

**AFR**

**RESERVED**

**Chief Justice's Court**

**Case :- WRIT - C No. - 709 of 2019**

**Petitioner :- Diocese Of Varanasi Education Society And 9 Others**

**Respondent :- State Of U.P. And 3 Others**

**Counsel for Petitioner :- Pankaj Srivastava**

**Counsel for Respondent :- C.S.C.**

**Hon'ble Govind Mathur,Chief Justice**

**Hon'ble Saurabh Shyam Shamsbery, J.**

To regulate fees in self financed independent schools in the State of Uttar Pradesh and the matter connected therewith or incidental thereto, the Uttar Pradesh State Legislature enacted an act in the name of “U.P. Self-Financed Independent Schools (Fee Regulation) Act, 2018”. The enactment aforesaid received the assent of the Governor on 12<sup>th</sup> September, 2018 and came to be published in the U.P. Gazette, Extraordinary, Part I, Section (Ka) dated 12<sup>th</sup> September, 2018.

The act aforesaid is having application to all Self-Financed Independent Schools of Pre-Primary, Primary, Upper Primary, High School and Intermediate Colleges granted recognition/affiliation by boards defined under clause (c) of Section 2 by Uttar Pradesh Basic Shiksha Parishad, Board of High School and Intermediate Education Uttar Pradesh, Central Board of Secondary Education, Indian Council of Secondary Education, International Baccalaureate and International General Certificate of Secondary Education or any other Board notified by the Government from time to time. The act is also having application on minority institutions recognized/affiliated by any of the boards referred above.

Section 2 of the Act provides definitions to different important terms referred in the act including District Fee Regulatory Committee,

Educational purposes, Minority educational institution and Self-Financed Independent School. For ready reference, the definitions of the terms mentioned above, as prescribed under Section 2 of the Act is quoted below:-

**“Definitions.-** *In this Act, unless the context otherwise requires.-*

(a) *“Affiliation” means enrolment of a recognized school among the list of approved schools of a Board for the prescribed/approved courses of studies upto Classes V, VII, X and/or XII as well as those preparing students according to prescribed courses for the Boards' examinations;*

(b) *“Academic Year” means commencement and end of academic session specified by the respective boards;*

(c) *“Appropriate authority” means the District Fee Regulatory Committee constituted under Section 8;*

(d) *“Board” means the Uttar Pradesh Basic Shiksha Parishad, Board of High School and Intermediate Education Uttar Pradesh, Central Board of Secondary Education (CBSE), Indian Council of Secondary Education (ICSE), International Baccalaureate (IB), International General Certificate of Secondary Education (IGCSE) or any other Board notified by the Government from time to time.*

(e) *“District Inspector of Schools” means an officer appointed in each district of the State in such manner as may be prescribed or any other officer authorized by the Government to exercise the powers and perform the functions of District Inspector of Schools of Secondary Education;*

(f) *“District Fee Regulatory Committee” means the District Fee Regulatory Committee constituted under Section 8;*

(g) *“Educational purposes” means any educational activity undertaken by a recognized school, inter alia,*

*including, creation of courses/curriculum, patents, research and development activities, teacher training programmes, staff development programmes, up-gradation of technology, vocational training, co-curricular activities and sports related infrastructure and equipment and establishment of a new branch or a new school;*

*(h) “Eligible educational entity” means of society registered under the Societies Registration Act, 1860 or public trusts or trusts created under the Indian Trusts Act, 1882, or companies registered under the Companies Act, 2013 or any other entity permitted by any of the Boards which operates, manages and maintains recognized schools in the State;*

*(i) “Government” means the Government of the State of Uttar Pradesh;*

*(j) “Guardian” means a parent or a person whose name is registered in school as guardian by the parent of a student;*

*(k) “Head of the school” means the principal or as may be called by any other name of a recognized school designated by the eligible educational entity to manage the administration and academic affairs of the recognized school, as the case may be;*

