

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 2356 of 2021**

**With**  
**R/SPECIAL CIVIL APPLICATION NO. 2131 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 15325 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 15329 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 3959 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 1341 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 454 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 3341 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 5302 of 2020**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 6854 of 2020**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 6739 of 2020**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 4221 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 1272 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 10083 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 15241 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 14720 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 16585 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 17821 of 2021**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 18068 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 18076 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 19063 of 2019**

With  
R/SPECIAL CIVIL APPLICATION NO. 20881 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 21566 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 22939 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 4236 of 2022  
With  
R/SPECIAL CIVIL APPLICATION NO. 4395 of 2022  
With  
R/SPECIAL CIVIL APPLICATION NO. 6186 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 6185 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 7232 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 7985 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 7983 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 8457 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 17957 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 18722 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 11813 of 2020  
With  
R/SPECIAL CIVIL APPLICATION NO. 15866 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 15656 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 15657 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 15640 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 20400 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 21384 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 18894 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 18895 of 2019

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**AMBE PUBLIC SCHOOL  
Versus  
STATE OF GUJARAT**

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Appearance:

SCA No.2356/2021 & SCA No. 2131/2021:  
*MR AJ YAGNIK for the Petitioners.*

SCA NO.15325/2019 & SCA NO.15329/2019:  
*MR DHAVAL C DAVE SENIOR ADVOCATE FOR MR NIKUNT RAVAL for the Petitioners.*

SCA NO. 3959/2021, SCA NO.1341/2021, SCA NO.454/2022, SCA NO.3341/2022, SCA NO.5302/2020, SCA NO.6854/2020, SCA NO.6739/2020, SCA NO.4221/2021, SCA NO.1272/2021, SCA NO.10083/2019, SCA NO.15241/2021, SCA NO.14720/2019, SCA NO.16585/2021, SCA NO.671/2021, SCA NO.17821/2021, SCA NO.18988/2021, SCA NO.18068/2019, SCA NO.18076/2019, SCA NO.19063/2019, SCA NO.20881/2019, SCA NO.21566/2019, SCA NO.22939/2019, SCA NO.4236/2022 & SCA NO.4395/2022:  
*MR MIHIR JOSHI SENIOR ADVOCATE WITH MR MITUL SHELAT FOR MS DISHA NANAVALY for the Petitioners.*

SCA NO.6186/2021, SCA NO.6185/2021, SCA NO.7232/2021, SCA NO.7985/2021, SCA NO.7983/2021:  
*MR MIHIR THAKORE, SENIOR ADVOCATE WITH MR RS SANJANWALA SENIOR ADVOCATE FOR MR SATYAM CHHAYA for the Petitioners.*

SCA NO.8457/2021, SCA NO.17957/2021, SCA NO.18722/2021:  
*MR MIHIR THAKORE, SENIOR ADVOCATE FOR MR ANIP GANDHI for the Petitioners.*

SCA NO.11813/2020:  
MR MIHIR THAKORE SENIOR ADVOCATE FOR MR SIDDHARTH SINHA WITH  
MR BH CHHATRAPATI for the Petitioners.

SCA NO.15866/2019, SCA NO.15656/2019, SCA NO.15657/2019, SCA  
NO.15640/2019:  
MR MIHIR THAKORE SENIOR ADVOCATE FOR MR TEJAS SATTA for the  
Petitioners.

SCA NO.20400/2019:  
MR PARTH CONTRACTOR for the Petitioners.

SCA NO.21384/2019:  
MR PERCY KAVINA SENIOR ADVOCATE FOR MR NIKUNT RAVAL for the  
Petitioners.

SCA NO.18894/2019, SCA NO.18895/2019:  
MR TUSHAR HEMANI SENIOR ADVOCATE FOR MS VAIBHAVI PARIKH  
for the Petitioners.

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MS MANISHA LUVKUMAR SHAH, SENIOR ADVOCATE WITH MR. KM ANTANI  
AND MS NIDHI VYAS AGP for the Respondents.  
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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 22/07/2022**

**CAV JUDGMENT**

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## **I- Introduction**

1. All these petitions are filed by the Self Financed schools challenging the orders passed by the Fee Regulatory Committee (Self-Finance Schools) and/or Fee Revision Committee under the provisions of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 (For short "the Act, 2017") and the Gujarat Self Financed Schools (Regulation of Fees) Rules, 2017 (for short "Rules, 2017") .
2. With the consent of the learned advocates, these petitions are heard finally and are being disposed of by this common judgment and order as the issues arising in these petitions are more or less similar.
3. The constitutional validity of the Act, 2017 was challenged before this Court by filing Writ Petition (PIL) No. 132 of 2017 and other similar petitions. The Division Bench of this Court (Coram : Hon'ble the Chief Justice Mr. R. Subhash Reddy and Hon'ble Mr. Justice Vipul M. Pancholi) by judgment and order dated 27<sup>th</sup> December, 2017 upheld the constitutional validity of the Act, 2017 by arriving at the following conclusion on various issues raised by the

petitioner therein:

"61. In view of the aforesaid discussion and reasons, we arrive at the following conclusion on various issues raised by the petitioners :

(A) The respondent State has legislative competence to enact the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 and the Rules framed thereunder, including for the schools affiliated to CBSC, ICSE and IB and the provisions of said Act and Rules framed thereunder are also not repugnant to the Right of Children to Free and Compulsory Education Act, 2009.

(B) Sections 2(g), 2(r), 2(t), 2(u), 3, 8, 9, 10, 11 and 12 of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 and the Rules 6, 7 and 8 and Form II and its Annexures of the Gujarat Self Financed Schools (Regulation of Fees) Rules, 2017 are not violative of Article 14 and 19(1)(g) of the Constitution of India and the various restrictions in the above said provisions of the Act and Rules framed thereunder are reasonable restrictions, within the meaning of Article 19(6) of the Constitution of India.

(C) The provisions of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 and the Rules framed thereunder are not violative of the rights guaranteed under Article 30 of the Constitution of India with regard to the minority institutions.

(D) Constitution of Fee Regulatory Committee, and Fee Revision Committee under Sections 3 and 12 of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 are not unconstitutional, as contended by the petitioners.

(E) Provisions of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 and the Rules framed thereunder are not retrospective in nature, as pleaded by the petitioners.

(F) Notification dated 25.04.2017 issued section 9(1) of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 is valid. However, we permit the Association of various categories of schools to file representation to the Competent Authority within a period of six weeks from today for modification of exemption limit notified in the notification. If such representations are filed, the Competent Authority to consider such representations and pass appropriate orders within a period of six weeks thereafter. If the Competent Authority comes to the conclusion that exemption limit is required to be revised, it shall take necessary steps to issue necessary notification by publication in official gazette and same would be effective from the academic year 201819.

(G) We further make it clear that it is open to the Self Financed Schools which are required to submit proposal in Form II to the Fee Regulatory Committee for fixation of fees to propose fees not

restricting to various types of fees notified under section 2(g) of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017 or type of income shown in Part IV (Annexure II) of financial information in the Rules, 2017. It is further open for such schools to propose any other fees to improve the quality of education and standard of schools. At the same time, such proposal should not amount to charging of exorbitant fees, or profiteering within the meaning of section 2(r) of the Gujarat Self Financed Schools (Regulation of Fees) Act, 2017.

(H) We permit the Self Financed Schools to submit their proposal to the competent authority within a period of three weeks from today. The Self Financed Schools, which have already submitted proposals, are also permitted to file further documents, if any, within a period of three weeks from today. On such proposals, it is open for the competent authority to take further steps in accordance with law."

