



**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition (M/S) No.513 of 2020

8TH JANUARY, 2025

Bindiya Khatri and others.

...Petitioners

Versus

State of Uttarakhand & others.

....Respondents

With

Writ Petition (M/S) No. 627 of 2020

Writ Petition (M/S) No. 890 of 2020

Writ Petition (M/S) No. 900 of 2020

Writ Petition (M/S) No. 914 of 2020

Writ Petition (M/S) No. 2100 of 2020

Writ Petition (M/S) No. 898 of 2022

Writ Petition (M/S) No. 2039 of 2022

Writ Petition (M/S) No. 3436 of 2022

Writ Petition (M/S) No. 2892 of 2023

Writ Petition (M/S) No. 576 of 2024

Counsel for the petitioners:

Mr. Abhijay Negi, Mr. Vinod Tiwari and
Ms. Snigdha Tiwari, learned counsel.

Counsel for the respondents:

Mr. Yogesh Chandra Tiwari, Standing
Counsel for the State of Uttarakhand

Mr. Sandeep Kothari, Advocate for
Uttarakhand Ayurvedic University.

Mr. Vipul Sharma, Advocate for Dev
Bhoomi Medical College of Ayurveda &
Hospital.

Mr. Navneet Kaushik, Advocate for Om
Group of College, Ayurvedic Medical
College & Hospital and Research Centre.

Mr. Aditya Pratap Singh, Advocate for
Motherhood Ayurved Medical College.

JUDGMENT

Petitioners are students of B.A.M.S. Course,
who took admission in different Ayurvedic Colleges
within State of Uttarakhand, during Academic Year



2017-18 and 2018-19. According to them, a college can charge only such fee, as is determined by the Fee Regulatory Committee and the determination of fee made by Regulatory Committee can only be applied prospectively, however, in their case, the colleges charged certain amount as fee in the absence of determination by the Fee Regulatory Committee, and thereafter, a provisional determination of fee made by the Regulatory Committee in its meeting held on 29.04.2019 was retrospectively made applicable from the Academic Year 2017-18, which is not permissible.

2. Since common questions of law and fact are involved in these writ petitions, therefore they are heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition (M/S) No.513 of 2020 alone are being considered and discussed.

3. The reliefs sought in Writ Petition (M/S) No.513 of 2020 are as follows:

"a) Issue a writ, order or direction in the nature of Certiorari to quash the order dated 31.01.2020 vide which a decision was taken by two members of a three member committee to convene meeting in the absence of the judicial member.

b) Issue a writ, order or direction in the nature of Certiorari to quash the decision taken by two members of the Appellate Authority as ultra vires the Constitution and against the letter and spirit of the judgements of the Honourable High Court.

c) Issue a writ, order or direction in the nature of Mandamus directing the private educational institutions to charge fee as last duly approved by the Fee Regulatory Committee at Rs. 80,500/- from the students of these private educational institutions."



4. Petitioners in Writ Petition (M/S) No. 513 of 2020 took admission in Doon Institute of Medical Sciences, Sahaspur, District Dehradun in the Academic Session 2017-2018; in fact, petitioners were in the first batch of students, as the said college started in the same year. Pursuant to judgment rendered by Hon'ble Supreme Court in the case of Islamic Academy of Education and another v. State of Karnatak and others, (2003) 6 SCC 697, State Legislature enacted the Uttarakhand Unaided Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (hereinafter referred to as 'Act'). The said Act applies to all Unaided Private Professional Educational Institutions. Section 4 of the said Act provides for a Fee Regulatory Committee. Section 4(12) of the said Act ordains that the committee shall determine the fee for admission to Private Professional Educational Institutions.

5. A conjoint reading of sub-sections (12) (13) & (14) of Section of 4 of the Act would reveal that every private institution is under the duty to place before the committee the proposed fee structure before commencement of an academic year, with all relevant documents and books of accounts, for determination of fee. Sub-section (14), however, provides that fee once determined, shall be applicable for a period of three years, and upon expiry of three years, the institution would be at liberty to apply for revision of fee, however, there is a rider in sub-section (14) that fee determined, shall be applicable to a student, who takes



admission in that academic year and the fee, which was applicable at the time of admission of a student shall not be revised till completion of his / her course of study. Sub-sections (12) (13) & (14) of Section of 4 of the Act are extracted below for ready reference: -

“(12) The Committee shall determine the fees for admission to professional courses of private institutions.

