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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7594 OF 2017

Euro School Education Trust ...Petitioner
Versus
Divisional Fee Regulatory Committee, ...Respondents
Pune & Ors.

Mr. Pravin Samdani, Sr. Counsel. with Amogh Singh, Arvind Kothari, Sahil Kanuga, Aarushi Jain, Siddharth Ratho, Arjun Gupta, i/b. Nishith Desai Associates for the Petitioner in WP No. 7594 of 2017.

Mr. C.P. Yadav, AGP for Respondent – State.

Mr. Siddharth Shankar Sharma, Adv. for Respondent No.4.

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 471 OF 2017

Indian Education Society & Anr. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Arvind G. Kothari, with Ms. Nandini Menon, for the Petitioners.

Mr. Abhay L. Patki, AGP for State – Respondents Nos. 1, 3 & 4.

Ms. Anubha Sahai, Adv. for Respondents Nos. 5 to 9.

Mr. Siddharth A. Sharma, Adv. for Respondent No.10.

**CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**
DATED: 18th July 2017

J U D G M E N T :- (Per B.R. Gavai, J.)

1. Since the factual background and the questions of law that arise for consideration in the present matter are common, hence the same are heard together and decided by this common judgment and order.

2. Rule. Rule made returnable forthwith.

3. The core issue that is involved in the present Petition is as to whether individual parents have locus to approach the Divisional Fee Regulatory Committee (hereinafter referred to as “**DFRC**”) under the provisions of the Maharashtra Educational Institutes (Regulation of Fees) Act (hereinafter referred to as “**said Act**”).

4. We have heard Shri Samdhani, learned Senior counsel and Shri Arvind G. Kothari, learned counsel for the Petitioners. Mr. C.P. Yadav for Respondent – State in Writ

Petition No. 7594 of 2017 and Mr. Abhay Patki, AGP for State
– Respondents Nos. 1, 3 and 4.

5. Shri Samdhani learned senior counsel submits that under the provisions of the said Act, it is only the management who is entitled to approach the DFRC. It is submitted that individual parents have no locus to file proceedings under the provisions of the said Act. Shri Samdhani learned senior counsel submits that the DFRC is the tribunal constituted under the provisions of said Act. It is submitted that a tribunal of a limited jurisdiction constituted under the provisions of a statute can exercise the powers only within the parameters as laid down by the statute. It is submitted that the tribunal cannot assume jurisdiction, which is not vested in it under the provisions of the statute. Shri Samdhani, therefore, submits that the impugned order which is passed by the DFRC in a proceeding initiated at the instance of the individual parents is not sustainable in law and the orders passed therein are liable to be quashed and set aside. Shri Samdhani further relying on the well settled principle laid down by the Privy Council in the case of **Nazir**

Ahmad V. Kind-Emperor, which has been consistently followed submits that :

“when act is required to be done in particular manner, it shall be done in that manner or not at all”.

6. It is, therefore, submitted that the jurisdiction exercised by the DFRC has been exercised in a manner which is inconsistent with the provisions of the statute and, therefore, not sustainable in law.

7. Smt. Anubha Sahai and Shri Siddharth Sharma both submit that, the said Act is enacted with a benevolent object of curbing the malpractices of the management which indulge into profiteering. It is submitted that the Act has been enacted with the purpose that the parents should have a say in fixing of the fees, so that the managements do not charge exorbitant fees and indulge in profiteering. They submit that, Section 10 of the said Act provides that the disputes between the parents and the management should be decided under the scheme of the said Act and therefore, upon a harmonious construction of Section 10 of the said Act with the preamble

of the said Act, it will have to be held that, the orders passed by authority are legal and valid.

8. The alternate submission is made by learned counsel for the Respondent parents, that statute provides for redressal of the dispute only to the management but it does not provide the same to the parents and as such the provisions of the statute will have to be held to be discriminatory being in violation of Article 14 and therefore, unconstitutional. The learned counsel for Respondents pray that the Petition deserves to be dismissed with exemplary costs.

9. The factual scenario in both the Petitions is not in dispute. For the sake of convenience, we will refer to the facts as they arise in Writ Petition No. 7594 of 2017.

