

**A.M.SHAFIQU & GOPINATH P., JJ.**

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W.P.(C) Nos.24070/2020, 24219 of 2020 &  
24725 of 2020  
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Dated this the 13<sup>th</sup> day of November, 2020

**ORDER**

**Shaffique,J.**

W.P.(C)Nos.24070 & 24219 of 2020

Admit. The learned Government Pleader takes notice for R1. Smt. Mary Benjamin takes notice for R2. Sri. Titus Mani takes notice for R3.

W.P.(C)No.24725/2020

Admit. Smt. Mary Benjamin takes notice for R1. The learned Government Pleader takes notice for R2. Sri. Titus Mani takes notice for R3.

W.P.(C)Nos.24070, 24219 of 2020 & 24725/2020

These writ petitions have been filed challenging an order dated 4.11.2020 by which the Fee Regulatory Committee for Medical Education in Kerala had issued directions notifying the fee to be collected by the respective Colleges for 85% of the students admitted under general quota and 15% of the students under the NRI quota. The main contention urged by the petitioners is that by judgment dated 19.5.2020, this Court, while setting aside the order passed by the Committee fixing the fee for the previous years, had given certain instructions to the Committee to fix the fee in accordance with the parameters prescribed thereunder. It is submitted that the matter came to be challenged before the Apex Court and the Apex Court had issued the following interim order:-

*"Permission to file the special leave petition(s) is granted.*

*Issue notice.*

*In the meantime, if the Fee Regulatory Committee submits any report after remand, the same shall not be implemented."*

2. The Committee, however, felt that, in the light of the Supreme Court order as aforesaid, it is inappropriate and unfair to regulate/ fix the tuition fee for the academic year 2020-2021 following the guidelines issued by the High Court in the judgment dated 19.5.2020. Thereafter, the Committee, while considering the fee structure of the previous years, i.e., 2019-2020 (which has already been set aside by this Court) combined the inflation rate of 6.41% and fixed the fee in respect of 19 Medical Colleges. Two more contentions have been urged by the petitioners. One is that, after the enactment of National Medical Commission Act, 2019, the Committee is devoid of any powers to regulate the fee. As per Section 10(1) (i), the Commission is to frame guidelines for determination of the fee and all other charges in respect of 50% of seats in Private Medical Institutions and deemed to be Universities which are governed under the provisions of this Act. However, the learned counsel appearing on behalf of the Commission on instructions would submit that, for the present year, the Commission had not taken any steps to regulate the fee in terms of Section 10 (1) (i). A substantial question has now arisen for consideration as to whether the Committee has jurisdiction to regulate the fee after promulgation of National Medical Commission Act, 2019, which requires to be adjudicated.

3. The Commissioner for Entrance Examination had issued a

notification dated 11.11.2020 by which the fee structure of self financing Medical Colleges had been stated to be the fee as fixed by the Committee. However, it is further stated that the fee is provisional and is subject to the final decision of the Government/AFRC or in accordance with the consensual agreement entered into between the self financing management and the Government. Even on earlier occasions, this Court in ***Kerala Self Financing Dental Colleges Managements Consortium v. State of Kerala*** [2017(4) KLT 809] has stated that fee had to be fixed in advance even before allotment since the students/their parents should be aware of fee structure that they will be liable to pay for getting admission in the respective Colleges. Unfortunately, this year also, the fee is stated to be provisional. If at all the Committee had fixed the fee structure, it should have followed the directions issued by this Court in our judgment dated 19.5.2020 in W.P.(C)No.19508/2019. The Supreme Court did not restrain the Committee from fixing the fee. The interim order indicated that any such report of the Committee shall not be implemented. The hands of the Committee was not tied on by the order passed by the Apex Court in fixing the fee in the light of the parameters prescribed by this Court. Such attitude of the Committee requires to be deprecated and we do so. Repeatedly, this Court had stated that the Committee should act in accordance with the directions issued by this Court. It is unfortunate that orders of this Court are not being complied in letter and spirit. The Government should address this issue and see whether the members of the Committee has any other

agenda in the matter or else the Government should take appropriate steps to ensure that a proper statutory Committee exists in considering the matter in the light of the directions issued by this Court.

4. Prima facie, we are of the view that a stalemate has occurred in respect of fixation of fee as far as the present year is also concerned. Therefore, the matter requires to be heard immediately. In the meantime, the Commissioner for Entrance Examination shall also intimate the students by proper publication in their website and the online portal that the maximum fee that will be levied, will be the fee as claimed by the respective Colleges. If the Colleges have given any such information, the same shall also be published in the website. It should also be stated that, while admitting the students, the students shall give an undertaking that they will be under the obligation to pay the difference in fee as may be fixed by the Court or such other authority as this Court may deem fit.

The respondents shall file their affidavits/statements within a period of two weeks.

Post on 30.11.2020.

Sd/-

A.M. SHAFFIQUE, JUDGE

Sd/-

GOPINATH.P, JUDGE

hand over  
acd

True Copy

ASSISTANT REGISTRAR