

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6654 OF 2018

(Arising out of Special Leave Petition (Civil) No.30567 of 2016)

M. Aamira Fathima and Others

.....Appellants

VERSUS

Annamalai University and Others

..... Respondents

WITH

CIVIL APPEAL NOS. 6655-56 OF 2018

(Arising out of Special Leave Petition (Civil) No.30658-30659 of 2016)

WITH

CIVIL APPEAL NO.6657-59 OF 2018

(Arising out of Special Leave Petition (Civil) No.31078-31080 of 2016)

WITH

CIVIL APPEAL NO.6660 OF 2018

(Arising out of Special Leave Petition (Civil) No.9806 of 2017)

WITH

CIVIL APPEAL NO.6661 OF 2018

(Arising out of Special Leave Petition (Civil) No.28543 of 2017)

JUDGMENT

Uday Umesh Lalit, J.

Special leave to appeal granted in all matters.

These appeals are directed against the common judgment and order dated 26.09.2016 passed by the High Court of Judicature at Madras in Writ Appeal No.1637 of 2014 and other connected matters. Matter arising from Writ Appeal No.1637 of 2014 which in turn arose from Writ Petition No.20720 of 2014, namely M. Aamira Fathima and others v. Annamalai University and others is taken to be the lead matter and the facts leading to the filing of the said writ appeal are set out in detail hereunder.

2. Annamalai University (hereinafter referred to as “the University”) was constituted under the Annamalai University Act, 1928 (Madras Act No.1 of 1929)¹. This Act received the assents of Governor and Governor General on 03.11.1928 and 11.12.1928 respectively and was first published in the Fort of St. George Gazette dated 01.01.1929. The University established Respondent No.2 College, namely, Rajah Muthiah Medical College in the year 1985.

¹Words “Tamil Nadu” were substituted for the word “Madras” by Tamil Nadu Adaptation of Law and Order, 1969

3. In 1992 the State legislature enacted the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 (hereinafter referred to as “1992 Act”). Section 2(b) defined Educational Institution as under:-

“(b) “educational institution” means any institution by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu and any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament) as the Government may, by notification, specify;”

Section 4 dealt with regulation of tuition fee or other fees or deposits and was initially as under:-

“4. (1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students :

Provided that before issuing a notification under this subsection, the draft of which shall be published in the *Tamil Nadu Government Gazette* stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it.”

4. After the judgment of this Court in *Islamic Academy of Education and another v. State of Karnataka and others*², sub-section (2-A) was added along with an Explanation in Section 4 of 1992 Act by the State Legislature vide Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Amendment Act, 2007. As a result of the aforesaid insertion of sub-section (2-A) and Explanation, Section 4 of 1992 Act now reads as under:

“4. (1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students :

Provided that before issuing a notification under this sub-section, the draft of which shall be published in the *Tamil Nadu Government Gazette* stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

²(2003) 6 SCC 697

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), no educational institution imparting education leading to a degree in medicine or engineering shall receive or collect any fee in excess of the amount fixed by the 'Committee on fixation of fee' constituted by the Government.

Explanation – For the purpose of this sub-section 'Committee on fixation of fee' means the Committee constituted in pursuance of the direction of the Supreme Court in *Islamic Academy of Education and another v. State of Karnataka and others* [(2002) 6 SCC 697].

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it.”

5. The University, though originally established as a private University had always received contributions and funding from the State Government. But the University never adhered to the statutory provisions or the norms set by the State Government or the University Grants Commission resulting in financial losses during the years 2009-10 and 2010-11. Under the orders passed by the Government of Tamil Nadu a Special Local Fund Audit Team was appointed which found various irregularities, whereafter by another order dated 14.12.2012 a High Level Committee was constituted to analyze the audit report submitted by the Special Local Fund Audit Team. The events which took place thereafter were summed up by the Single Judge in the instant matters and the relevant observations in paragraphs 17 to 19 are quoted hereunder:

“17. After examining the report and the supporting material, this High Level Committee concluded that the Founder had grossly abused the privileges conferred upon him and that despite receiving grants from the State Government to the tune of Rs.427.98 crores during the period from 1998-99 to 2012-13, the University had landed up in serious financial crisis. Therefore, the Committee recommended that the Government shall issue necessary directions to the Senate and the Syndicate and also to appoint some person to carry out those directions.