10. The said Act has come into force w.e.f. 1st December 2014. The fees charged by the school run by the Petitioner trust were approved by the 'Executive Committee' as constituted in the said Act for the academic year 2017-2018,

vide which there was increase by 8%, than the fees which were stipulated for the academic year 2016-2017. It appears that there are certain orders passed by this Court in Writ Petition (L) No. 3244 of 2015 on 23rd December 2015. However, we find that reference to the same would not be necessary in the present matter, since we propose to decide the matter on the basis of scheme as provided in the said enactment. It further appears that under the rule making powers provided under the said Act, the State of Maharashtra has framed the Maharashtra Educational Institutions (Regulation of Fee) Rules 2016, (hereinafter referred as to “**Rules**”). It appears that some of the parents had made complaint to Respondent No.3, Deputy Director of Education with regard to increase of fees by the Petitioner – management. The Respondent No.3 – Deputy Director of Education vide letter dated 2nd June 2016 informed the Petitioners that upon inquiry into allegations made regarding increase in fees, allegations were found to be without substance.

11. However, it appears that subsequently, the Respondent No.1 on the basis of the complaints made by the Respondent Nos. 4 & 5 issued a notice to the Petitioners on 5th May 2017, vide which the complainants as well as the present Petitioners were directed to remain present for the hearing on 16th May 2017. Both the parties were also directed to produce relevant documents before the committee. It appears that thereafter the Respondent No.1 heard the Petitioners as well as the Respondents Nos. 4 & 5 on 5th May 2017 and 16th May 2017. Thereafter the order impugned herein came to be passed on 7th June 2017, thereby directing the Petitioner to form Parents Teachers Association (hereinafter referred as “**PTA**”) and EPTA strictly in accordance with Section 4 of the Act, 2011 within 45 days of the order and further directing that subsequent thereto the management shall put up its proposal for fee hike in accordance with the provisions of the Act of 2011. It was further directed that only upon getting approval in accordance with the said Act, the management may hike the fee for academic year 2018-2019. It was further directed that till then the school shall recover the fee for the present academic year 2017-2018 in

accordance with the fee prevailing for last academic year without any addition.

12. For appreciating rival submissions, it will be necessary to refer to the relevant provisions of the said Act and Rules.,

The Preamble of the said Act reads thus:-

WHEREAS the National Policy of Education envisages that the commercialization of education and profiteering by the educational institutions should be curbed;

AND WHEREAS the State Government desires that steps should be taken to prevent the commercialization of education through profiteering by the educational institutions;

AND WHEREAS the practice of charging exorbitant fees by the educational institutions is on increase in the State;

AND WHEREAS with a view to effectively curb this undesirable practice and commercialization of education which result in frustration among meritorious and indigent students and to maintain excellence in the standard of education, it is expedient in the public interest to regulate collection of fee by the educational institutions in the State of Maharashtra and to provide for matters connected therewith and incidental thereto; it is hereby enacted

in the Sixty-second Year of the Republic of India as follows:-

Clause (d) of Section (2) reads thus:-

(d) “Divisional Fee Regulatory Committee” means the Divisional Fee Regulatory Committee constituted under Section 7.

Clauses (j) & (k) which define 'Executive Committee' and 'Fee' read thus:-

- (j) “Executive Committee” means the Executive Committee of the Parent-Teachers Association;
- (k) “fee” means the amount, fixed as a fee under sections 5 and 6 and includes,-
- (i) Tuition fee ;
 - (ii) Term fee, which shall not exceed one month tuition fee per term ;
 - (iii) Library fee and deposit ;
 - (iv) Laboratory fee and deposit ;
 - (v) Gymkhana fee ;
 - (vi) Caution money ;
 - (vii) Examination fee ;
 - (viii) Hostel fee and Mess charges ;
 - (ix) Admission fee ;

Explanation – Where the student is admitted into the school having the facility to undertake education upto the tenth standard or any standard below it, the student shall not be required to pay the admission fee once again ;

(x) deposit as security amount or amount payable for any curricular or co-curricular item as may be prescribed ;

Sections 3, 4 & 6 read thus :-

Section 3

No school itself or on its behalf shall collect any fee in excess of the fee fixed or approved under this Act.

Section 4 (1) (a) Every private school shall constitute the Parent-Teachers Association.

