

Court No. - 19

(1) **Case :-** WRIT - C No. - 10329 of 2024;

Petitioner :- G.S. Medical College And Hospital, Ghaziabad Thru. Deputy Director Sri. Mukul Sharma

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education, Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(2) **Case :-** WRIT - C No. - 10335 of 2024;

Petitioner :- Saraswathi Institute Of Medical Sciences, Thru. General Manager Sri. Nanjappa Gowder Varadharajan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education, Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(3) **Case :-** WRIT - C No. - 10337 of 2024;

Petitioner :- Sharda University, Greater Noida Thru. Registrar

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Medical Education, Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(4) **Case :-** WRIT - C No. - 10338 of 2024;

Petitioner :- Noida International Institute Of Medical Sciences, Thru. Secy. Dr. Devesh Kumar Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education, Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal, Aishvarya Mathur

Counsel for Respondent :- C.S.C.

(5) **Case :-** WRIT - C No. - 10348 of 2024;

Petitioner :- M/S Heritage Institute Of Medical Sciences, Varanasi Thru. Its Auth. Signatory Sri Bablu Kahaujia

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education, Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(6) **Case :-** WRIT - C No. - 10350 of 2024;

Petitioner :- United Institute Of Medical Sciences, Prayagraj Thru.
Authorised Signatory Sri Lal Mani Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(7) **Case :-** WRIT - C No. - 10352 of 2024;

Petitioner :- Dr. K.N.S. Institute Of Medical Sciences, Barabanki Thru.
Registrar Sri. Ranjit Kumar Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal, Aishvarya Mathur

Counsel for Respondent :- C.S.C.

(8) **Case :-** WRIT - C No. - 10410 of 2024;

Petitioner :- T.S. Misra Medical College And Hospital, Lucknow Thru.
Authorised Signatory, Sri Desh Deepak

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Sunil Kumar Chaudhary, Mudit Agarwal

Counsel for Respondent :- C.S.C.

(9) **Case :-** WRIT - C No. - 10446 of 2024;

Petitioner :- Naraina Medical College And Research Centre, Kanpur
Thru. Prin./Authorised Signatory Virendra Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(10) **Case :-** WRIT - C No. - 10447 of 2024;

Petitioner :- Kanti Devi Medical College Hospital And Research Center,
Mathura Thru. Chairman Manoj Agrawal

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(11) **Case :-** WRIT - C No. - 10457 of 2024;

Petitioner :- Krishna Mohan Medical College And Hospital, Mathura
Thru. Auth. Signatory Sri. Sumit Kumar Sharma

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(12) **Case :-** WRIT - C No. - 10660 of 2024; AND

Petitioner :- Rama Medical College, Hospital And Research Centre,
Kanpur Thru. Law Officer Sri. Shyamlal Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

(13) **Case :-** WRIT - C No. - 10661 of 2024

Petitioner :- Rama Medical College, Hospital And Research Centre,
Hapur Thru. Law Officer, Sri Shyamlal Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Medical Education,
Lucknow And Others

Counsel for Petitioner :- Mudit Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. J. N. Mathur, Senior Advocate assisted by Mr. Mudit Agarwal, Ms. Aishvarya Mathur and Mr. Sunil Kumar Chaudhary learned counsel appearing for petitioners and Mr. V.K. Shahi, learned Additional Advocate General, assisted by Mr. Rahul Shukla, learned State Counsel for opposite parties.

2. On 03.12.2024, the following order had been passed:-

"1. Supplementary affidavit filed today is taken on record.

2. Heard Mr. J.N. Mathur, learned Senior Counsel assisted by Mr. Mudit Agarwal and Ms. Aishvarya Mathur, learned counsel for petitioner and learned State Counsel for opposite parties.

3. Petition has been filed challenging notification dated 28.10.2024 whereby fees for various Medical/Dental Institutions has been notified by the State Government.

4. Learned counsel for petitioner submits that earlier Fee Fixation Committee from Medical and Dental courses was notified by the Government on 12.06.2024 whereafter by means of notification dated 11.07.2024, fees structure for the Academic Session 2024-25 was notified by the State Government which was challenged in Writ-C No. 6828 of 2024 primarily on the ground that the notification had been issued

without jurisdiction inasmuch as the notification could not have been issued straightaway by the State Government without determination of fees structure by the Committee in terms of Section 10 of the U.P. Private Professional Educational Institutions (Regulations of Admission and Fixation of Fee) Act, 2006 as well as the Rules framed thereunder in 2008.