(13) Before the commencement of the academic year, it shall be compulsory for every private institution to place before the committee the proposed fee structure of professional courses with all relevant documents and books of accounts for determination of fees.

The committee after considering all the documents placed before it, shall determine the fee within one month maximum.

In case the proposal for fixation of fee for professional courses is not placed before the committee, the private institution shall not run the course. Therefore the private institution shall not give admission in such course.

(14) The fee determined by the committee shall be applicable on the private institution for a period of three years. After the expiry of the period of three years, 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 that fees shall not be revised till the completion of his/her course in the said private institution.”

6. Section 12 of the aforesaid Act provides for an Appellate Authority, which shall hear appeals against the order of Fee Regulatory Committee. According to the petitioners, the Fee Regulatory Committee had last determined the fee in the year 2007, and thereafter, the question of fee determination was never taken to the Fee Regulatory Committee. Thus, it is contended on behalf of the petitioners that in view of the fee determination made by the Committee in 2007, they were liable to pay ₹80,500/- as fee. It is further



contended that the fee determined in 2007 was in respect of all Ayurvedic Colleges within Uttarakhand.

7. According to the petitioners, on the request of Ayurvedic Colleges, State Government issued a Government Order dated 14.10.2015, whereby the tuition fee payable by students of B.A.M.S. Course in different Ayurvedic Colleges was increased from ₹80,500/- to ₹2,15,000/- without reference to the Fee Regulator Committee constituted under Section 4 of the aforesaid Act. It is contended that State Government could not unilaterally have ordered upward revision of fee by the said Government Order. The said Government Order was challenged before this Court and by a judgment dated 09.07.2018 rendered in Writ Petition (M/S) No. 1849 of 2017 and other connected petitions, the said order was set aside.

8. It is contended that despite the said judgment, students of Ayurvedic Colleges were illegally made to pay ₹2,15,000/- as tuition fee, without placing the matter before the Fee Regulatory Committee. Thus, it is contended that the act of the colleges of charging fee in excess and the fee determined by Fee Regulatory Committee is illegal and is liable to be refunded to the students.

9. In this writ petition, petitioners have challenged the order dated 31.01.2020 passed by the Appellate Authority. By the said order, the decision taken by Fee Regulatory Committee in its meeting held on 29.04.2019 was made applicable to the students of



Academic Session 2017-18. It is contended on behalf of the petitioners that the enhanced fee, as determined by the Fee Regulatory Committee can be made applicable only prospectively and the students, who took admission in preceding years cannot be asked to pay the enhanced fee, as was determined in subsequent years. It is further contended that from the minutes of the meeting of the Fee Regulatory Committee held on 29.04.2019 (Annexure-2 to the writ petition), it is revealed that the fee determined by the Committee in the said meeting was only provisional and not final, therefore, such provisional fee could not have been made applicable, with retrospective effect by the Appellate Authority. In support of the contention that fee determined by the committee was only provisional, learned counsel for the petitioners has drawn attention of this Court to Annexure-2 to the writ petition, relevant extract whereof is extracted below: -

"After hearing all concerned including President of the Association, Director Ayush, Secretary Ayush and Chartered Accountant, the Committee unanimously decided to fix interim fee for sessions 2019-20, 2020-21 and 2021-22 as follows: -

- a) BAMS - Rs. 2.15 lac per annum
- b) BHMS - Rs. 1.10 lac per annum
- c) MD/MS (Ayurved) - Rs. 3.15 lac per annum

The institutions will inform the above fees in writing to the students along with the rider that if the final fees fixed by the committee is less, the difference will be refunded to them and if it is more the difference will be charged from them additionally.