(b) The Parent-Teachers Association shall be formed by the head of the school within thirty days from the beginning of each academic year. Parent of every student in the school shall be a member of the Parent-Teachers Association and an annual amount of rupees fifty, in case of urban area and rupees twenty, in case of rural area, shall be collected from each member of such Association.

(c) On formation of the Parent-Teachers Association, for giving representation to every Standard, a lottery shall be conducted by drawing a lot of the willing parents of each Standard to constitute the Executive Committee and notice of one week before such lottery shall be given to the members of the Parent-Teachers Association.

(2) (a) The Executive Committee shall consist of,-

- (i) **Chairperson** – Principal or Head Master
- (ii) **Vice Chair-personal** – One from amongst the parent
- (iii) **Secretary** – One from amongst the teachers
- (iv) **Two Joint Secretaries** – Both from amongst parents
- (v) **Member** – One parent and one teacher from every standard.

(b) Out of the total members in the Executive Committee, there shall be at least one member from the Scheduled Castes, the Scheduled Tribes or Backward Class of citizens to be rotated in the manner prescribed and at least fifty per cent. of the members shall be women.

(c) The list of members of the Executive

Committee shall be displayed on the notice board within a period of fifteen days from the formation of the Executive Committee and copy thereof shall forthwith be forwarded to the concerned Education Officer.

(d) The term of the Executive Committee of the Parent-Teachers Association shall be for one academic year and no member of the Executive Committee shall be eligible for drawing a lot by lottery within the period of three years since the formation of the Executive Committee:

Provided that, the provisions of sub-clauses (i), (iii) and (v) of clause (a) above regarding condition of three years for selection of teacher member shall not apply to the school having only two teachers.

(e) The Executive Committee shall meet at least once in a three months. The procedure to be followed for conducting the meeting of the Executive Committee shall be such as may be prescribed.

(f) The Parent-Teachers Association shall have a general meeting at least once before the 15th August of every year. The procedure to be followed for conducting the meeting of the Parent-Teachers Association shall be such as may be prescribed. The Parent-Teachers Association shall discharge such duties and perform such functions as may be assigned to it under this Act and as may be prescribed.

Section 6 (1) The management of the private un-aided schools and permanently un-aided schools shall be competent to propose the fees in such schools.

(2) On the formation of the Executive Committee, the management of the school shall

submit the details of the proposed fee along with the relevant record to the Executive Committee for its approval at least six months before the commencement of the next academic year. While giving the approval, the Executive Committee shall have the authority to decide the amount of fee afresh.

(3) After considering all the relevant factors laid down under section 9, the Executive Committee shall approve the fees within a period of thirty days from the date of receipt of the details of the proposed fee and the record under sub-section (2) and communicate the details of the fee so approved in writing to the management forthwith. The details of the fee so approved by the Executive Committee shall be displayed on the notice board in Marathi, English and in the respective medium of school, and if such school has its own website, it shall be displayed on the same, and it shall be binding for two academic years.

(4) If the Executive Committee fails to decide the fees within the period specified in sub-section (3), the management shall immediately refer the matter to the Divisional Fee Regulatory Committee for its decision under intimation to the Executive Committee in such manner as may be prescribed. During the pendency of the reference, the management of school shall be at liberty to collect the fee of the previous academic year *plus* fifteen per cent increase in such fee till the final decision of the Divisional Fee Regulatory Committee.

(5) If the difference between the fees decided by the management and the fees approved by the Executive Committee is not more than fifteen per cent, then the fees communicated by the Executive Committee under sub-section (3) shall be binding on the management and if the difference is more than fifteen per cent, then management may prefer

an appeal to the Divisional Fee Regulatory Committee, within a period of thirty days from the date of such communication under sub-section (3) in such manner as may be prescribed :

Provided that, the Divisional Fee Regulatory Committee may entertain such appeal or reference after the expiry of the period of thirty days, if it is satisfied that there are sufficient reasons for not preferring an appeal or reference within time.

(6)(a) The Divisional Fee Regulatory Committee shall decide the appeal or reference as far as possible within the period of ninety days from the date of its filing after giving the opposite party an opportunity of being heard.

(b) While deciding the appeal or reference, the Divisional Fee Regulatory Committee shall not grant any stay to the fee proposed by the management or, as the case may be, the fee approved by the Executive Committee.