5. Learned counsel for petitioner has drawn attention to the judgment and order dated 17.08.2024 passed in the aforesaid writ petition whereby while allowing the writ petition, certain directions were issued, particularly for the aspect that the Fee Regulatory Committee would fix the fee for Academic Session 2024-25 in respect of institutions before the Court in accordance with law for which they were required to submit all the documents and proposals, if not already done by 24.08.2024 whereafter the Committee was required to determine the fee for Academic Session 2024-25 by 24.09.2024. Direction was issued for the Committee to consider request of the institution for enhancement of fee in proportion to the rate of inflation on the fee determined earlier for the Academic Session 2021-22 as provided for by this Court passed as an interim measure in the said writ petition on 14.08.2024. Other directions with regard to procedure for enhancement on payment of such fee was also indicated.

6. It is also submitted that this Court also directed the Chief Secretary Government U.P. to conduct an inquiry against persons responsible for delay in constitution of Fee Fixation Committee and for conclusion of such inquiry within two months and for Fee Fixation Committee to proceed and determine the fee well in advance for mid-session failing which they will be liable to be proceeded in contempt.

7. It has been submitted that despite such specific directions having been issued by this Court, the impugned notification has been issued again without any determination of fee by the Fee Fixation Committee as would be evident from the impugned notification itself.

8. Considering the aforesaid aspects and upon perusal of the judgment and order dated 17.08.2024, learned State Counsel is granted a week's time to obtain instructions particularly with regard to the following three aspects:-

(a). Whether any opportunity of hearing as envisaged under

Section 10 of the Act of 2006 was provided to the institutions concerned and the dates on which opportunity of hearing was given and its procedure?

(b). Whether the Fee Fixation Committee has determined the fee structure for Medical/Dental Institutions in accordance with judgment and order dated 17.08.2024 passed in Writ-C No. 6828 of 2024?

(c). Whether the inquiry as directed by this Court in the aforesaid judgment has been conducted by the Chief Secretary, Government of U.P.?

9. In case questions no. (b) and (c) are answered in affirmative, copies thereof shall be brought on record by an affidavit.

10. The preliminary objections raised by learned State Counsel pertaining to improper authorization in filing the writ petition as well as the aspect of alternative and efficacious remedy available to petitioner under Section 11 of the Act of 2006 shall be adjudicated upon on the next date of listing subject to the instructions provided to State Counsel.

11. List this case on 11.12.2024, as fresh."

3. In pursuance of aforesaid directions, affidavit dated 11.12.2024 has been filed on behalf of opposite parties.

4. Learned State Counsel has reiterated the preliminary objection regarding maintainability of above petitions in view of the fact that petitioners have an alternative and equally efficacious remedy of filing Appeal under Section 12 of U.P. Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 [hereinafter referred to as the Act of 2006]. Response thereto has been given by learned counsel for petitioners. In view of said reiteration, an additional question is framed as follows:

(d) Whether petition would be maintainable in view of appellate remedy available to petitioners in terms of Section 11 of the Act of 2006?

5. Since preliminary objections involve mixed questions of

facts and law, the same shall be adjudicated upon along with the factual aspects.

Question No.(a) :

(a) Whether any opportunity of hearing as envisaged under Section 10 of the Act of 2006 was provided to the institutions concerned and the dates on which opportunity of hearing was given and its procedure?

6. With regard to Question No.(a) framed by this Court on 03.12.2024, learned State Counsel has adverted to Minutes of Meeting of Fee Fixation Committee held on 04.09.2024; 09.09.2024; 10.09.2024; 20.09.2024; 24.09.2024 and 30.09.2024 to submit that delegations from the Colleges concerned were invited to put forth their submissions. It is submitted that Minutes of Meeting of Fee Fixation Committee clearly indicates representatives of institutions who appeared before the Committee and submitted their applications. It is submitted that Minutes of Meeting also indicates the fact that apart from submissions of Applications, oral opportunity of hearing was also provided to such representatives of the institutions. It is therefore submitted that appropriate and adequate opportunity of hearing was provided to all the institutions concerned in terms of Section 10 of the Act. It is also submitted that since there is no specific procedure prescribed for providing opportunity of hearing, adequate opportunity of hearing as indicated in Minutes of Meeting was provided.