18. In pursuance of the aforesaid recommendations, the Government issued a letter dated 7.3.2013 to the Vice Chancellor, to convene the meeting of the Syndicate and Senate, to respond to the report of the Special Local Fund Audit Team. A special meeting of the Senate was held on 13.3.2013 and the meeting of the Syndicate was held on 14.3.2013. The report of the Syndicate showed that by and large, the findings of the Special Local Fund Audit Team were correct. Therefore, the Government issued a directive on 26.3.2013 to convene a special meeting of the Senate and the Syndicate. This was opposed by the Vice-Chancellor by a reply dated 1.4.2013 on the ground that a second meeting will serve no purpose.

19. Therefore, the Government, by G.O. Rt. No.1401, Public Department dated 4.4.2013, appointed an Administrator in exercise of the powers conferred by Section 28(4) of the Annamalai University Act, 1928.”

6. In 2013, the State Legislature enacted the Annamalai University Act, 2013 (hereinafter referred to as “2013 Act”) which came into force w.e.f. 25.09.2013 and repealed the Annamalai University Act, 1928. Sections 3(1), 4(13) and 20(1)(m) and (ab) of said 2013 Act were as under:

“3(1) On and from the date of commencement of this Act, the Annamalai University established under the Annamalai University Act, 1928 shall be deemed to have been established and incorporated

under this Act and is hereby declared to be the University by the aforesaid name.

4. The University shall have the following objects and powers, namely:-

(1) to (12).....

(13) to fix fees and to demand and receive such fees as may be prescribed;

“20. (1) The Syndicate shall have the following powers, namely:-

(a) to (l).....

(m) to prescribe the fees to be charged for admission to the examinations, degrees, titles and diplomas of the University and for all or any of the purposes specified in section 4:

(n) to (z)(aa).....

(ab) to charge and collect such fees as may be prescribed;

(ac) to (an).....”

7. 150 students who had taken admission in First MBBS Course in Respondent No.2 College for the Academic Session 2013-14 preferred Writ Petition No.20720 of 2014 in the High Court of Judicature at Madras questioning fees of more than Rs.5.54 lakhs per annum imposed by the University. Similar challenge was raised by students studying in Dental Courses which petitions were heard and dealt with by the High Court along with the main matter. It was urged by the petitioners that the fees fixed in

Government Colleges in the State were Rs.12,290/- for MBBS Course and Rs.10,290/- for BDS Course; that the Committee on Fixation of Fee constituted in terms of 1992 Act had fixed the tuition fees for MBBS Course at Rs.2.30 lakhs for two self-financing colleges, Rs.2.60 lakhs for one self-financing college and Rs.2.80 for other self-financing colleges and that in so far as ESI Medical Colleges were concerned, it had fixed the tuition fees at Rs.24,000/-. Highlighting the enormous difference between the fees charged by the University on one hand and the scale fixed by the Government as well as the Committee on Fixation of Fee on the other, it was prayed that the matter for fixation of fee be referred to the Committee in terms of 1992 Act.

8. While opposing the aforesaid submissions, it was contended on behalf of the University that the fees stipulated by the University were in terms of its statutes and the provisions of 2013 Act: that the object of 1992 Act was to curtail the menace of self-financing colleges imposing high fees and that the Government Colleges and State Universities did not come within the purview of 1992 Act: that presently the University was running in deficit and if the fee structure was reduced it would put the financial condition of the University in great jeopardy.

9. The Single Judge of the High Court by his common Judgment and Order dated 02.12.2014 dismissed the challenge raised by the petitioners. It was observed that the petitioners having been admitted to MBBS and BDS Courses in pursuance of the prospectus for the year 2013-14, were bound by the terms and conditions contained therein and were therefore estopped from raising any challenge. Reliance in that behalf was placed on the decision of this Court in *Cochin University of Science and Technology and another v. Thomas P. John and others*³. The Single Judge then proceeded to consider whether the provisions of 1992 Act would apply and get attracted in the present case. After considering the definition of Educational Institution under Section 2(e) of 1992 Act, he observed that for the purposes of application of the provisions of 1992 Act, the concerned Institution must have been notified by the State Government under the said 1992 Act. It was further observed that the University was initially established in pre-independence days and merely because the earlier Act was repealed and replaced by 2013 Act, the first limb of Section 2(b) would not apply without the State Government referring the University to the Fee Fixation Committee.