4. The petitioners therein have challenged the aforesaid judgment and order dated 27<sup>th</sup> December, 2017 by preferring Special Leave to Appeal (C) No.314/2018 and other allied matters before the Hon'ble Supreme Court.
5. The Hon'ble Supreme Court has passed various interim orders during the pendency of the above matters which would have some



bearing on the issues raised by the petitioners in this group of petitions and the same would therefore, be referred to at an appropriate stage.

## **II- RELEVANT PROVISIONS:**

6. In view of above developments, before advertng to the specific issues raised by the petitioners in these petitions arising out of adjudication of the fee proposals by the respective Fee Regulatory Committees and Fee Revision Committees, it would be germane to refer to the statements and objects and reasons of the Act, 2017 as well as relevant provisions of the Act, 2017 and Rules, 2017 which read as under:

### **"STATEMENT OF OBJECTS AND REASONS**

At present clause (19) of Sec.17 of the Gujarat Secondary and Higher Secondary Education Act, 1972 empowers the Government to prescribe conditions for admission of students to the registered schools and for that purpose direction, can be given to the Gujarat Secondary and Higher Secondary Education Board. Moreover, the Gujarat Primary Education Rules, 1949 also require, strict adherence, of the said rules and the provisions of the Right of Children, to Free and Compulsory Education Act, 2009. There is however, no law prescribing the fixation of fees by the schools and more

particularly the self financed schools. It is noticed that in absence of any such law prescribing standards of fees leviable by the self financed schools, such schools charge exorbitant fees. Therefore, in order to mitigate the plight of the parents seeking admission of their wards in the self financed schools, it is considered necessary to provide by law special provisions for fixation of fees for the self financed schools. -

The Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain, in brief, some of the important provisions of the Bill :-

Clause 1—This clause provides for short title, extent and commencement of the Act.

Clause 2—This clause defines terms used in the Bill.

Clauses 3 and 4.—These clauses provide for constitution, jurisdiction and headquarters of the Fee Regulatory Committee.

Clause 5.—This clause provides that vacancies occurred in the Committee shall not invalidate the proceedings of the Committee.

Clauses 6.—This clause provides for the procedure to be regulated by the Fee Regulatory Committee at its meeting.

Clause 7.—This clause provides for the power of the State Government to terminate the appointment of the

Chairperson or any member of the Fee Regulatory Committee under the circumstances as mentioned therein.

Clause 8.—This clause provides for the powers to be exercised and functions to be performed by the Fee Regulatory Committee.

Clause 9.—This clause provides for the exemption granted to any self financed school from appearance before the Fee Regulatory Committee.

Clause 10.—This clause provides for the factors as specified therein, under which the Fee Regulatory Committee shall determine the fees leviable by the self financed school.

Clause 11.—This clause prohibits the self financed school to collect any fee in excess of the fees fixed by the Fee Regulatory Committee.

Clause 12.—This clause provides for the constitution of the Fee Revision Committee.

Clause 13.—This clause provides for the regulation of accounts of the self financed school and maintenance of records thereof.

Clauses 14 to 15.—These clauses provide for offences committed under this Act and penalties thereof.

Clause 16.—This clause provides for the power of State Government to give directions for the purpose of carrying out of the provisions of the Act, rules or orders made there under.

Clause 17.—This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Clause 18.—This clause provides for usual indemnity for acts done in goods faith.

Clause 19.—This clause provides that the members of Committee, officers and the employee shall be public servant within the meaning of Sec. 21 of Indian Penal Code.

Clause 20.—This clause empowers the State Government to make rules, by notification in the Official Gazette, for carrying out the purposes of the Act. .

Clause 21.—This clause empowers the State Government to remove difficulties arising within a period of two years from the commencement of the Act."

**The Gujarat High Finance School (Regulation of Fees) Act, 2017**

**2(g) "Fee or Fee Structure"** means any amount, by whatever name called, collected, directly or indirectly, by a school for admission of a student to any Standard or course of study 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) Admission fee, which shall not exceed one month tuition fee;
- (ix) Yoga and Physical Education fee;
- (x) any other fee as determined by the Fee Regulatory Committee;

**2(r) "profiteering"** means any amount accepted in cash or kind, directly or indirectly which is in excess of the fee fixed or approved as per the provisions of this Act and shall include profit earned from school by trust or company associated with the school in any manner whatsoever;

**3. Constitution of Fee Regulatory Committee.** - (1) The Government shall constitute a Fee Regulatory Committee for the purpose of determination of the fee for any standard or course of study in self financed schools;

(2) The age of the Chairperson and the members shall not be more than 65 years at the time of appointment. The term of the Chairperson and other nominated members shall be three years.

(3) The honorarium and allowances payable to and other terms and conditions of service of member shall be such as may be prescribed.

(4) The Committee shall consist of the following members, namely: -

(a) retired District and Sessions Judge or a person who had been a member of All India Service, having retired from a post not below the rank of Principal

Secretary to Government or a person who had been a member of Indian Police Service, having retired from a post not below the rank of Additional Director General of Police, to be nominated by the Government, who shall be the Chairperson of the Committee;

(b) the Chartered Accountant, to be nominated by the Government;

(e) One Civil Engineer/Government approved valuer, to be nominated by the Government;

(d) one representative from the self financed school management of the respective zone, to be nominated by the Government;

(e) one Academician of repute, to be nominated by the Government.

(5) The District Education Officer or, as the case may be, the District Primary Education Officer shall act as a co-ordinator to the Committee to provide administrative support.

**8. Powers and Functions of the Fee Regulatory Committee.-** (1) Subject to the provisions of section 9, the Fee Regulatory Committee shall determine the fee payable by students in the self financed schools.

(2) The Committee shall have power to,-

(a) require each self financed school to place before the Committee, the proposed fee structure of such school alongwith all relevant documents and books of accounts for scrutiny before such date as may be specified by the Committee;

(b) verify whether the fee proposed by the self financed school is justified

and whether it amounts to profiteering or charging of exorbitant fee;

(c) approve the existing fee structure or determine the fee which can be charged by the self financed school;

(d) verify whether the fee collected by the self financed school, operating within the territory of the State of Gujarat, is recognised by the competent State Educational Authority or affiliated to the Gujarat Secondary and Higher Secondary Education Board/Central Board of Secondary Education/Council for Indian School Certificate Examinations/IB board or any other board, as the case may be and the school imparts instruction prescribed by the Gujarat Secondary and Higher Secondary Education Board or any other Board, as referred to above;

(e) hear complaints or initiate *suo moto* hearing with regard to collection of excess fee by a self financed school, as referred to above in Clause (d);

(f) regulate the fees charged by the school and penal action as per the provisions of this Act;

(g) report the matter to the respective competent Educational Authority that the school has collected excess fee and it has not complied with the provisions of the respective applicable Acts and rules made thereunder of the concerned Board for appropriate action.

(3) (a) For the purposes of this Act, the Fee Regulatory Committee while holding inquiry shall have the powers of a Civil Court under the Code of Civil of Civil Procedure, 1908, (V of 1908) while

trying a suit in respect of the following matters, namely:-

- (i) summoning and enforcing the attendance of any witness and examining him on oath;
  - (ii) requiring the discovery and production of any document;
  - (lii) receiving evidence on affidavit; and
  - (iv) issuing commission for examination of witnesses for local inspection,
- (b) All inquiries and revisions under this Act shall be deemed to be the judicial proceedings within the meaning of Secs. 193, 219 and 228 of the Indian Penal Code (XLV of 1860)

**10. Factors for determination of fee. -**

(1) The Fee Regulatory Committee shall determine the fee leviable by a self financed school taking into account the following factors, namely: -

- (i) location of the self financed school i.e. village, town, or city in which the school is situated;
- (ii) investment incurred to setup the school;
- (iii) infrastructure made available to the students for the qualitative education, facilities provided as mentioned in the prospectus or website of the school;
- (iv) expenditure on administration, maintenance of services and utilities of the school;
- (v) excess fund generated from Non-Resident Indians, as a part of charity by the management and contribution by



the Government for providing free-ship in fee or for other items under various Government schemes given to the school for the students.