(c) On decision in appeal or reference, the Divisional Fee Regulatory Committee may pass appropriate orders for refund of the excess fee to the student concerned. IN case the management fails to refund the excess fee to such student, the Divisional Fee Regulatory Committee shall proceed to recover such excess fee from the management as arrears of land revenue and pay the same to such student.

(d) The decision of the Divisional Fee Regulatory Committee in appeal or reference shall be displayed on the notice board of the concerned school, and if such school has its own website, it shall be displayed on the same by the management.

7. (1) The Government shall, by notification in the *Official Gazette*, constitute a Divisional Fee Regulatory Committee for each Educational Division.

(2) The Divisional Fee Regulatory Committee shall consist of the following members, namely

- (a) A Retired District Judge, nominated by the Government in consultation with the High Court. – Chairperson
- (b) Divisional Chairman of the Maharashtra State Board of Secondary and Higher Secondary Education – Member
- (c) A Chartered Accountant or Cost and Works Accountant. – Member
- (d) Retired Head of Central Board of School Education or Indian Certificate of Secondary Education or any other Board not connected directly or indirectly with any educational institution, or retired officer not below the rank of Joint Director of Education of the Government – Member
- (e) Regional Deputy Director of Education – Ex- Officio Member Secretary.

(3) Every appointment of a member under clauses (c) and (d) of sub-section (2) shall be made by the State Government on the recommendation of the Selection Committee.

(4) The State Government shall constitute a Selection Committee for the Divisional Fee Regulatory Committee consisting of the following namely :-

- (a) Chairperson of the Revision Committee – Chairperson
- (b) The Secretary in charge of the Law and Judiciary Department – Member
- (c) The Secretary in charge of the School Education Department – Member

Provided that, where the Chairperson of the Revision Committee is, by reason of absence or otherwise, unable to act as a Chairperson of the Selection Committee, the Chairperson acting as such under the proviso to sub-section (2) of Section 11 shall act as a Chairperson.

Sections 9 & 10 of the said Act read thus:-

Section 9 (1) The following factors shall be considered while deciding the fee leviable by the school, namely :-

- (a) the location of the school ;
- (b) the infrastructure made available to the students for the qualitative education, the facilities provided and as mentioned in the prospectus or website of the school ;
- (c) the educational standard of the school as the State Government or the competent authority may prescribe ;
- (d) the expenditure on administration and maintenance ;
- (e) the excess fund generated from on-resident Indians, as a part of charity by the management and contribution by the Government for providing fee-ship in fee or for other items under various Government schemes given to the school for the Scheduled Castes, the Scheduled Tribes and Vimukta Jatis and Nomadic Tribes students ;
- (f) qualified teaching and non-teaching staff as per the norms and their salary components ;
- (g) reasonable amount for yearly salary increments ;

(h) expenditure incurred on the students over total income of the school and the reasonable surplus for qualitative development of the students ;

(i) any other factor as may be prescribed ;

(2) The Divisional Fee Regulatory Committee shall indicate the different heads under which the fee shall be levied.

(3) Every private school preferring an appeal before the Divisional Fee Regulatory Committee shall place the copy of decision in appeal on its notice board, and if such school has website, on its website.

Section 10 (1) The powers and functions of the Divisional Fee Regulatory Committee shall be to adjudicate the dispute between the school management and the Parent-Teachers Association regarding fee to be charged by the school management from the students.

(2) The Divisional Fee Regulatory Committee may authorise any officer not below the rank of the Education Officer or the Education Inspector to enter any educational institute or any premises belonging to the management of such school, if the Divisional Fee Regulatory Committee finds so necessary, and search, inspect and seize any records, accounts, registers or other documents belonging to such school or the management in so far as such record, accounts, registers or other documents are necessary and relevant to decide the issues before the said Committee. The provisions of the Code of Criminal Procedure, 1973 relating to search and seizures shall apply, so far as may be, to searches and seizures under this section.

(3) The Divisional Fee Regulatory Committee shall regulate its own procedure, for the discharge of

its functions, and shall, for the purpose of making any inquiry under this Act, have all powers of a civil Court under the code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely :-

(i) the summoning and enforcing the attendance of any witness and examining him on oath ;

(ii) the discovery and production of any document ;

(iii) the reception of evidence o affidavits ;

(iv) the issue of commission for examination of the witness.