³(2008) 8 SCC 82

10. The correctness of the decision of the Single Judge was questioned by the students by filing Writ Appeal Nos.1637 and 1638 of 2014. Writ Petition Nos.6909, 6910, 12515, 27098 and 31848 of 2015 and 14562, 22911 and 26388 of 2016 preferred by some of the students were also heard along with said writ appeals by the Division Bench of the High Court. By its common judgment and order dated 26.09.2016 the Division Bench rejected the challenge and dismissed the appeals. The Division Bench affirmed the reasoning which weighed with the Single Judge. It went on to observe that the University was empowered under 2013 Act to fix, demand and receive such fees as were prescribed.

11. These appeals by special leave question the correctness of the decision rendered by the Division Bench of the High Court. Mr. Ranjit Kumar, learned Senior Advocate while leading the arguments on behalf of the petitioners, submitted that it was completely erroneous on part of the High Court to observe that the provisions of 1992 Act would not apply in the present case. He further submitted that on plain reading of its provisions, 1992 Act must apply and get attracted in the present case. These submissions were countered by Mr. S. Nandakumar, learned Advocate who appeared for the University. In his submission, the provisions of 1992 Act

would not get attracted without an appropriate reference having been made by the State Government to the Fee Fixation Committee.

12. In the present case the Single Judge considered the definition of Educational Institution as appearing in Section 2(e) of 1992 Act and came to the conclusion that for the purposes of application of the provisions of 1992 Act the concerned institution ought to have been notified by the State Government and an appropriate reference must be made to the Fee Fixation Committee. This reasoning has been affirmed by the Division Bench. It is, therefore crucial to consider the scope and ambit of the said provision. For facility the definition of “educational institution” can be divided in two parts as under:

Section 2(b) “educational institution” means:

(I) any institution by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu.

and

(II) any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament) as the Government may, by notification, specify.

According to (I) part, the activity must lead to award of degree or diploma conferred by any University established under any law made by the Legislature of the State. There is element of certainty about this first part of definition and it is not left to the discretion of the Government in any manner. If there is a course which leads to award of degree or diploma by any University as specified, the concerned institution carrying on the activity of imparting education would be an educational institution within the meaning of said Section 2(b).

The definition has an inclusive provision which is specified in the (II) part and empowers the Government to specify any other educational institution or class or classes of educational institutions. Upon such specification by notification, such institution or class or classes of institutions would also stand covered by the definition. The (II) part also contains a bracketed portion which is an exclusionary aspect of the definition. This bracketed portion excludes any institution established by the

Central Government or under any law made by the Parliament with respect to which the State Government cannot, even by exercising power of specification include such institution.

13. The aforesaid analysis thus conclusively establishes that in so far as cases covered under (I) Part are concerned, no specification by the Government is required or necessary. If the concerned activity leads to award of degree or diploma by any University established under any law made by the State Legislature, such institution shall be “educational institution” within the meaning of provisions of Section 2(b). The specification by notification is a pre-requisite only if the institution concerned is otherwise not covered under (I) Part. The High Court was completely in error in observing that for the application by the provisions of 1992 Act an educational institution must always be specified by the Government by notification. In our view, the requirement of specification of notification is only in respect of “any other educational institution or class or classes of educational institutions” and has not to be read with (I) part of definition, which part of the definition is an independent and stand alone provision and does not require any specification by the Government.

14. The next question which must be considered is whether University in the present case answers the description in (I) Part of Section 3(b) of 1992 Act. According to Section 3(1) of 2013 Act, on and from the commencement of said Act the University established under the Annamalai University Act, 1928 shall be deemed to have been established and incorporated under the provisions of 2013 Act. It is well settled that whenever a Legislation deems, by way of legal fiction that a particular state of affairs has to be assumed, that legal fiction has to be given full effect. After quoting famous passage of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*⁴, this Court in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others*⁵ held that the legal fiction engrafted in Explanation I to Section 6 of the Hindu Succession must be given due and full effect. There is thus no escape from the situation that the University in the present case is the one established under any law made by the Legislature of the State of Tamil Nadu.