(vi) students strength in the self financed school;

(vii) classes of study and courses of study offered by the school;

(viii) qualification of teaching, and non-teaching staff (as per the relevant norms) their salary components, and reasonable amount for yearly salary increments;

(ix) Expenditure incurred on the students against total income of the school which shall include profit earned from school by the trust or company associated with such school;

(x) reasonable revenue surplus for the purpose of development, education and expansion of the school;

(xi) any other factors which may be prescribed by the Government from time to time.

(2) The fee Regulatory Committee shall, after determining the fee leviable by a self financed school, communicate its decision to the school concerned.

(3) The Fee Regulatory Committee shall determine the total fees which shall be levied by considering all different fees charged by the school.

(4) The fee structure so determined by the Fee Regulatory Committee shall be binding on the self financed schools for a period of three years.

(5) The Fee Revision Committee may recommend to the Government for the upper fee limit to be kept for the

schools of the State. The Government may consider such recommendation appropriately.

**11. Prohibition of collection of excess**

**fee.** - (1) No self financed school shall collect any fee in excess of the fee fixed by the Fee Regulatory Committee for admission of students to any standard or course of study in that school.

(2) No excess fee shall be collected by any person either for himself or on behalf of such self financed school or on behalf of the management of such self financed school.

(3) No school itself or on its behalf shall collect any donation or capitation fee under any name whatsoever, or receive any deposit under any head to the school managements school trusts, company, or any trustee or member of the school. If any parents or guardian of a student has paid voluntarily any above referred amount, he shall inform the concerned Fee Regulatory Committee, the details of such payment on affidavit. Such nondisclosure shall amount to abetment of the profiteering committed by the school management.

(4) The School shall open and operate separate and only one bank account for individual registered school. The parents shall make payments of prescribed fees directly into the concerned school bank account. The acknowledgement of receipt of the total collected fee from the parents shall be given in the form of counter-foil from bank and concerned school, as the case may be.

**12. Fee Revision Committee.**-(1) The Government shall constitute a committee for the purpose of revision against the order passed by the Fee Regulatory Committee. The headquarters of the Fee Revision Committee shall be at Gandhinagar or at such other place, as may be decided by the Chairperson of the Committee.

(2) The Committee shall consist of the following members, namely:-

(i) retired Judge of the High Court, to be nominated by the Government shall be the Chairperson of the Committee;

(ii) the Secretary to the Government of Gujarat, Education Department (Primary and Secondary);

(iii) the Secretary to the Government of Gujarat, Finance Department, or his nominee not below the rank of the Deputy Secretary;

(iv) the Secretary, Gujarat Secondary and Higher Secondary Education Board or, as the case may be, the Director, Primary Education, ex-officio, who shall be the Member-Secretary;

(v) one representative from the self financed school management to be nominated by the Government;

(vi) the Chartered Accountant, to be nominated by the Government.

(3) A person aggrieved by the order of the Fee Regulatory Committee made under Sec.10 may file revision application

before the Fee Revision Committee within a period of twenty-one days from the date of receipt of such order:

Provided that if the Fee Revision Committee is satisfied that such School was prevented for filing a revision application within prescribed time-limit for sufficient cause, it may condone the delay and shall allow the revision application but not later than three months.

(4) The orders passed by the Fee Revision Committee shall be final and binding on the self financed school.

**Gujarat Self Financed Schools (Regulation of Fees) Rules, 2017**

**"5. Meetings of Fee Regulatory Committee.**-(1) The Chairperson shall preside over the meetings of the Fee Regulatory Committee. The Committee may adopt its own procedure for transaction of business as it deems fit.

(2) The date, time and venue of the meeting of the Committee shall be decided by the Chairperson and the same shall be communicated to the members of the Committee by the Co-ordinator of the Committee.

(3) The notice in FORM I, along with the agenda items of the meeting shall be given to the each member of the Committee at least 7 clear days in advance by registered post acknowledgement or any other mode including electronic mode as may be

decided by the Committee. The acknowledgement shall be preserved for one year.

(4) Emergency meeting may be called for by the Chairperson of the Fee Regulatory Committee with a short notice of 24 hours.

(5) The quorum at the meeting of the Committee shall be atleast two-third Members of the total strength of the Committee. If there is no quorum at the meeting, the same shall be adjourned for half an hour. Thereafter the meeting shall be held for the transaction of its business.

(6) The District Education Officer, or the District Primary Education officer of the Zonal headquarters, as the case may be, shall be the Co-ordinator of the Committee who shall act as per the directions of the Chairperson and shall prepare proceedings of the meeting and circulate the same to all the Members within seven days from the date of meeting.

(7) All official correspondence relating to administrative nature shall be issued under the signature of the Co-ordinator.

**6. Procedure for Submission of Proposal by Self Financed School for Determining of Fee or Fee Structure.**-(1) The Self financed school shall prepare and submit to the Fee Regulatory Committee, a proposal in FORM II for fixation of fee or fee structure, containing the particulars specified in it, for its consideration and approval not later than the 31st October of the year of the

proposal. The proposal shall also contain the following matters, namely

(i) proposal shall be for fixation of fee or fee structure for next three years;

(ii) audited accounts of the preceding two financial years;

(iii) provisional accounts from 1st April to 31st August of the year in which proposal is made alongwith a certificate of Chartered Accountant containing the income and expenditure specifying under the different heads;

(iv) proposed budget estimates in respect of the year of proposal with the relevant record and evidence; and

(v) expenditure incurred towards the educational related services rendered to the students by the affiliated/holding or subsidiary companies having same or related trustees and directors, directly or indirectly

2) In the event of non-submission of proposal within prescribed time limit or submission of incomplete details for fixation of fee, the Fee Regulatory Committee shall suo moto determine the fee structure which shall be binding on such school. The fees structure as determined by the Fee Regulatory Committee suo moto shall be applicable for the next three academic years.

(3) The self financed school shall pay such amount towards the process fee, as may be determined by the State Government, alongwith the proposal.

(4) The self financed school shall be bound to supply any further information or statements which may be required by the Fee Regulatory Committee within the time limit specified by the Committee.

**7. Procedure to be Adopted by Fee Regulatory Committee for determining Fee or Fee Structure**—The Fee Regulatory Committee shall adopt following procedure for determining fee or fee structure or fee commensurate with the facilities provided by the self financed school, namely:

(1) (a) On receiving the proposal from the self financed school in FORM II, the Fee Regulatory Committee shall scrutinise the proposal in accordance with the provisions of the Act and the rules made thereunder.

(b) The Committee may call for any further information or statements as are necessary for scrutiny of the proposed fee or fee structure from the self financed school within the specified time limit and may offer hearing to the concerned school.

(c) The Committee may authorise any Member or any officer for spot verification of documents and school buildings, etc.

(2) The Committee shall not ordinarily grant more than three adjournments during the course of proceedings.

(3) After considering all the relevant factors as provided in the Act and the rules, the Fee Regulatory Committee shall take a decision on such proposal

within a period of ninety days from the date of receipt of the proposal.

(4) The Fee Regulatory Committee shall determine the total fees under a single head which may be levied or collected. The order in FORM III, determining the total fees shall be operative for a period of three years.

(5) In the event of contravention of the Act or the rules, the Fee Regulatory Committee shall pass an order of, -

(a) refund of differential amount in case the school has collected excess fee; and

(b) penalty in case of any contravention of the provisions of the Act or the rules.

(6) The fee determined by the Fee Regulatory Committee for Pre-Primary Schools, Primary Schools, Secondary and Higher Secondary Schools shall be displayed by every such self financed school on its notice board in Gujarati and English as also on its official website.