*(l) “Joint Director of Education” means divisional level officer of Education Department of the Government;*

*(m) “Local authority” means a local area notified by a Nagar Panchayat, Nagar Palika, Nagar Nigam or a Zila Panchayat having jurisdiction over that local area;*

*(n) “Management Committee” means the body of persons of a recognized school authorized by competent body/authority to manage the functioning of that school;*

*(o) “Minority educational institution” means an institution established and administered by a minority, whether based on religion or language, having the right to do so under*

*clause (1) of Article 30 of the Constitution of India;*

*(p) "Parent Association" means an Association of Parents of a recognized school to be constituted in such manner as may be prescribed;*

*(q) "Parent-Teachers Association" means Parent-Teachers Association framed under Parent-Teachers Association Regulations, 1986 for the schools recognized by Board of Secondary Education, Uttar Pradesh and for the other boards Parent-Teachers Association as constituted by the school with parent and teachers of the school;*

*(r) "Permitted fee increase" means the increase in fee permitted under Section 4;*

*(s) "P.W.D." means Public Works Department of the Government;*

*(t) "Recognized school" means a school recognized by a Board for operation in the State.*

*(u) "Recognition" means formal certification granted by a Board for operation in the State to a school that it conforms to the standards and conditions laid down by the Government to operate a school;*

*(v) "Self-Financed Independent School" means an institution imparting education wherein major expenses of the institution, for any purpose whatsoever, are to be met by the management of such institution itself and/or out of the school funds/revenue or through contributions, loan borrowings including loans obtained by creation of any encumbrances on School property;*

*(w) "School" includes;*

*(i) Pre-primary school imparting education below the primary stage such as nursery and kindergarten; or*

*(ii) Primary school imparting education from*

*Classes I to V (both inclusive); or*

*(iii) Upper primary imparting education from Classes VI to VIII (both inclusive); or*

*(iv) High school imparting education to Classes IX to X; or*

*(v) Intermediate college imparting education to Classes XI to XII;*

*managed by an eligible educational entity and affiliated to a Board as a self-financed independent school;*

*Provided that where such school operates on a standalone basis as a pre-primary school imparting education below the primary stage, it shall not come under the purview of this Act;*

*(x) "School property" means all movable and immovable property, tangible or intangible, owned by, or in the possession of, the recognized school or the eligible educational entity within the school campus and/or related to the concerned recognized school and all other rights and interests in, or arising out of, such property, and includes land, building and its appurtenances, play grounds, hostels, furniture, books, apparatus, maps, intellectual property, equipment, utensils, cash, reserve funds, investments and bank balances;*

*(y) "State" means the State of Uttar Pradesh;*

*(z) "State Appellate Authority of Self-Financed Independent Schools" means State Self-Financed Independent Schools Authority constituted under Section 9."*

Chapter II of the act relates to admission to schools and fees and as per Section 3 a recognized school shall determine its fee structure under

sub-sections (1) and (2) of Section 4 for different classes/grades/school levels commensurate to, *inter alia*, meeting its operational expenses, providing for augmentation of facilities and expansion of infrastructure and for providing facilities to the students, to generate reasonable surplus to be utilized for development of educational purposes including establishment of a new branch of a new school under the management of the same eligible educational entity.

The provision aforesaid further provides Possible Fee Components and certain checks in settling the fee including that no school shall except with the prior approval of the appropriate authority, charge, during the academic year any fee in excess of the fee intimated to the appropriate authority under sub-section (4) and further that every recognized school shall ensure that no capitation fee is charges. It is also provided that no student shall be compelled to purchase books, shoes, socks and uniform, etc. from a particular shop and the school uniform shall not be changed within live consecutive academic years. If change is required, it can be changed with proper justification with prior approval of District Fee Regulatory Committee.