(4) No judicial order shall be passed by the Divisional Fee Regulatory Committee in the absence of the Chairperson. The order of the Divisional Fee Regulatory Committees shall be binding on the parties to the proceedings before it for two academic years. It shall not be called in question in any civil Court except by way of an appeal before the Revision Committee constituted under this Act.

(5) At the time of resolving the dispute, the Divisional Fee Regulatory Committee shall not grant any interim stay to the fee determined by the school management. ON decision in appeal or reference, the Divisional Fee Regulatory Committee may pass appropriate orders for refund the excess fee to such student, the Divisional Fee Regulatory Committee shall proceed to recover such excess fee from the management as an arrears of land revenue and pay the same to such student.

(6) The Divisional Fee Regulatory Committee shall on determining the fee leviable by a private school, communicate its decision to the parties concerned.

(7) The Divisional Fee Regulatory Committee shall indicate the different heads under which the fee shall be levied.

(8) The orders passed by the Divisional Fee Regulatory Committee shall be binding on the private school for two academic years. At the end of the said period, the private school shall be at liberty to propose changes in its fee structure by following the procedure as laid down under this Act.

13. It could thus be seen that as rightly contended by the learned counsel for the Respondent parents, that the Act has been enacted with a object of preventing commercialisation of education through profiteering by the Educational Institutions. The Act has been aimed since it was noticed that practice of charging exorbitant fees by the educational institutions is on increase in the State. Therefore, with a view to effectively curbing the undesirable practice and commercialization of education.

14. As already observed hereinabove, the Executive Committee means the Executive Committee of the Parent Teachers Association. The constitution of same is provided under Section 4 of the said Act. Clause (k) of Section 2 defines as to what would be the fee to be determined under

clauses 5 & 6 and has various components which can be included while computing fee. Section 3 provides injunction on the schools from collecting any fees in excess of the fees fixed under the said Act. Section 4 mandates that every private school shall constitute the Parent Teachers Association. Sub clause (1) (b) of this Section provides that Parent Teachers Association shall be formed by head of the school within thirty days from the beginning of each academic year. The parent of every student in the school shall be a member of the Parent Teachers Association and the fees to be charged for the purpose of being a member of Association. Sub Section 2 provides constitution of Executive committee. A perusal of clause (a) of Section 2 would reveal that constitution of the Committee is in such a manner that numerically, it shall have one more member representing the parents. For example, if the Committee consists of 21 members, it will have 10 members, who are from HM and teachers category whereas it will have 11 members who are the representatives of parents. Clause (b) of Section 4 provides that out of total number of Executive Committee, there shall be at least one member from the Scheduled

Caste, the Scheduled Tribes or Backward Class citizens to be rotated in the manner prescribed and at least fifty per cent of the members shall be women. The list of members of the Executive Committee shall be displayed on the notice board within a period of fifteen days from formation of the Executive Committee of the Parent Teachers Association. The term of the Executive Committee of the Parent Teachers Association shall be for one academic year. Clause (f) requires that the Parent – Teachers Association shall have a general meeting at least once before the 15th August of every year.

15. Section 6 of the said Act is a most relevant provision, upon interpretation of which provision, the fate of the present Petition will have to be decided. Sub Section (1) of Section 6 provides that, the Management of the private un-aided schools and permanently un-aided schools shall be competent to propose the fees in such schools. Sub Section (2) requires that, on the formation of the Executive Committee, the management of the school shall submit details of the proposed fee along with a relevant record to the Executive Committee for its approval at least six months

before the commencement of next academic year. While giving approval the Executive Committee is also empowered to decide amount of fee afresh. Sub Section (3) of Section 6 requires that after considering the relevant factors, which are laid down in Section 9, the Executive Committee shall approve the fees within a period of 30 days from the date of receipt of details of the proposed fee and the record as provided in sub section (2). The Executive Committee, thereafter is required to communicate the details of the fee, so approved in writing to the Management forthwith. The details of the above fees so approved by the Executive Committee are required to be displayed on the notice board in Marathi, English and in the respective medium of the school. If such a school has its own website, it shall be displayed on the same and it shall be binding for two academic years.