(7) No Self Financed School shall collect fee amounting to more than one quarter from any student at a time and collection of fee for more than one quarter at a time shall be construed as collection of capitation fee and such school shall be liable to be proceeded against in accordance with the provisions of the Act.

(8) The order determining the fee by the Fee Regulatory Committee shall be



binding on the self financed school till the revision application is finally decided by the Fee Revision Committee. In the event of increase in fees by the Fee Revision Committee, the self financed school shall be at liberty to collect the differential amount from the student / parents in the next quarter.

**9. Powers and Functions of Fee Regulatory Committee**-The powers and functions of the Chairperson and the Fee Regulatory Committee amongst others shall be as follows, namely

(1) The Chairperson of the Fee Regulatory Committee -

(i) shall by an order authorise any officer or person for authentication of such orders and such decisions of the Committee under sub-sec. (3) of Sec. 6 of the Act;

(ii) may authorise any member of the Fee Regulatory Committee to visit any school for verification;

(iii) may authorise any officer for inspection of the accounts and records of the self financed school under sub-sec. (4) of Sec. 13;

(iv) shall monitor the strict implementation of the provisions of the Act and the rules.

(2) The Fee Regulatory Committee shall-

(i) make necessary documents available where the revision application is made

by the self financed school to the Fee Revision Committee;

(ii) call for such other information or statements as are necessary for determination of fee structure or require the presence of the authorised person of the self financed school.

(3) The order of the Committee determining the total fee shall also contain directions to refund the difference of fee within the specific time limit mentioned in it.

**12. Maintenance of Accounts and Records under Sec. 13.**—Every self financed school shall maintain the accounts in the following manner, namely: —

(1) (a) the self financed school shall keep accounts for different kinds of expenditure and transactions such as fee collected, grants received from the Central/ State Government/ local authority, donations and financial assistance received, payment of salary and allowances to the teaching and non-teaching staff, purchase of machinery, equipments, laboratory apparatus and consumables, library books, stationery, computers software and other such expenditure incurred for imparting educational activities such as building construction/renovation/expansion of the school, etc.;

(b) certificate relating to Tax Deducted at Source (TDS) for salary of teaching and non-teaching staff;

(c) expenditure incurred towards the related trust or affiliated/holding/

subsidiary company having same trustees/directors/members or relatives for educational, management service or house keeping services.

(2) The self financed school shall keep the registers, accounts and records within its premises at all reasonable time for inspection by the Fee Regulatory Committee or the authorised officer.

(3) The accounts maintained by the self financed school together with all vouchers relating to various items or receipts and expenditure shall be preserved by that school till the audit of accounts is over and objection, if any, raised is settled or till a period of seven years, whichever is later.

(4) (a) The self financed school shall maintain the following registers and record for the purposes of the Act and the rules, namely:

- (i) General Register,
- (ii) Admission Registers,
- (iii) Fee receipt,
- (iv) Fee Collection Register,
- (v) Cash Book,
- (vi) Library Register,
- (vii) Staff Attendance Register,
- (viii) Student Attendance Register,
- (ix) Voucher File,
- (x) Cheque Register,
- (xi) Service Books,
- (xii) Stock Registers,
- (xiii) Transfer Certificate Book,
- (xiv) Contingency Expenditure Register,
- (xv) Asset Register,
- (xvi) Building rent Register,
- (xvii) District Information System for Education (DISE) form,

(xviii) Unified District Information System for Education (UDISE) form,  
(xix) Minute book of school management,  
(xx) Register for TDS certificate.

(b) The Principal / Head Master/ Managing Trustee or authorised person of the self financed school shall be responsible for maintenance of accounts, records and registers.

**15. Meetings of Fee Revision Committee**

(1) The Chairperson shall preside over the meetings of the Fee Revision Committee. The Committee may adopt its own procedure for transaction of business as it deems fit.

(2) The date, time and venue of the meeting of the Committee shall be decided by the Chairperson and the same shall be communicated to the members of the Committee by the Member-Secretary of the Committee.

(3) The notice in FORM VI alongwith the agenda items of the meetings shall be given to the each Member of the Committee at least seven clear days in advance by registered post acknowledgement or any other mode including electronic mode as may be decided by the Committee. The acknowledgement shall be preserved for the period of one year.

(4) The emergency meeting may be called for by the Chairperson of the Fee Revision Committee with a short notice of 24 hours.

(5) The quorum at the meeting of the Committee shall be atleast two third members of the total strength of the

Committee. If there is no quorum at the meeting, the same shall be adjourned for half an hour. Thereafter the meeting shall be held for the transaction of its business.

(6) The Member - Secretary of the Committee shall prepare the proceedings of the meeting and circulate the same to the all the members within seven days from the date of meeting.

(7) All official correspondence relating to administrative nature shall be issued under the signature of the Member - Secretary of the Committee. The orders and decisions of the Committee shall also be communicated by the Member - Secretary of the Committee. The Committee may authorise any Member of the Committee to visit the school for verification and any officer for inspection of accounts and records.

**16. Procedure for Deciding Revision Application by Fee Revision Committee.-**

The Fee Revision Committee shall adopt following procedure for deciding the revision application preferred by self financed school in FORM V, namely:

(1) On receiving the revision application from the Self financed School in the prescribed manner, the Fee Revision Committee,-

(i) shall call for the proceedings of the Fee Regulatory Committee;

(ii) shall go through the proposal of the self financed school submitted to the Fee Regulatory Committee and relevant documents and evidences

attached with such proposal;

(iii) shall examine the grounds on which the revision application is preferred;

(iv) may call for any information or evidences as may be necessary for deciding the application from the self financed school to be submitted within the specified time limit;

(v) shall take into consideration the factors on which the Fee Regulatory Committee has determined the fee structure;

(vi) consider such other matters as it may deem necessary.

(2) After considering all the relevant factors mentioned in sub-rule (1), the Fee Revision Committee shall take a decision on revision application within a period of ninety days from the date of receipt of the said revision application.

(3) The decision of the Fee Revision Committee shall be Communicated to the school management and copy of the same shall be endorsed to the Fee Regulatory Committee.

(4) The order of the Fee Revision Committee shall clearly specify determination of total fees to be levied for three years and imposition of penalty in case of contravention.

**17. Powers and Functions of Revision Committee.**—The powers and functions of the Chairperson and of the Fee Revision Committee amongst others shall be as follows, namely:—

(1) The Committee may call for any information or evidences as may be necessary for deciding the revision application from the self financed school.

(2) The Committee may issue such directions as it deems necessary in order to communicate the decision with respect to matters specified in Sec. 14 of the Act."

### **III-SUBMISSIONS OF PETITIONERS FOR COMMON ISSUES:**

7. Learned Senior Advocate Mr. Mihir Thakore with regard to the powers of the Fee Regulatory Committee (For short "FRC") to decide the fee proposals submitted by the Self Financed Schools submitted that the provisions of the Act, 2017 in light of Statement of Objects and Reasons stated here-in-above, have emanated from various proposition laid down by the Hon'ble Supreme Court and various High Courts for fixation of fees of a self financed educational institute with an underlying golden thread running in all the decisions is to curb profiteering and charging of exorbitant fees by the Self Financed Schools, Colleges and Universities. The objects of promulgating the Act, 2017 manifest that as there was no law prescribing the fixation of fees by the Schools and more

particularly, the Self Financed Schools and in absence of any such law prescribing the standards of fees leviable by the Self Financed Schools, such schools charge exorbitant fees and therefore, in order to mitigate the plight of the parents seeking admission of children in the Self Financed Schools, the Act, 2017 has come into existence to make special provisions for fixation of fees for the Self Financed Schools in the State and the matters connected thereto.