Section 4 relates to fixation of fee and that reads as follows:-

*“Fixation of fee. - (1) Permitted fee increase for existing students – A recognized school may revise its fee annually for its existing students by itself for each grade/class/level of school equivalent to average per centage per capita increase of monthly salary of teaching staff of previous year, but the fee increase shall not exceed latest available yearly per centage increase in consumer price index + fiver per cent of the fee realised from the student;*

*Explanation. - At the time of admission, irrespective of the grade/class in which a student is entering the school, the school shall provide to the*

*guardian, the complete fee structure for all grade/class upto grade/Class XII applicable to new students for that particular year. This fee structure shall become the base for calculating subsequent annual permitted fee increase on compounding basis for each grade/class to determine the fee applicable to the students for future grade/class:*

*Provided that, in case of implementation of the pay commission recommendation in any School, in that year the term “but the fee increase shall not exceed latest available yearly per centage increase in consumer price index+five per cent of the fee realized from the student” shall not apply. When pay commission recommendation has been implemented in the school, that year, school may revise its fee annually for its existing students by itself for each grade/class/level of school equivalent to average per centage per capita increase monthly salary of teaching staff of previous year. This shall be applied from year 2018-2019;*

*In case of the implementation of levy of any new cess, it may be charged with proper justification with prior approval of District Fee Regulatory Committee upto the level of impact of that cess;*

*For the previously admitted students, computation of Permitted Fee increase for the first Year 2018-2019 in accordance with sub-section (1) The fee to be fixed for Year 2018-19 shall be the lower of the fee computed taking base Year 2015-16 and computations of fee based on taking 2017-18 as base year and calculated as per provision of sub-section (1);*

*(2) Permitted fee fixation for new student- The school shall be free to determine its fee for the new*

*students for any class/grade/level seeking fresh admissions, in a particular academic year subject to guidelines, if any, notified by the Government. Increase in fee for subsequent years for these students shall be in accordance with sub-section (1).”*

Section 6 of the act provides for Development Fund and according to that not more than 15% of total income of school during the financial year transferred to Eligible Educational Entity as development fund.

As per Section 7, a school shall 60 days prior to commencement of admissions in each academic year, publish on its notice board or on its website the details relating to issues mentioned below:-

*“... (a) general information about the recognized school, accreditation, and affiliation;*

*(b) admission policy;*

*(c) details of the fee and fund structure for the previous year, current year and the ensuing year;*

*(d) details of facilities including hostel, sports, co-curricular activities and extracurricular activities;*

*(e) details of student to space ratio and student to teacher ratio;*

*(f) details of the salaries of teachers in Academic Year 2015-2016, 2016-2017, 2017-2018;*

*(g) calendar of major events being organized by the recognized school throughout the academic year for students; and*

*(h) calendar of major events being organized by the recognized school throughout the academic year for teacher training and staff development programmes;*

*(2) Unless otherwise specified under this Act or the rules made thereunder and the information disclosed in sub-section*



*(1) shall remain in the public domain for the entire academic year;”*

Section 8 of the Act provides for District Fee Regulatory Committee, its constitution, functions and power. As per this provision, a District Fee Regulatory Committee is required to be constituted in every district of the State consisting of District Magistrate (Ex-officio Chairman), a Chartered Accountant to be nominated by the District Magistrate, an Engineer, not below the rank of Executive Engineer of PWD nominated by the District Magistrate, a senior officer of State Finance and Accounts Service nominated by the District Magistrate, a parent of Parent Teachers Association of a school situated in the district nominated by the District Magistrate, an eminent principal/manager/administrator of a self-financed school nominated by the District Magistrate and the District Inspector of Schools. The District Fee Regulatory Committee is having powers as prescribed under sub-section (4) of Section 8 and those are as under:-

*“8(4).- The District Fee Regulatory Committee shall have power to:-*

*(a) take decisions on proposals received from the management committee regarding the proposed fee increase beyond the permitted fee increase under sub-section (1) of Section 4;*

*(b) hear complaint of a student or guardian or parent teacher association of such School whose complaint remains unheard by the Head of the School within fifteen working days under this Act:-*