7. In response thereto, learned counsel for petitioners submit that the Minutes of Meeting indicates the fact that only Applications were required to be submitted by the Institutions concerned and although Minutes of Meeting indicate that oral opportunity of hearing was also provided but the same is not reflected either in the earlier Minutes of Meeting or even in the penultimate meeting of the Fee Fixation Committee dated

08.10.2024. It is submitted that opportunity of hearing as required in terms of Section 10(2) of the Act of 2006 cannot be an empty formality and submissions once raised by the Institutions concerned were required to be addressed by the Committee.

8. Upon perusal of material on record, particularly the Minutes of Meeting of the Committee, it is evident that although it narrates names of representative of the Institutions concerned as well as the fact that oral opportunity of hearing was also provided to all such representatives, none of the Minutes of Meeting including the penultimate one of 08.10.2024 indicate any discussion with regard to submissions which were raised by such representatives.

9. In the considered opinion of this Court, opportunity of hearing is required to be provided by the Committee pertaining to fixation of fee in terms of Section 10(2) of the Act of 2006. Such an opportunity of hearing cannot be an empty formality requiring only the presence of representatives of or Application to be submitted by the institutions concerned. Once such an application is submitted or even orally made by representatives of the Institutions, they are mandatorily required to be addressed by the Committee in the final orders pertaining to Fixation of Fee. Such a procedure having not been followed in the present case, clearly indicates violation of Section 10 (2) of the Act of 2006.

10. In view thereof, this Court finds the answer to question no.1 being negative against the opposite parties.

Question No.(b) :

(b) Whether the Fee Fixation Committee has determined the fee structure for Medical/Dental Institutions in accordance with judgment and order dated 17.08.2024 passed in Writ-C No. 6828 of 2024?

11. The scope of Question No.(b) is extended to determination whether the fee structure determined by the Fee Fixation Committee is in accordance not only with the judgment and order dated 17.08.2024 but also in terms of Section 10 of the Act of 2006.

12. With regard to Question No.(b), learned counsel for petitioners has adverted to Minutes of Meeting of the Committee dated 20.09.2024 indicating appointment of a Chartered Accountant for the purposes of submitting a report pertaining to criteria laid down by the Committee on 20.09.2024.

13. He has thereafter adverted to Minutes of Meeting dated 24.09.2024 to submit that in pursuance of his appointment, the Chartered Accountant submitted a report pertaining to profitability of the Institutions concerned. Minutes of Meeting dated 24.09.2024 adverted to aforesaid report and thereafter created three classes of Institutions with the first category pertaining to those Institutions whose audited balance sheet indicated profitability of 15 per cent. It is submitted that for such category, the Committee found that there was no occasion to determine any enhancement of fee.

14. The second category pertains to those Institutions whose submitted documents were apparently perused by the Committee, which did not find any occasion to enhance fee.

15. The third category pertains to those institutions who were permitted to enhance their fee.

16. Learned counsel for petitioners submit that the petitioner-institutions come primarily under the first and second category. It is submitted that a perusal of Minutes of Meeting of the Committee will make it evident that aforesaid Minutes of Meeting are not an order at all as contemplated in terms of

Section 10 of the Act of 2006 and are in fact only recommendations and therefore since there is no order passed by the Fee Fixation Committee, there is no occasion for petitioners to file an appeal, which under Section 11 of the Act of 2006 can be filed only against an order of the Committee fixing fee in terms of Section 10 of the Act of 2006.

17. It is further submitted that even otherwise, the Minutes of Meeting of the Committee clearly pertain to considerations made on factors not coming within the scope of Section 10 of the Act of 2006 and are also therefore vitiated.

18. It is also submitted that for aforesaid reasons, the Minutes of Meeting are also not in consonance with directions issued by this Court earlier on 17.08.2024.

19. Learned State Counsel has refuted the submissions advanced by learned counsel for petitioners with the submission that mere inclusion of the word '*Sanstuti*' would not make the orders passed by the Fee Fixation Committee to be mere recommendations and are in fact orders in terms of Section 10 of the Act of 2006. It is also submitted that the factors indicated in Section 10 of the Act of 2006 as well as in the directions issued by this Court on 17.08.2024 have been fully complied with.