16. Sub section 4 thereof provides that, if the Executive Committee fails to decide the fees within a period specified in sub section (3), the management shall immediately refer the matter to DFRC for its decision under intimation to the

Executive Committee in such manner as may be prescribed. During the pendency of the reference, the management of the schools are at liberty to collect the fees of the previous academic year plus 15% increase in such fee till the final decision of the DFRC. Sub Section (5) thereof mandates that if the difference between fees decided by the management and the fees approved by the Executive Committee is not more than fifteen per cent, fees communicated by the Executive Committee under sub section (3) shall be binding on management. It further provides that if the difference is more than fifteen per cent then management may prefer an appeal to the DFRC within a period of 30 days from the date of said communication under sub section (3). Proviso to sub-section (5) enables the DFRC to entertain such an appeal even beyond period of limitation if it is satisfied that there are sufficient reasons for not preferring an appeal or reference within time.

17. Sub-Section (6) requires that the DFRC shall decide the appeal as far as possible within a period of 90 days from the date of its filing after giving the opportunity of being heard to

the opposite party. Sub section (b) prohibits DFRC from granting any stay to the fees proposed by the management or fees approved by the Executive Committee. Sub-Section (c) empowers the DFRC to pass appropriate orders of refund of the excess fee to the student concerned. DFRC also empowers to recover such excess fee from the management as arrears of land revenue and pay the same to such student.

18. Sub-section (d) provides that decision of DFRC in appeal or reference shall be displayed on the notice board of the concerned school, and on its website if such school has its own website.

19. Section 7 enable the management or Executive Committee which is aggrieved by decision of the DFRC to prefer a further appeal before the DFRC in such manner as prescribed. This section also deals with the constitution of the DFRC, since there is no dispute regarding the same, reference to the same would not be necessary.

20. Section 8 deals with the term of office of Chairperson and other members of the DFRC and therefore, reference to the same is also not necessary in the present *lis*. Section 9 is important section in as much as it lays down guidelines for determining the fee leviable by a school. It requires various factors like, location of the school, infrastructure made available to the students for the qualitative education and the facilities, the educational standard of the school, the expenditure on the administration and maintenance, the excess fund generated from non resident Indians, the contribution by the government for providing free-ship in case of backward class candidates, qualified teaching and non teaching staff as per the norms and their salary components, reasonable amount for yearly salary increments and any other factors, to be taken into consideration, while determining the fees.

21. Section 10 on which learned counsel appearing on behalf of Respondent parents heavily rely, provides that the powers and function of DFRC shall be to adjudicate the dispute between the school management and the Parent

Teachers Association regarding fees to be charged by the School management from the students. Sub-Section 2 of Section 10 enable DFRC to authorise any officer not below the rank of the Education Officer or the Education Inspector to enter any educational institute or any premises belonging to the management of such school and seize any records, accounts or registers or other documents which are found necessary and relevant to decide issue before the DFRC. The powers relating to search and seizures as per Code of Criminal Procedure insofar as they apply, to searches and seizures under this section. Sub-Section (3) of this Section bestows some of the powers which are available to a Civil Court under the provisions of CPC to the said DFRC. Sub-Section (4) provides that no order shall be passed by DFRC in absence of the Chairperson. It further provides the order passed by DFRC shall be binding for two years and that it shall not be called in question in any Civil Court except by way of an appeal before the Revision Committee constituted under the Act. Sub-Section (5) of Section 10 makes a similar provision as is already contained in clause (b) of Sub Section (6) of

Section 6 which prohibits Divisional Committee to grant any interim stay to the fee determined by the school management. It also provides for refund of fees recovered in excess, as is provided in Clause (c) Section (6). Sub-Section 8 of Section 10 provides that orders by the DFRC shall be binding on the private school for two academic years. It further provides that at the end of the said period the private schools are at liberty to propose changes in its fee structure by following the procedure as laid down under the Act. Chapter 4 of the said Act deals with offences and penalties. Section 17 provides as to what shall be the offences. Rule 9 of the said Rules deals with the procedure to prefer a proposal to DFRC under Section 6 of the Act. The provisions herein are almost similar with what has been provided in Section 6 of the said Act.