⁴1952 AC 109, 132 =(1951) 2 All ER 587

“If you are bidden to treat an imaginary state of affairs as real, you must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it; and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

⁵(1978) 3 SCC 383

15. In *Islamic* (supra), this Court directed constitution of two Committees, namely, Fee Fixation Committee and Admissions Committee. Paragraph 7 of the decision dealt with the concept of Fixation of Fee by the Committee and said paragraph was as under:

“7. 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, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in *T.M.A. Pai 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 the total number of members of the Committee shall not exceed five. 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."

16. The directions issued in *Islamic* (supra) including one regarding constitution of Fee Fixation Committee came up for consideration in *P.A.*

*Inamdar and others v. State of Maharashtra and others*⁶ and the matter was settled in following terms:

“151. On Question 4, our conclusion, therefore, is that the judgment in Islamic Academy insofar as it evolves the scheme of the 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 the two Committees in accordance with the decision in Islamic Academy therefore, fails.....”

17. But the situation in the present matter stands on a slightly different footing inasmuch as by inserting sub-section (2-A) along with an explanation in Section 4 in 1992 Act, Fee Fixation Committee is a statutory mechanism in terms of said provisions of 1992 Act. Said Section 4 shows that under sub-section (1) the Government is empowered to regulate the tuition fee or any other fees or deposits in the manner prescribed therein. But in relation to imparting of education leading to a degree in medicine or engineering, sub-section (2-A) has been given an overriding effect by incorporating non-obstante provision. Sub-section (2-A), unlike sub-section (1), does not require any notification by the Government. If an institution carries on activity of imparting education leading to a degree or diploma as spoken of in sub-section (2-A) of said Section 4, the fee structure has to be that which is fixed by the Committee. The legislative intent is very clear and

⁶(2005) 6 SCC 537

no educational institution which comes within the scope of sub-section (2-A) can receive or collect any fees in excess of the amount fixed by the “Committee on Fixation of Fee”.

18. We now have to deal with the submission whether the University by virtue of Section 4(13) and 20(1)(m) of 2013 Act could charge, collect and receive tuition fee without the intervention of “Committee on Fixation of Fee” as contemplated by Section 4(2-A) of 1992 Act. The University by its very nature of activities would be running numerous courses and to that extent provisions of 2013 Act are general in nature. The provisions of Section 4(2-A) of 1992 Act are specific and special and apply to courses leading to degrees in Medicine and Engineering. Therefore, insofar as professional courses leading to degrees in Medicine and Engineering are concerned, the matter must be screened and assessed by Committee on Fixation of Fee and the submission that the University was entitled to fix fees on its own without the intervention of such Committee has to be rejected. The other submission that the students were estopped from raising a challenge must also fail. If a particular modality is prescribed by the Legislature any action in defiance or ignorance of such modality cannot be protected or preserved on the plea of estoppel. The reliance placed on the decision of this Court in *Cochin University of Science and Technology*

(supra) was also misplaced. In that case students who had taken admission in NRI Quota, thereafter contended that their fee structure be slashed to the same level as applicable to non NRI students. The concept of estoppel was pressed into service while rejecting said submission but that cannot be a ground to deny the express protection available under a legislation.

19. We, therefore, allow these appeals and set aside the judgments and orders under appeal. We hold that the University was not entitled and competent to devise its own fee structure in the present matter without having the fee fixed by the Committee on Fixation of Fee as contemplated under 1992 Act. The matters shall therefore have to be referred to said Committee and the University is directed to place the entire material including its balance-sheet and accounts before the Committee on Fixation of Fee within two weeks from the date of this Judgment. The Committee shall thereafter bestow attention and fix appropriate fee structure for the academic year 2013-14 onwards. It goes without saying that if the fee structure fixed by the University is found by the Committee to be inappropriate, consequential benefit and advantage shall be given to each and every student. The Committee shall fix the appropriate fee structure for the current academic Session 2018-19 as well. The entire exercise shall be completed by 31.08.2018.

20. These appeals stand allowed in aforesaid terms. No costs.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

New Delhi,
July 13, 2018