8. Learned Senior Advocate Mr. Mihir Thakore referred to the decisions of the Apex Court so as to submit that right to determine the fees is absolutely of the School and the only jurisdiction of the FRC is to verify whether the fee determined by the Schools amounts to profiteering or charging of capitation fee and whether the surplus of the fee over expenditure is reasonable or not.
9. Learned Senior Advocate Mr. Thakore referred to and relied upon the provisions of sections 2(r), 8(2)(b) and 10 of the Act, 2017 in support of his submissions.
10. Mr. Thakore would submit that FRC has



no jurisdiction to determine the reasonableness of the expenditure incurred and cannot say that such expenditure is not justified under the provisions of section 8(2) (b), 10(1) read with definition of "profiteering" under section 2(r) of the Act, 2017.

11. In support of his submissions, learned Senior Advocate Mr. Mihir Thakore relied upon the following decisions:

1) In case of **T.M.A. Pai Foundation and others v. State of Karnataka and others** reported in (2002) 8 Supreme Court Cases 481, wherein the Apex Court observed as under :

"54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

2) In case of **Islamic Academy of Education and another v. State of Karnataka and others** reported in (2003) 6 Supreme Court Cases 697, the Apex Court observed as under :

"154. The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors including, facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the book of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors some, of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in para 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also

take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development, of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee."

3) In case of **P.A. Inamdar and others v. State of Maharashtra and others** reported in (2005) 6 Supreme Court Cases 537, the Apex Court observed as under :

"Q. 3 Fee, regulation of

139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in Pai Foundation. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (Paras 56 to 58 and 161 [Answer to Q.5(c)] of Pai Foundation are relevant in this regard).

### Capitation Fees

140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. 'Profession' has to be distinguished from 'business' or a mere 'occupation'. While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to the society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated."

- 4) In case of **Malankara Orthodox S.C.M. College v. Fee Regulatory Committee** reported in 2007 SCC OnLine Ker 428, the Kerala High Court observed as under :

"2. Petitioner has sought for a declaration that petitioner is entitled to collect fees from the students based on the fee structure proposed by them before the committee. Government of Kerala has constituted the Fee Regulatory Committee under section 6 of Act 19 of 2006. Powers conferred on the Regulatory Committee under the Act was the subject matter of the decision of this Court in Lisie Medical & Education Institutions v. State of Kerala, 2007(1) KLT 409. This court placing reliance on the decision of the Supreme Court in TMA Pai Foundation case (2002)8 SCC 481, Islamic Academy's case (2003) 6 SCC 697, and Inamdar's case WP(C). 16303/07 (2005) 6 SCC 527 held as follows:

"It is further clear that the fee has to be decided by the institutions themselves and such right of the institutions cannot be arrogated by the State. While, however, fixing the fee structure, the institutions cannot indulge into profiteering nor can charge capitation fee, even though the element of surplus income to cater to the future needs of the institutions can be definitely taken into account while fixing the fee. The Committees that may be constituted or the law that may be even made could only regulate the profiteering and charging of capitation fee. The Committees would themselves have every right to modify the fee structure fixed by the institutions and debar institutions by an order and if legislation is made to that effect

by law, to reduce the fee in the event of its coming to a finding that the fee structure had a component of profiteering and/or capitation fee, but nothing beyond that. The fixation of fee structure is the right of an institution particularly when unaided. The right of the Committees that may be constituted or the Government to legislate, in our considered view, cannot go beyond examining the fee structure to find out therein the element of profiteering or charge of capitation fee, be it by monitoring committees or by legislation."

5) In case of **Bhojia Dental College & Hospital & another v. State of Himachal Pradesh** reported in 2013 SCC Online HP 3868, it was observed as under :

"21. From the extracted portion of the aforesaid decisions, there is no manner of doubt that it is the prerogative muchless right of the educational institution to decide its own fee structure. The Review Committee has to evaluate as to whether that fee structure does or does not result in profiteering, commercialization or demanding capitation fee. The Review Committee is expected to examine the justification given by the educational institution and record its satisfaction, one way or the other, by a speaking order and reasons to be recorded therefor. The Committee has to bear in mind broad contours delineated by the Apex Court in paragraph 155 of the

Islamic Academy and paragraph 149 of P.A. Inamdar (supra)."

6) In case of **Kerala Self Finance Dental College Managements Consortium v. State of Kerala** reported in 2017 SCC OnLine Ker 19106, it was observed as under:

"40. From the aforesaid series of decisions of the Apex Court what we understand is that such institutions being unaided private medical colleges have their fundamental rights under Article 19 (1)(g) of the Constitution as they are carrying on an "occupation" and that right includes right to fix fee which can only be regulated in terms of Article 19(6) to the extent of authorising the State to check for profiteering and capitation fee alone while ensuring reasonable profit/surplus. The judgments don't authorise the State to either control the occupation of these colleges much less fix the fee. In other words, the State cannot, through the Committee set up under the Ordinances or the Act, start dictating to the institutions as to what would be reasonable expense and what would be an unreasonable expense; what expense can be allowed to be part of the fee and what expense cannot be a part of the fee. The State before disallowing whole or part of any expense would have to point out the reasons that why allowing such an expense would be profiteering or allowing capitation fee."

12. It was further submitted that

"profiteering" as defined under section 2(r) of the Act, 2017 only means any amount accepted in cash or kind which is in excess of the fee fixed or approved as per the provisions of the Act, 2017 and the profit earned from the School by the Trust has to be read in the context of various decisions of the Apex Court referred to here-in-above. It was therefore, emphasized that the role of the Fee Regulatory Committee under section 8(2)(b) of the Act, 2017 is only to verify whether the fee proposed by the Self Financed School amounts to profiteering i.e. recovery in excess of fees which could be legitimately charged on the basis of actual expenditure incurred by the School.

13. Mr. Thakore would submit that FRC has no jurisdiction to go into the aspect of reasonableness of the expenditures which is the prerogative of the Self Financed School. It was submitted that so long as the expenditure is incurred for running of the school, the same has to be allowed for determination of fees by the FRC. It was pointed out that as per the provisions of section 8(2)(b) of the Act, 2017, FRC can only verify the genuineness of such expenditures to find out whether it is



intended for running the school or not. It was submitted that the term 'justified' would not entitle the FRC to delve into reasonableness of the expenditures and there cannot be any subjective satisfaction of the expenditures incurred as per the criteria to be fixed by the FRC, because as held by the Apex Court in the aforesaid decisions it is for each school to determine what level of expenditure it would incur to impart education as per the standard of education set by it and it is for the parents of the students to seek admission on that basis. Mr Thakore therefore, would submit that the term 'justified' can only relate to the reasonable surplus of fee over expenditure incurred i.e. whether the surplus is justified or not or whether it results in charging of exorbitant fees not in accordance with the factors enumerated in section 10(1) of the Act, 2017.

- 14.** Learned Senior Advocate Mr. Mihir Joshi assisted by learned advocate Mr. Mitul Shelat for the petitioners-schools submitted that the FRC is not entitled to reduce the fees proposed by the School in absence of any finding that the fees proposed by the School management amounts to profiteering. It was submitted that the respondent committees have

no power to disallow certain expenditures incurred by the School for providing better educational and related facilities to its students on the ground that in the opinion of the Committees, such facilities were unnecessary and/or beyond the requirement stipulated under the law. Referring to the provisions of the Act, 2017, it was submitted that the FRC cannot disallow the expenditures incurred by the School as reflected in the audited books of accounts or reduce the same for the purpose of determination of fees without holding that the accounts were not duly and properly maintained by the Schools or without giving any finding with regard to genuineness of such expenditures. It was submitted that FRC cannot decide the quantum of expenditure incurred by the School for the purpose of education duly recorded in the books of accounts and audited by the Chartered Accountant.