22. It could thus be seen that, the said Act is complete code in itself. It provides as to in what manner the fees will be first determined by the management and thereafter approved by the Executive Committee, which has to be constituted as per provisions of the Act, what would be the effect of the

difference in fees as approved by the management and approved by the Executive Committee. It provides a remedy to the management to approach DFRC in case the Executive Committee fails to decide the matter within the period prescribed in sub-section (3) of Section 6. Sub-Section (5) mandates the management to accept the approval by the Executive Committee, if the difference between the proposal of the management and decision of the Executive Committee is not more than 15%. Only if the difference is more than 15%, the management is entitled to prefer an appeal to the DFRC. A further appeal is provided under sub-section (7) of Section 6 either to the management or to the Executive Committee to approach the Revision Committee, if either the management or the Executive Committee are aggrieved with the decision taken by the Divisional Committee.

23. We may gainfully refer to the observations of the **Privy Council** in the celebrated case of **Nazir Ahmad V. King Emperor**. The aforesaid principle laid down by Privy Council has been consistently followed by the Hon'ble Supreme Court and various High Courts. Very recently by the Apex Court in

the case of **Central Coalfields Ltd. & Anr. Vs. SLL SML
(Joint Venture Consortium) & Ors.** ¹has observed thus:-

52. There is a wholesome principle that the Courts have been following for a very long time and which was articulated in Nazir Ahmad v. King Emperor namely “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden”. There is no valid reason to give up this salutary principle or not to apply it *mutatis mutandis* to bid documents. This principle deserves to be applied in contractual disputes, particularly in commercial contracts or bids leading up to commercial contracts, where there is stiff competition. It must follow from the application of the principle laid down in Nazir Ahmed that if the employer prescribes a particular format of the bank guarantee to be furnished, then a bidder ought to submit the bank guarantee in that particular format only and not in any other format. However, as mentioned above, there is no inflexibility in this regard and an employer could deviate from the terms of the bid document but only within the parameters mentioned above.

53. Nazir Ahmed has been followed in dozens of decisions rendered by this Court and by other constitutional Courts in the country. The Central Vigilance Commission has accepted this principle in a modified form as a guiding principle in its circular dated 31st December, 2007 wherein it is mentioned that all organizations ought to evolve a procedure for acceptance of bank guarantee that is compatible with the guidelines of banks and the Reserve Bank of India. One such requirement is that the bank

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Decided on 17th August 2016

guarantee should be in a proper prescribed format and should be verified verbatim on receipt with the original. Adherence to this principle of verbatim verification would not only avoid undue problems for the employer but would also virtually eliminate subjectivity on the part of the employer.

24. It could thus be seen that it is more than well settled principle of law that when a statute requires a particular thing to be done in a particular manner, it is to be done in that manner alone or not at all. Undisputedly, DFRC is a creation of the said Act and at the most can be construed to be a statutory tribunal constituted under the said enactment. It will be relevant to mention the observations of the Their Lordships of the Apex Court in the case of ***Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu & Ors.***² which read thus :-

23. The jurisdiction of a Tribunal created under statute may depend upon the fulfilment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the Tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the Tribunal has to consider. At the inception of an enquiry by a Tribunal of limited jurisdiction, when a challenge is made to its

² 1991 Supp (2) Supreme Court Cases 228.

jurisdiction, the Tribunal has to consider as the collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be Tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the further exercise of its jurisdiction depends; but subject to that, the Tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction which it would not otherwise have except such tribunals of limited jurisdiction when the statute not only empowers to enquire into jurisdictional facts but also the rights and controversy finally it is entitled to enter on the enquiry and reach a decision rightly or wrongly. If it has jurisdiction to do right, it has jurisdiction to do wrong. It may be irregular or illegal which could be corrected in appeal or revision subject to that the order would become final. The questions to be asked, therefore, are whether the tribunal has jurisdiction under Inam Act to decide for itself finally; whether the institution or the inamdar or the tenant is entitled to ryotwari patta under Section 3, 4 and 7 and whether the tribunal is of a limited jurisdiction and its decision on the issue of patta is a collateral fact.

