong provision does not invalidate an order. Merely because, a reference is made to Section 5(8) of the Act, the recommendation made by the Committee cannot be invalidated. The recommendation has been made by the Committee on the basis of admitted facts. The petitioner in view of law laid down by Constitution Bench of Supreme Court cannot be permitted to recover any amount over and above the amount fixed by the Fee Fixation Committee.”

16. Admittedly, the said order passed by the Co-Ordinate Bench of this Court has reached finality.

17. The provisions of Sections 6(4) and 7(2) of the KPEI Act, 2006 read as under:

“6 (4) The fee determined by the Committee shall be binding on the professional educational institution for a period of three years. At the end of the said period the institution would be at liberty to apply for revision. The fee so determined shall be applicable to a candidate

who is admitted to an institution in that academic year and shall not be revised till the completion of his course in the said college. No professional educational institution shall collect a fee amounting to more than one year's fee from a candidate. Collecting of more than one year's fee shall be construed as collecting of capitation fee and shall be liable for penalty under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (Karnataka Act 37 of 1984).

7 (2) No professional educational institution shall collect any fee by whatever name or form called from the candidate for admission to professional educational courses over and above the fee determined by the Fee Regulatory Committee and the fee prescribed by the university concerned."

18. By careful reading of the aforesaid provisions clearly indicate that no professional Educational institution shall collect excess fee over and above determined by the Fee Regulatory Committee. Admittedly, the Fee Regulatory Committee has fixed the admission fee for both the

Government and Private Colleges and fee fixation for the academic year 2017-18 and 2018-19 made by the Fee Regulatory Committee was not challenged. Thereby, the petitioners and the institutions of respondent No.5 are bound by fee structures fixed by the Fee Regulations Committee notified. Thereby, any excess amount collected by respondent No.6 or any other institution is in utter violation of Articles 14 and 21 of the Constitution of India.

19. In the statement of objections, though it is contended by respondent No.6 that students have voluntarily paid the fee, if the institution is running for the education of the students with good intention, in all fairness, they should have directed the students not to pay the excess fee. If they really maintain transparency, they should not have accepted the excess fee and being the educational institution, should act like a "Guru". Therefore, contention of the learned counsel for respondent No.6 that petitioners

voluntarily paid the fee, the same cannot be accepted and they are running the institution for the purpose of marketing education to the students, as money-making machine, which is impermissible.

20. It is also not in dispute that when respondent No.6 filed writ petition before this Court challenging the very order dated 31.10.2018 passed by the Admission Overseeing Committee, wherein the Co-Ordinate Bench of this Court confirmed the order of Admission Overseeing Committee on 15.03.2022, in order to maintain judicial discipline, this Court has to follow the aforesaid judgment, which has reached finality. Thereby, respondent No.6 is bound to refund the excess fee collected from the petitioners for the academic year 2017-18 and 2018-19 and Rajiv Gandhi University has to take action against respondent No.6 as the order passed by the Co-Ordinate Bench of this Court has reached finality and why Rajiv Gandhi University is acting as a fence sitter is not

forthcoming. In order to curb the institution respondent No.6 from collecting the excess amount, it is high time for the State Government and Rajiv Gandhi University to take action against respondent No.6 and ensure the refund of the amount collected from the students for the academic year 2017-2018 and second year MBBS Course and the same be refunded with interest @ 6% within the stipulated period.

21. Now the students are before this Court to implement the order passed by the Admission Overseeing Committee dated 31.10.2018 and this Court already upheld the recommendation made by the Admission Overseeing Committee, which has reached finality, respondent No.6 is bound by the order of the Admission Overseeing Committee stated supra with interest @ 6% within a period of two months from the date of receipt of the order. Thereby, petitioners have made out a case to direct

respondent No.6 not to collect excess amount over and above fee prescribed by the Government for the Medical Seat Fee for the academic year 2017-18 as per Annexure-C and also made out a case to direct respondent No.6 to refund the amount collected over and above from the petitioners/students as per Annexure-C and prohibiting respondent No.6 from collecting fee over and above fixed by respondent Nos.1 and 2 for the remaining MBBS course from the petitioners, who are final year students and respondent No.1 - Government, respondent No.5- Rajiv Gandhi University of Health Sciences and respondent No.4- the KEA are directed to implement the recommendation made by Admission Overseeing Committee dated 31.10.2018 as per Annexure-K in WP No.52425/2019 not only in respect of respondent No.6 and also in respect of other institutions, who have collected excess fee in order to avoid litigation by the similarly situated students in other colleges and

it is high time for the State Government to pass general order issuing directions to all the institutions in the States not to collect excess fee over and above determined by the Government and in view of provisions of Sections 6(4) and 7(2) of the KEPI Act, 2006 in order to prevent the unfortunate students and unfortunate parents unnecessarily approaching this Court for justice. When this Court already taken a view and we confirmed the view, it is the duty of the State Government to protect the students and issue directions to all the colleges including respondent No.6, who collected excess amount over and above fee fixed by the State Government, if the State is really interested in the welfare of the citizens of the State.

22. It is stated by the learned counsel for the petitioners that respondent No.6 college collected the excess fee from some of the students for the

academic year 2017-18, 2018-2019 and 2019-2020, 2020-2021. The same is place on record.

23. The other issue raised with regard to directions to respondent Nos.1 and 5 to impose a fine of Rs.10.00 lakhs on respondent No.6 for demanding excess fee to each petitioners and for damages of Rs.5.00 lakhs to each students, it is for the students to take appropriate action, in accordance with law and such directions cannot be issued in the present writ petitions to that extent and the relief sought for in the prayer (f) and (g) are denied.

24. In view of the above, we pass the following:

ORDER

- i. The writ petitions filed by the petitioners/students are hereby ***allowed***.
- ii. Recommendation made by the Admission Overseeing Committee as per report file

No.KEA/AOC/87/2018-19 dated 31.10.2018 is hereby ***affirmed***.

- iii. Respondent No.6-college is hereby prohibited not to collect excess amount over and above fee fixed by the Government vide Annexure-C for the academic year 2017-2018 and 2018-2019 as per Medical Seat Fee Structure.
- iv. Respondent No.6 is hereby directed to refund the amount collected from the petitioners for the academic years 2017-2018, 2018-2019, 2019-2020 and 2020-2021 over and above fee prescribed by the State Government and the KEA within a period of two months from the date of receipt of the order without giving any room for contempt with interest @ 6% as per the recommendation made by the Admission Overseeing Committee.
- v. It is for the State Government to issue general directions, if the state government is really interested in protecting the rights of the students and ensuring none of the colleges,

including respondent No.6 should collect the excess fee over and above that fixed by the State Government and the KEA for the years 2017-2018, 2018-2019, 2019-2020 and 2020-2021 within a period of 15 days from the date of receipt of the order.

- vi. If State Government is really interested in welfare of the parents and citizens of the State, it is the high time for the State Government to issue such general directions.

Ordered accordingly.

**Sd/-
JUDGE**

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JUDGE**