15. It was submitted that each school is entitled to adopt the methodology of teaching and offer a range of activities which would best ensure overall physical and mental development of the child and determination of fees based merely on minimum requirements or on the basis of a standardized formula would

adversely impact excellence in education and entrench upon the right of an educational institution to manage and run the school.

**16.** Learned Senior Advocate Mr. Joshi thereafter referred to the Scheme of the Act, 2017 more particularly, provisions of section 2(g) which defines "fee or fee structure", section 2(r) which defines 'profiteering' and section 3(1) providing for constitution of Fee Regulatory Committee comprising of five members of its body having quasi-judicial powers. Learned Senior Advocate Mr. Joshi also referred to and relied upon section 3(4) of the Act, 2017 to submit that five different categories of persons including the retired High Court Judge, Chartered Accountant, Civil Engineer, representative from Self Financed School management of the respective zone and one academicians of repute constitute the FRC and therefore, any decision has to be a decision by the Committee as the body as a whole and not only by the Chairman which is the fact in most of the orders passed by the Committees which are challenged in these petitions. It was submitted that section 8 provides for powers and functions of the FRC and section 10 provides factors for determination of fee. It

was submitted that procedure for fee regularization ought to have been undertaken by the Committee comprising of all its members looking to the aims and objects of its composition as discernible. Mr. Joshi relied upon Rules 5, 7, 14 to 16 of the Gujarat Self Finance Schools (Regulation of Fees) Rules, 2017 (For short "the Rules 2017") to point out that the provisions of quorum cannot be made applicable to quasi-judicial proceedings of fee regulation to justify orders being passed only by some of the members of the Committee as it appears in various orders which are challenged in these petitions.

- 17.** Learned Senior Advocate Mr. Joshi referred to and relied upon the judgments which are referred by Mr. Thakore and further referred to the stand of the State as represented by the learned Advocate General before the Division Bench in Writ Petition No. 132/2017 wherein the challenge is made to the validity of the Act, 2017 as under:

"[17.2] Learned Advocate General thereafter, submitted that it needs to be appreciated that section 3(1), 8(1), 9(2) and subsections (1) to (4) of Section 10 of the Act of 2017 use the word "determine" with respect to

fee, whereas section 8(2)(a) of the Act of 2017 and the Rules 6(1) and 7(1)(a) of the Rules of 2017 use the word "proposal" with respect to fee. In other words, the Fee Regulatory Committee while determining the fee only gives the final approval to the proposal of the fees initially fixed and to be charged, after being satisfied that it is based on the factors mentioned in section 10 of the Act of 2017 and there is no commercialization of education. Thus, the said provisions of the Act of 2017 clearly suggest that they contemplate a regulatory measure and do not take away the powers of the self financed schools to fix their own fee."

- 18.** Learned Senior Advocate Mr. Joshi further relied upon the following observations made by the Division Bench while upholding the validity of the Act, 2017 in the judgment and order dated 27.12.2018 :

"[29.1] In the decision rendered by the High Court of Madras in the case of Tamil Nadu Nursery, Matriculation and Higher Secondary Schools Association v/ s. State of Tamil Nadu and others (supra), the Division Bench of High Court of Madras has considered decisions rendered by the Hon'ble Supreme Court in the case of TMA Pai Foundation (supra), P.A.Inamdar (supra) and Islamic Academy (supra). A common thread is passing through all the aforesaid decisions of the Hon'ble Supreme Court that commercialization in education should be stopped at all levels of

education. Further, commercialization of education may be resorted to by charging unreasonable fee or charging capitation fee or by profiteering in order to find out as to whether any of the self financed schools have adopted any of the above referred means, there is need for an appropriate regulation whereby the fee fixed and proposed by self financed school can be accepted, if the same is reasonable. For the said purpose, legislation dealing with mere grievance / complaint mechanism would not be sufficient to find out as to whether the self financed schools are charging unreasonable fee or charging capitation fee or are profiteering. It is also required to be noted that nature of restriction being imposed to curb commercialization of education cannot be different in the above referred two classes of educational institutions viz. self financed professional colleges and self financed schools. Thus, under the shelter of 'maximum autonomy', self financed schools cannot be permitted to contend that they have 'absolute autonomy'. Thus, regulatory measure imposed by the impugned Act cannot be said to be unreasonable restriction.

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[30] From the aforesaid decisions rendered by the Hon'ble Supreme Court and various High Courts, it can be said that the State is authorized to regulate the fee structure of a self financed school while maintaining delicate balance between the permissible regulation to verify and prevent profiteering and collection of

capitation fee by the management of all the private unaided educational institutions in whatsoever form, garb, guise or camouflage, on one hand and avoidance of undue intrusion into the operational, managerial and academic autonomy of the institution on the other. It is further clear that though autonomy of self financed school is required to be respected, commercialization of education cannot be permitted under the garb of autonomy. We are of the view that the provisions of the Act is in tune with the legal principles laid down by the Hon'ble Supreme Court in various decisions with reference to the autonomy to the schools to fix their fee on the one hand and conferring power to regulate the quantum of fee with limited purpose to ensure that the schools are not indulging in profiteering on the other hand. As pointed out hereinabove, in the present batch of petition, we have to determine the question as to whether the provisions relating to fixation of fee are violative of Article 19(1)(g) of the Constitution or they are regulatory in nature, which is permissible in view of Article 19(6) of the Constitution, keeping in mind that the Government has the power to regulate the fixation of fee in the interest of preventing profiteering and further that fixation of fee has to be regulated and controlled at the initial stage itself. If the provisions of the impugned Act are carefully examined in light of observations made by the Hon'ble Supreme Court as well as different High Courts referred hereinabove, we are of the view that while enacting the impugned Act and the Rules made thereunder, fundamental

right of the petitioners guaranteed under Article 19(1)(g) of the Constitution has not been violated and the restrictions imposed by the respondent State can be said to be reasonable restriction within the meaning of Article 19(6) of the Constitution.

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[30.3] With regard to above provision, it is pleaded by learned Advocate General appearing for the respondent State that fee and fee structure as defined under section 2(g) of the Act include nine different heads of fees and any other fees, as may be determined by the Fee Regulatory Committee. It is submitted that such definition is to be read along with other provisions of the Act in entirety and Rules made thereunder. It is submitted this will not restrict Self Financed Schools to propose any other fees to be charged. It is submitted that different heads notified in the definition are only illustrative but not exhaustive. It is submitted that said definition is with reference to prescribed Annexure II Part (IV) of the Rules relating to financial information. In column no.2, type of income is not only restricted to fee collected under different heads as notified under section 2(g), it includes any other fees to be charged by the school management with regard to transportation fees, break fast or lunch fees, books selling, computer fees etc.

[30.4] From the above said provision of Section 2(g) read with Rules and required information to be furnished in



Part IV relating to financial information of Annexure II to the Rules, we are of the opinion that if school management is charging any other fees apart from the fees charged under different heads as notified under section 2(g) of the Act, it is always open for the school management to show such fees in the proposal in Part IV of Annexure II to the Rules. Thus, we hold that different heads of fees notified under section 2(g) are only illustrative but not exhaustive. As such, this will not preclude the Self Financed Schools to charge any other fees viz. transportation fees, computer fees, book selling etc. and such fees collected can be included in the proposal which is to be submitted to the Fee Regulatory Committee for approval of fees to be charged.

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[31.1] Above said provision defining profiteering is challenged mainly on the ground that the school is invariably never an independent legal entity, is not expected to maintain profit or loss account or balance sheet. As such, definition 'profiteering' runs contrary to the legal and accounting principles, as school is not an independent entity and if such position is accepted, definition 'profiteering' becomes completely unworkable, arbitrary and violative of Article 19(1) of the Constitution of India. It is true that school has no independent legal entity and is required to be established either by the Trust or Company. But at the same time, from the very definition of profiteering, it becomes clear that

acceptance of amount in cash or kind directly or indirectly in excess of fees fixed or approved as per the provisions of the Act, includes profit earned by the Trust or company. The term profiteering as defined under Section 2(r) does not prohibit the Trust or Company running Self Financed Schools from making profit. What is prohibited is making profit by collecting fees, in excess of fees, prescribed and approved by the competent authority and in the event of such acceptance of cash or kind in excess of fees, prescribed under the provision of the Act, will amount to profiteering and same will include profit earned from school run by the Trust or the Company.