25. It could thus be clearly seen that at the inception of an inquiry, the tribunal of limited jurisdiction is required to decide the issue as to whether it has jurisdiction to decide the matter which is brought before it or not. It is more than settled that a tribunal of a limited jurisdiction will have a jurisdiction to entertain a proceeding only if the statute under which it is created enables the party to approach it and to decide only

the issues which the statute empowers it to decide. The scheme of the enactment which we have discussed herein above would clearly reveal that the DFRC can be approached only by the management and that to only in the event when the difference between the proposal submitted by it and the one approved by the Executive Committee is more than 15%. Conversely if the difference between the fees proposed by the management and approved by Executive Committee is less than 15%, in that event the management also will have no right to approach the DFRC. It could, also, be seen that under Section 6, it is only the management, who has a right to file a first appeal before the Divisional Committee in case the management is aggrieved by the decision of DFRC. It is only the second appeal as provided under sub-section 7 of Section 6, wherein right is given to file appeal by the Management as well as Executive Committee before Revision Committee, if either of them is aggrieved by decision of Divisional Committee. It could thus be seen that the perusal of the scheme would reveal that the statute does not provide for initiation of proceedings before DFRC, at the behest of individual parents.

26. No doubt that, the learned counsel for Respondents are contending that in view of powers under Section 10, all questions between the school management and PTA regarding the fee are to be determined by the DFRC. The learned counsel urged us to accept the said interpretation by placing reliance on preamble of the Act. No doubt that, sub Section 1 of Section 10 provide that powers and functions of DFRC shall be to adjudicate the dispute between the school management and the PTA regarding fee to be charged by the school management from the students. However, a particular sections of statute cannot be read in isolation. While considering the provisions of law, the Court will have to take into consideration various provisions of the statute and apply the principle of harmonious construction.

27. The other principal that we are required to take into consideration is the first principal of interpretation. That is of plain and literal construction. Only when the effect cannot be given to the legislative intent, a recourse to the other principals of statutory interpretation would be permissible. It is more than well settled that a right to appeal is a creature of a

statute. There cannot be an inherent right to an appeal, until the statute specifically provides for the same. If the legislature in its wisdom has not provided for right to appeal by individual parents before DFRC, if we arrive at the interpretation urged by Respondent Parents by resorting to the pragmatic principle of interpretation, we are of the view that we will be totally encroaching upon the legislative functions of the legislature. The learned counsel for the Respondents may be justified in contending that the legislative enactment which provides a right to appeal only to the management and not to the parents is discriminatory and in violation of Article 14. However, such a challenge cannot be entertained by us in a Petition filed by a management. If the Respondents – Parents are of the view that such enactment is unconstitutional, it is always permissible for them to raise an appropriate challenge in that regard. However, while entertaining the Petition of the Petitioners raising basic issue as to the tenability of the appeal at the instance of individual parents, it will not be permissible for us to consider challenge of the Respondents. We are therefore, of the considered

view that the Respondent No.1 has erred in entertaining the grievance on behalf of the individual parents.

28. We are also of the considered view that the learned Tribunal – Respondent No.1 has further erred in issuing a direction to again constitute PTA and the Executive Committee. We find that the jurisdiction given to Respondent No.1 is only to the limited extent of determination of the fees. The dispute with regard to constitution of PTA or the Executive Committee is beyond the purview of the said enactment. If any of the parties are aggrieved with the constitution of PTA, the same being an association, such party would either have to invoke the jurisdiction of the Civil Court, if the association is not registered or if it is registered under the provisions of the Maharashtra Public Trust Act, then the competent authority under the said Act. We find that the direction issued in that regard by the Respondent No.1, is also without jurisdiction.

29. We have no hesitation in accepting the arguments of the Respondents – Parents that the said enactment has been

enacted with the avowed object of prohibiting exploitation of the parents. However, though we may hold that the contention of the Respondents Parents is correct in that regard. In the exercise of our powers under Article 226, that we have with us, we cannot go beyond the provisions of the statute. If the parents find that there any lacunas in the enactment which come in the way of achieving its object then it is only the legislature who can step in and cure the defects in the enactment. We find that if we accept the arguments as advanced by the Respondents – Parents, it would be amounting to taking over the legislative functions ourselves and providing in the statute what was not provided by the legislature.

30. In the result, both the Writ Petitions are allowed. Rule is made absolute by quashing and setting aside the orders impugned in Writ Petition No. 7594 of 2017 dated 7th June 2017 and Writ Petition (L) No. 471 of 2017 dated 20th June 2017. In the facts and circumstances no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)