20. For purposes of adjudication of aforesaid question, the provisions of Section 10 of the Act of 2006 are required to be examined. The aforesaid Section is as follows:-

"10.(1) The Committee shall determine, the fee to be charged by a private aided or unaided professional educational institution having regard to:-

(i) the nature of the professional course,

(ii) the available infrastructure,

(iii) a reasonable surplus required for growth and development of the

professional institution,

(iv) the expenditure on administration and maintenance,

(v) the expenditure on teaching and non teaching employees of the institution,

(vi) any other relevant factor.

(2) The Committee, shall give the institution an opportunity of being heard before fixing any fee:-

Provided that no such fee, as may be fixed by the Committee, shall amount to profiteering or commercialization of education."

21. A perusal of the Minutes of Meeting particularly of 20.09.2024 and 24.09.2024 along with that of 08.10.2024 evidences the criteria laid down by the Fee Fixation Committee and a final decision has thereafter been accorded in the Meeting dated 08.10.2024. Although the language of order indicates it to be a recommendation being made to the State Government but since not only the criteria but actual fixation of fee has been indicated in the Minutes of Meeting indicated herein above, the aforesaid minutes of meeting, particularly of 24.09.2024 and 08.10.2024 can be deemed to be final orders passed by the Fee Fixation Committee, against which an appeal can be preferred by petitioner-institutions. It is also evident that the Fee Fixation Committee should in fact have indicated that final orders pertaining to Fee Fixation is being passed in terms of Section 10 of the Act of 2006 instead of indicating it to be a recommendation. Nonetheless, as held herein above, same can be deemed to be orders passed under the Act.

22. The Act of 2006, particularly Section 10 thereof, clearly indicates the factors which are required to be taken into account by the Fee Determination Committee for the purposes of fixation of fee of educational institutions covered under the said Act. The same is a mandate upon the Fee Fixation Committee in terms of order dated 12.06.2024 whereunder the Committee

was constituted by the State Government.

23. In view of provisions of Section 10 of the Act of 2006, the Committee was bound statutorily to consider the aspects pertaining to nature of the professional course, available infrastructure of the institute as well as expenditures incurred and reasonable surplus required for growth and development of the institutions.

24. The wordings of Section 10 of the Act of 2006 relate to a particular institution whereunder the Committee is required to consider the aspects indicated in Section 10 of the Act of 2006 for each individual institution since the factors enumerated in Section 10 of the Act would be quite different for each institution. Evidently a collective order pertaining to all institutions categorizing them is not envisaged under Section 10 of the Act as has been done in the present case.

25. A perusal of the Minutes of Meeting dated 20.09.2024 evidences the factors which have been laid down by the Committee for determination of fee structure of the institutes in paragraph 3 thereof. However none of the factors indicated in the Minutes of Meeting dated 20.09.2024 are relatable to the factors indicated in Section 10 of the Act of 2006.

26. In the considered opinion of this Court, the factors indicated in Section 10 of the Act of 2006 are binding upon the Committee and have necessarily to be adverted to while determining the fee structure. Additional issues or aspects may be considered by the Committee in terms of Section 10 (1)(vi) but the factors indicated in Section 10(1)(i) to (v) are necessarily and mandatorily required to be adverted to by the Committee.

27. A perusal of Minutes of Meeting dated 20.09.2024 and 24.09.2024 however reveals that categorization of institutes has

been made primarily on the basis of report submitted by a Chartered Accountant, which also appears to pertain only to the audited balance sheet submitted by the institutes.

28. Even if it is assumed that the Chartered Accountant in his report had adverted to conditions indicated in Section 10(1) of the Act of 2006, it was the bounden duty of the Committee also to have adverted to same and to have deliberated upon it in its order while determining fee structure in terms of Section 10 of the Act of 2006.

29. Despite such a statutory mandate upon the Committee, this Court does not find any discussion whatsoever in the Minutes of the Meetings of the Committee pertaining to the factors enumerated in Section 10(1) of the Act of 2006.

30. In view of discussion made herein above, it is therefore evident that the Minutes of Meetings of the Committee and determination of fee structure by the Committee is not in consonance either with Section 10 (1) of the Act of 2006 nor of the judgment and order dated 17.08.2024 passed in Writ C No. 6828 of 2024, which also pertains to direction being made to the Committee to determine fee structure in accordance with the Act of 2006.

31. Considering aforesaid discussion, the question no. (b) is determined in the negative against the opposite parties.

Question No. (c) :

(c) Whether the inquiry as directed by this Court in the aforesaid judgment has been conducted by the Chief Secretary, Government of U.P.?