[31.2.] If the definition is considered with reference to provision under Section 10(1)(x) of the Act, it is clear that this will not preclude the Management or Trust of the School to collect any fees, which includes reasonable revenue surplus for the purpose of development, education and expansion of school. Profit attracts to the Trust or the Company, only in the event of collecting excess fees more than reasonable revenue surplus which is required for the purpose of development, education and expansion of the school. This definition is required to be considered with reference to object of the Act, which is designed to prevent profiteering in running the schools. Merely because there is no independent legal entity to the school, and only such schools are to be run by the Trust or Company does not make definition of profiteering as

illegal or arbitrary so as to accept the case of the petitioners.

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[39.3] To counter such submission, it is submitted by learned Advocate General appearing for the respondent State that it is always open for the management of the school to propose fees. It is submitted that in absence of any restriction on the proposal, it cannot be said that Fee Regulatory Committee is either fixing or determining the fee as sought to be projected by the petitioners. It is submitted that words 'fixation and determination' are used with reference to power of approval conferred on the Committee approving fees or proposal sent by the management. It is submitted that while considering the proposal for determining fees, there is nothing wrong on the part of the Fee Regulatory committee to verify whether fee proposed by the self financed schools are justified or whether it amounts to profiteering or charging exorbitant fees as referred in section 8(2) (b) of the Act. It is submitted that any fee, in order to be reasonable, has to be commensurate with the facilities being provided by the Self Financed Schools. Whatever, fees which are collected by petitioners under various heads can be shown as reasonable surplus for the purpose of approval of such fee by the Fee Regulatory Committee. It is submitted that if the proposals are reasonable and does not amount to profiteering or charging exorbitant fees, such proposal

will be approved. Only in cases, where the Committee finds that the proposal for fee fixation amounts to profiteering or charging exorbitant fees, only such proposal will not be approved by the Fee Regulatory Committee. It is submitted that statute as a whole is looked into with reference to objects and reasons of the Act, power conferred on the Committee is only regulatory mechanism and it cannot be said the Committee is fixing the fees on its own.

[39.4] Thus, it is clear from the various provisions of the Act that initially proposals are to be submitted by the School / management of the schools and in absence of any ceiling limit fixed on the proposal, it cannot be said that Fee Regulatory Committee is empowered to fix and determine fees leviable by the schools. It is submitted that under the scheme of the Act, penal provisions are also attracted under Chapter IV of the Act when the school management contravenes the provisions of the Act and the Rules made thereunder. With reference to composition of Fee Regulatory Committee, it is submitted that said Committee is not discharging any adjudicatory function, as such does not necessarily include Retired High Court Judge or District Judge. It is submitted that Fee Revision Committee constituted under Section 12 of the Act is headed by Retired Judge of the High Court to be nominated by the Government, who shall be Chairman of the Committee. It is submitted by learned Advocate General appearing for the State that so far as provisions of Revision under Section 12(3) of the Act, the

Government will take necessary steps to amend the above said provision suitably so as to approach Revisional Authority by any person aggrieved by any order of the Fee Regulatory Committee, not merely confining to orders passed under section 10 as exists now. It is submitted that by following necessary procedure, steps will be taken to amend the provision suitably.

[39.5] From the title of the Act "The Gujarat Self Financed Schools (Regulation of Fees) Act, 2017, it is clear that Self Financed Schools which are covered by the Act are required to submit proposal for fee or fee structure along with documents and books of accounts for scrutiny before such date as may be specified by the Fee Regulatory Committee. If the various provisions of the Act and Rules made thereunder are considered, it is clear that regulatory mechanism is provided under the scheme of the Act to check profiteering as defined under Section 2(r) of the Act. It is also clear that this will not preclude the school / school management to propose any kind of fees to seek justification for approval of such proposal by the Committee and the Committee is empowered only to see that there is no profiteering as defined under the Act based on the relevant documents to be produced before the Committee along with the proposals.

[39.6] Fee Regulatory Committee cannot fix the fees on its own. The words 'fixation and determination' used in various provisions of the Act are with reference to proposal of fee or fee

structure to be submitted by the school management. In such event, the Fee Regulatory Committee is empowered to scrutinize such proposals so as to check that such proposals do not amount to profiteering within the meaning of section 2(r) of the Act. In that view of the matter, we are of the view that merely because words 'fixation and determination' are used under certain provisions of the Act, by itself is no ground to invalidate the said provisions, as submitted by learned Counsel for the petitioners, as the object of the Regulation is to provide regulatory mechanism to prevent profiteering in running the school. The words 'fixation and determination' mentioned in the provisions referred above, by itself is no ground to declare such provisions as ultra vires or violative of Article 19(1)(g) of the Constitution of India.

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[41] Now, keeping in view aforesaid decisions rendered by the Hon'ble Supreme Court, we are of the considered view that the words 'determination and fixation' used in some of the provisions of statute have to be read down as power of approval of the proposed fees by the Fee Regulatory Committee. It is clear from the objects and title of the Act itself that such Act is enacted to regulate fees in Self Financed Schools, as it is noticed that in absence of any such law prescribing standards of fees leviable by the Self Financed Schools, such schools charge exorbitant fees. It is further stated in the object of the Act, 2017 that in

order to mitigate the plight of parents seeking admission of their wards in the Self Financed Schools, it is considered necessary to provide special provisions for fixation of fees for the Self Financed Schools. If the object of Act, 2017 is considered with reference to all the provisions of the Act, it is clear that words 'determination and fixation' used in certain provisions are only considered as approval of fees by the Fee Regulatory Committee on proposal sent by the management of school. It is to be noticed that under the scheme of the Act, there is no maximum ceiling limit fixed while sending such proposal. Only aspect is when such proposals are sent, relevant data and requirements as contemplated under the provisions of the Act and Rules have to be submitted by the management for scrutiny of such proposal by the Fee Regulatory Committee. On such proposal, the Fee Regulatory Committee has to find whether fees proposed are justified including reasonable surplus which can be used by the management of the school for development and expansion of school etc. Ultimately, if the Fee Regulatory Committee finds that fees which are sought to be charged as proposed are exorbitant and amounts to profiteering, then the Committee may not approve. In which event, there is remedy provided in the Act itself to approach Fee Revisions Committee which is headed by Retd. Judge of High Court, where order of Fee Regulatory Committee is subject matter of approval by the Revisional Authority."

19. It was submitted that the Apex Court during the pendency of the SLPs challenging the order of the Division Bench upholding the validity of the Act, 2017 has passed various interim orders which are relevant for the purpose of adjudication of the issues raised in this petition.

20. Mr. Joshi relied upon order dated 1<sup>st</sup> February, 2018 passed by Hon'ble Supreme Court which reads as under:

"Serious grievances have been made and apprehensions have been expressed by the learned counsel appearing for the petitioners about the exercise of power under the Gujarat Self Financed Schools (Relation of Fees) Act, 2017, (hereinafter referred to as the 'Act'), which has been upheld by the impugned judgment(s) and order(s) passed by the High Court of Gujarat.

Having heard learned counsel for both sides, we consider it appropriate to pass the following orders:

The respondent-State of Gujarat shall reconstitute the Fee Fixation Committees and the Revisional Authority under the Act within a period of one week from today. The Committees shall be headed by a retired Judge of High Court. The Revisional Authority shall comprise two retired Judges of the High Court.