This is being done as an interim arrangement as the academic session is due to start very soon. Moreover, it has been brought to the notice of the committee that proposals received from the institutions are not complete in all respects. Association is directed to get the shortcomings in the proposals rectified by the concerned individual institutions and get the proposals submitted to Director Ayush within a week.



The subcommittee constituted earlier and comprising of Director Ayush, Chartered Accountant and subject specialist will examine the above proposals and submit their recommendations to the committee at the earliest. Put up on 13 May, 2019."

10. Learned counsel for the petitioners submits that the Fee Regulatory Committee had determined the interim fee for Academic Sessions 2019-20, 2020-21 and 2021-22 as per provision contained in Section 4(14) of the aforesaid Act, however, the Appellate Authority illegally took a decision to make the revised fee applicable, even to students of Academic Sessions 2017-18 and 2018-19. Thus, it is contended that the Appellate Authority's order dated 31.01.2020 is liable to be set aside to the aforesaid extent.

11. Attention of this Court is also drawn to the provision contained in Section 5(2) of the aforesaid Act, which provides that no professional educational institution shall collect any fee over and above the fee determined by the Committee. It is contended that the fee determined by the Committee was for Academic Sessions 2019-20, 2020-21 and 2021-22, therefore, the decision to apply the said fee determination, to earlier academic years, is unsustainable.

12. Learned counsel for respondents, however, supported the order passed by Appellate Authority on 31.01.2020 and submitted that since fee structure of Ayurvedic Colleges was not revised for a considerable time and the colleges concerned were facing it difficult to meet the expenditure, therefore, on the prayer of the concerned colleges, Appellate Authority rightly



decided to apply the revised fee structure from Academic Session 2017-18.

13. It is not in dispute that after enforcement of the Act, decision regarding fee structure of an aided private professional educational institution has to be taken by the Fee Regulatory Committee alone and neither the management of the college nor the State Government can decide the fee structure unilaterally. It is not in dispute that after the fee determined by the committee in the year 2007, the Fee Regulatory Committee determined the fee structure of Ayurvedic Colleges on 29.04.2019 and in between, there was no fee determination by the committee. In view of provision contained in Section 5(2) of the aforesaid Act, Ayurvedic Colleges concerned could not have charged the fee over and above the amount determined by the committee.

14. In these writ petitions, petitioners have questioned the authority of the Appellate Body to apply the fee determination made by the committee to such students, who took admission in preceding years. It is contended that fee determination can be applied only prospectively and students who took admission in previous academic years cannot be asked to pay the enhanced fee determined by the committee in subsequent years.

15. This Court finds substance in the said submission. In view of provision contained in sub-sections (12), (13) and (14) of Section 4 of the



aforesaid Act, the tuition fee payable by students of a private unaided professional college can be revised only as per determination made by the committee; every college, before commencement of academic session, will have to require before the committee, the proposed fee structure and the fee determined by the committee, shall be applicable for a period of three years and after expiry of three years, the college would be at liberty to apply for revision. It is further revealed that fee determined by the committee shall be applicable to a student who takes admission in the same academic year in which the fee determination is made and the fee payable by such students shall not be revised till he / she completes the course.

16. Thus, the order passed by Appellate Authority is in teeth of provision contained in Section 4 (14) of the Uttarakhand Unaided Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, as such it is liable to be quashed.

17. The writ petitions are allowed. The impugned order dated 31.01.2020 (Annexure-1 to the writ petition), passed by Appellate Authority to the extent it permits upward revision of tuition fee, with retrospective effect to students who took admission during Academic Sessions 2017-18 and 2018-19 is quashed. It is provided that fee determination made by the Regulatory Committee in its meeting held on 29.04.2019 would be applicable only prospectively. Subject to payment of admissible fee by the



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petitioners, Ayurvedic College concerned shall issue NOC to them and the University shall thereafter release petitioners’ educational certificates, without any further delay.

MANOJ KUMAR TIWARI, J.

Dt: 8^h January, 2025
Arpan

ARPAN
JAISWAL

Digitally signed by ARPAN JAISWAL,
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