*(i) made for fee being charged in excess of the fee intimated to the appropriate authority under Section 4;*

*(ii) made for capitation fee being charged;*

*(iii) made for revision of fee during ensuing academic year; and*

*(iv) made for increase in fee more than the permitted fee increase without obtaining approval of the appropriate authority;*

*(v) made for compulsion to purchase books, shoes, socks and uniform, etc., from a particular shop;*

*(vi) change of school dress within five years, without prior approval of District Fee Regulatory Committee;*

*(vii) made for not making disclosure as provided under Section 7;*

*(viii) made for non-refunding of security money/caution money after violation of provision made in clause (c) of sub-section 3 of Section 3;*

*(ix) made for violation of Section 6.”*

Sub-section (8) of Section 8 provides that every recognized school which proposes to increase its fee beyond the permitted fee increase shall, at least three months before the commencement of the academic session, submit a proposal containing the details of the proposed fee with appropriate documents justifying the need for such increase to the District Fee Regulatory Committee. An Appellate authority is also prescribed under the act in the name of State Self Finance Independent School Appellate Authority to adjudicate grievance of the recognized institutions, if any, arising out of any order under the act.

The constitutional validity of the act is challenged by the petitioner, a minority institution on the count that as per article 30(1) of the Constitution of India no interference in administration of minority institutions can be made by the State authorities statutorily or otherwise.

Reliance is placed by learned counsel appearing on behalf of the petitioner upon the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation Vs. State of Karnataka, 2002 (8) SCC 481.***

It is stated that minority institutions are having right to adopt their

own procedure to admit the students, to set up reasonable fee structure, to constitute governing body, to appoint staff and to take action, if there is dereliction of duty on the part of any employee. The act in question as per learned counsel appearing on behalf of the petitioner is violating a valuable constitutional right of the minority institutions.

It would be appropriate to state that the petitioner-institution is not receiving any aid of the Government of Uttar Pradesh but recognition of the courses undertaken by it.

Heard learned counsel at length.

Article 30 of the Constitution of India prescribes fundamental right of minorities to establish and administer educational institutions. According to clause (1) of Article 30 all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice. The right aforesaid has been crystallized by the Supreme Court of India in several cases and at the first instance the matter came up before it in Reference The Kerala Education Bill, 1957, AIR 1958 SC 956. On the basis of the legal foundation laid down in the case aforesaid the rights of the minorities as prescribed under Article 30 of the Constitution of India were examined in detail by the Apex Court in *TMA Pai Foundation (supra)* holding therein that the right to establish an educational institution can be regulated; but such regulatory measures must, in general, ensure the maintenance of proper academic standards, atmosphere and infrastructure including qualified staff and prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. The Court while strengthening the rights protected under Article 30 of the Constitution of India shown its concern about interference of the government may that by way of statute in day today administration of the minority educational institutions. It would be

appropriate to state that the court in the case of **TMA Pai (supra)** make a fine distinction in right to “administer” and “maladminister” the minority institution.

The issue was again considered by the Apex Court in **Secretary, Malankara Syrian Catholic College Vs. T. Jose, (2007 (1) SCC 386**. The Apex Court summarized the general principles relating to establishment and administration of educational institutions by minorities as under:-

*“... (i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:*

*(a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;*

*(b) to appoint teaching staff (teachers/lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;*

*(c) to admit eligible students of their choice and to set up a reasonable fee structure;*

*(d) to use its properties and assets for the benefit of the institution.*

*(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also.*

*(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to*

*maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).*

*(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.*

*(v) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilisation of the aid, without however diluting or abridging the right under Article 30(1)."*

*"Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of the State funds. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well-qualified professional teachers. An institution can have the services of good qualified*

*professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff."*

*"We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallized in T.M.A. Pai. The State can prescribe:*