32. With regard to such question, the opposite parties have filed their affidavit indicating that an inquiry has already been held as directed by this Court and a copy of the report was also brought on record.

33. In view of aforesaid, nothing more remains to be adjudicated upon with regard to the said question.

Question no.(d):

(d) Whether petition would be maintainable in view of appellate remedy available to petitioners in terms of Section 11 of the Act of 2006?

34. With regard to preliminary objections raised by learned State Counsel regarding maintainability of this petition, it is no doubt evident that this Court has deemed the recommendations made pertaining to fee structure by the Committee to be orders passed in terms of the Act of 2006 and against which an appeal would ordinarily lie under Section 11 of the said Act. However Section 11 of the Act of 2006 merely provides a forum for appeal against orders passed by Fee Fixation Committee. There does not appear to be any power conferred upon the appellate authority to determine the fee structure afresh, which appears to be in the sole domain of the Committee constituted in terms of Section 4 of the Act of 2006.

35. In view of discussion made herein above and finding recorded by this Court that the impugned fee structure has been determined by the Committee ignoring specific and mandatory provisions of Section 10 of the Act of 2006, it shall be the sole prerogative of the Committee only, constituted in terms of Section 4 of the Act to determine the fee afresh.

36. In such circumstances, there would be no fruitful purpose in remitting the matter to the appellate authority, which would be a waste of time and would affect studies of the students who would be affected in case there is a change in the fee structure.

37. Learned State Counsel has adverted to directions passed by Division Bench of this Court in Special Appeal (Defective) No. 632 of 2024 decided vide judgment and order dated 03.01.2025 whereby petitions filed by individual students have been

referred to the appellate authority.

38. Aforesaid special appeal had been preferred against the judgment and order dated 17.08.2024 and in paragraph 6 thereof in the judgment rendered in special appeal, it has been held that the Division Bench did not gather any illegality in the order passed by learned Single Judge insofar as direction issued for revision of fee in the light of provisions of the Act was concerned. Reference to appellate authority was made since disputed questions of fact were required to be ascertained and also since the appellate authority is vested with the power of undertaking a deeper probe into relevant facts as well as interest of aggrieved parties. It has been held that since a mechanism has been evolved under the statute for redressal of grievance involving disputed questions of facts and law, remedy of appeal under Section 11 was granted.

39. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is discernible that the aforesaid appeal had not been preferred by unaided private institutions but by individual students and their parents primarily raising the dispute of not being afforded an opportunity of hearing.

40. In the present case, it is the unaided private institutions who have approached this Court with specific plea that mandatory provisions enumerated under Section 10 of the Act of 2006 have not been considered by the Fee Fixation Committee.

41. As noticed herein above, this Court has found favour with the aforesaid submission.

42. In view thereof, there is no disputed questions of fact involved in the present writ petition since even as per perusal of the Minutes of Meetings of the Fee fixation Committee, mandatory factors enumerated under Section 10(1) of the Act of

2006 have been ignored by the Fee Fixation Committee, which alone is the authority to determine fee.

43. So far as objections regarding improper authorization is concerned in WRIT - C No. - 10329 of 2024, a supplementary affidavit has subsequently been filed bringing in record the proper authorization for petitioners to file this Petition on behalf of the Institution. The said preliminary objection therefore now does not require to be decided.

44. In view of aforesaid and as has been held herein above, the preliminary objection regarding maintainability of above petitions is hereby rejected. The petitions therefore are held to be maintainable.

45. Considering aforesaid discussion, the impugned notification dated 28.10.2024 is hereby quashed by issuance of a writ in the nature of Certiorari. Further writ in the nature of Mandamus is issued commanding opposite party No.2 as follows:-

(a) to re-visit the aspects of fee determination for the relevant courses for the academic year 2024-25 strictly in accordance with provisions of Section 10(1) of the Act of 2006.

(b) since considerable time has elapsed, the Fee Fixation Committee is directed to take a decision expeditiously, preferably within a period of two months from the date a certified copy of this order is served upon the said committee.

(c) Fee deposit made by the students in terms of the impugned determination will abide by outcome of fresh determination so made.

46. The above petitions therefore stand **allowed** in terms of aforesaid directions. Parties to bear their own cost.

Order Date :- 10.1.2025

kvg/-