*(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,*

*(ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,*

*(iii) a mechanism for redressal of the grievances of the employees,*

*(iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions."*

**The summary quoted above in quite unambiguous terms convey that all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control of the management over the staff or abridges/duties, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.**

The Apex Court further examined the rights enshrined under Article 29 and 30 of the Constitution of India in *Sindhi Education Society Vs. Chief Secretary, Government of NCT of Delhi, 2010 (8) SCC 49*, the Apex Court examined the question relating to the extent the State can regulate the right of the minorities to administer their educational institutions when such educational institutions are receiving aid from the State/not receiving the aid from the State. The Court after recapitulating the law crystallized in *TMA Pai Foundation (supra)* held **that all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority institutions also but if any such regulation, if interfere with the overall administrative control by the management then that would be inapplicable to minority institutions.**

On going through the law thrashed by the Apex Court in all the judgments referred above, we are having no doubt in arriving at the conclusion that article 30 protects the minority institutions from interference of the Government in their establishment, management and administration but that in no manner prevents the State to ensure good administration by putting checks on the eventualities giving rise to “maladministration”. The right to administer educational institutions by minorities does not permit to indulge in malpractices including, commercialization of education. The State if satisfies the test of reasonableness and the test that the provision applied is regulative of educational character and is conducive to make the minority educational institutions more effective for education to the minorities then such provision is not at all hit by the right protected under Article 30 of the Constitution of India. In other words such provision is in furtherance to the right given to ensure better and brighter educational status to such institutions.

Under the act under consideration, there is no provision that may cause interference with overall administrative control by the management

with right of a minority educational institutions in settling the fee. On the contrary, as per Section 3 a recognized school shall determine its fee structure and while doing so it is required to meet certain guidelines given under Section 4 of the act. Section 3 also provides possible fee components and optional fee components those may be charged by the schools. The restrictions prescribed are that no school shall, except with the prior approval from the appropriate authority, charge during the academic year any fee in excess of the fee intimated to the appropriate authority earlier and, further that no capitation fee shall be charged by such institutions. The restrictions are quite reasonable. The institution, if has settled a fee after taking into consideration all the relevant factors then the same in normal course must not be changed without a justifiable reason. If for any reason change in fee structure is warranted then the recognized institutions must seek approval from the appropriate authority. The restriction as a matter of fact checks maladministration and ensures fair administration of the institutions by the management itself. So far as capitation fee is concerned that is nothing but a mark of commercialization of education and therefore, in light of the judgments of Hon'ble Apex Court that has rightly being checked under the Act.

Section 4 of the Act gives a broad idea and factors to be kept in mind for fixation of fee. The provisions of Section 4 of the Act no where restricts a recognized institution in settling fee, but prescribes a reasonable mode as a guiding factor while fixing the fee structure.

The provision on its face is a reasonable and is a statutory effort to stop commercialization of education and exploitation of the students joining educational institutions including minority institutions. While assessing constitutional validity of a provision at the scale of right given under Part-III of the Constitution of India, it must be kept in vision that ultimately the rights given protects the persons/citizens/legal entities, as the case may be, from arbitrariness, unreasonability, unjustifiability and fancy. If a provision is just and reasonable and otherwise satisfies the four



corners of Article 13 of the Constitution of India, it must be held constitutionally acceptable to extend the protection of any right given under Part-III.

On fair analysis of the Act of 2018, we find it a legislation to ensure easy accessibility to each and every citizen and further to expand fairness and reasonability in administration of the institutions, including minority institutions, without interference therein for broader interest of the ultimate consumer, as such we do not find any violation of Article 30(1) of the Constitution of India while introducing U.P. Self-Financed Independent Schools (Fee Regulation) Act, 2018.

The writ petition for the reasons given above, lacks merit and hence is dismissed in limine at threshold.

**Order Date :-2.7.2019**  
Bhaskar

**(Saurabh Shyam Shamsbery, J.)**

**(Govind Mathur, C.J.)**