The respondent-State shall carry out the exercise of fixing exemption limit under Section 9 of the Act. For this purpose, they shall hear the representatives of the petitioners-schools and one representative from each of the parents' associations; one which opposes the Act and the other which supports the Act.

The respondent-State shall state the norms by which the various factors suggested by the citizens for fixing the exemption limit under Section 9 of the Act will be taken into account. After such limit is fixed, the Fee Fixation Committees shall scrutinize the proposals and the accounts submitted by the various schools including the petitioners' schools and fix the fees. Preferably, the State Government may create the categories of fee structure along with the facilities made available by the schools for easy determination of the fees chargeable by them.

The aforesaid Committees shall provisionally intimate the school and notify the fees chargeable by the schools, on its website. The schools may within a period of 7 days of such notification may make a representation before the Committees. The Committees shall finalise the fees chargeable by the schools within a period of one week on receipt of such representations.

The exemption limit shall be fixed by the State Government within a period of four weeks.

The schools which have not submitted their proposals and accounts to the Fee Fixation Committees, shall submit the same within a period of two weeks

thereafter.

The Committees shall notify provisional list within a period of two weeks upon receipt of the proposals and the accounts from the schools. The schools make make a representation in that regard within a period of one week thereafter. The final fixation of fees shall be announced by the Fee Fixation Committees within a period of four weeks' thereafter.

It is made clear that in case a Revision is filed by the schools under section 12(3) of the Act, the same shall be considered and disposed of by the Revisional Authority within a period of 30 days' thereafter.

We direct that the final fixation shall not be implemented by the State Government without further orders of this Court.

Any grievance of any party regarding the working out of this order shall be made to this Court alone in the present proceedings and not to any other court or forum. However, in the meantime, no coercive steps under the Gujarat Self Financed Schools (Relation of Fees) Act, 2017, shall be taken by the respondent-State.

It is further made clear that this order shall not prejudice the rights and contentions of either party.

In the meantime, the schools shall declare their fee structure only on a provisional basis and shall not collect anything more than the provisional fees.

List these matters on 03.05.2018 for further hearing.

In the meantime, the respondent-state may file counter affidavit, if any."

- 21.** The aforesaid order dated 01.2.2018 was clarified vide order dated 19.2.2018 as under:

"Certain clarifications have been sought by the State of Gujarat in our order dated 01.02.2018.

Having heard both sides, we consider it appropriate to pass the following order :

"At page 24 of the application the words "The Committees shall be headed by a retired Judge of High Court. The Revisional Authority shall comprise two retired Judges of the High Court" shall be treated as deleted and the same shall be substituted by the following words which read thus"

"The Committees shall be headed by a retired Judge of the High Court, if available or a retired District Judge. The list of High Court Judges shall be submitted by the petitioners-Schools to the office of the Hon'ble the Chief Justice of the Gujarat High Court who may select Judges for this purpose. The composition of the Revisional Authority shall remain the same as envisaged by Section 12 of the Act. However, it shall be headed by two former Judges of the High Court who shall act as Chairman and

Vice Chairman of the Committee. The said High Court Judges shall also be selected by the Hon'ble the Chief Justice of the Gujarat High Court,"

At page 25 of the application the words, "The Committees shall finalise the fees chargeable by the schools within period of one week on receipt of such representations" shall be substituted by the words, "The Committees shall finalise the fees chargeable by the Schools within a period of four weeks on receipt of such representations".

The provisional fixation of fees shall be for the years 2017-2018 and 2018-2019. However, this order shall be without prejudice to the rights and contentions of both parties.

I.A. No. 20303/2018 is disposed of in the above terms."

22. Thereafter the Apex Court passed the following order on 25.04.2018 :

"Having heard S/Shri Arvind Datar, Kapil Sibal, Mihir Joshi learned senior counsels for the petitioners and Shri K.K. Venugopal, learned Attorney General and Shri C.A. Sundaram, learned senior counsel for the respondents, it appears that if the following features are incorporated when the Act is implemented for fixation of fees, it will meet the ends of justice:

(a) the State of Gujarat shall not question the decision of any school to provide a particular facility or things in a particular quality or standard

which it considers appropriate for imparting education in its school.

The Schools shall have a right to offer such facilities as they consider appropriate for the standards of education which they profess to meet.

The Schools would be entitled to fix their fee structure to meet the cost of providing such facilities or standards.

b) The petitioner-Schools and the State of Gujarat shall hold a meeting and determine the percentage of surplus that could be generated by the schools according to the formula/standard which will be laid up.

The schools shall be entitled to use the surplus only for the purpose of objects of the Society/Trust related to education, inclusive of expenditure for operational expansions, augmentation of facilities, expansion of infrastructure and a reasonable surplus for establishment of a new branch or a new school.

(c) The term 'School' shall mean the educational institution, the charitable Trust or Society or company which runs the school.

The parties shall prepare a Scheme and exchange the same with the Scheme prepared by either side. They shall thereafter prepare a joint Scheme and submit the same to this Court before the next date of hearing. The State of Gujarat shall receive representations, if any, which may be submitted by the two Parent Association (petitioners in SLP(C)..D. Nos. 11985 and 11723/2018)

before us.

List the matters in the second week of July, 2018.”

**23.** In view of above orders passed by the Apex Court, it was submitted that it is not permissible for the FRC to disallow the entire expenditure incurred by the School as reflected in the audited books of account on the ground that it is not related to education when such expenditure in fact is incurred for the purpose of running the school. It was pointed out that in many cases, the FRC has determined fee structure on the basis of notional figures of the students contrary to the actual strength of the students in a School for determination of the fees which is contrary to the provisions of the Act, 2017.

**24.** Mr. Joshi further submitted that FRC in many cases denied the School management from recovering the cost of education on the ground that academic year has since been over and the parents cannot be burdened with cost of education and as the School is managed by charitable trust, it must bear the cost of education and the Act does not provide for recovery of differential fees. It was submitted that such criteria is not

prescribed under the provisions of the Act, 2017.

**25.** Reference was made to the provisions of the Right to Education Act, 2009 more particularly, sections 2(b), 13, 18 and 23 read with Rule 15(b) of the Rules framed thereunder to submit that FRC is not justified in disallowing the cost of education incurred by the School management towards imparting education to the students under the Right to Education Act, 2009.

**26.** Mr. Joshi thereafter addressed on each head of the expenditure which has been either disallowed or reduced by the FRC in the orders challenged in these petitions without conducting any inquiry or giving any reason and submitted that such arbitrary determination of the fees by the Committees is not justified.

**27.** Learned Senior Advocate Mr. Joshi thereafter referred to common issues arising in these petitions with regard to expenditures which are either not allowed or reduced by the FRC and Fee Revision Committee while determining the fees under the provisions of the Act, 2017.

**A) Disallowance of Future Development Cost:**

1) Reference was made to the orders passed by the FRC granting only 5% of the profit as Future Development Cost. It was submitted that there is no rationale for giving increase of only 5% in fees for the subsequent years while determining the fees for the year under consideration. It was submitted that the concerned school though raised the ground in the revision application filed before the Fee Revision Committee that the fees proposed by the School was based on projected expenditure to be incurred by the School over the three academic years which clearly shows that there is deficit between the projected fees and expenditure, it was pointed out that considering the rate of inflation in the country, 5% increase in the fees for the subsequent years is not justified, more particularly, when there is a consistent increase of 12% to 14% in the salary payable to the staff every year. However, Fee Revision Committee while confirming the order passed by the FRC did not consider this ground of only 5% increase in fees for the subsequent years and has only considered the proposal for the year under



consideration. It was submitted that 5% increase in fees for the subsequent years is subjective decision of the FRC as different FRCs of different zones adopt different percentage for future development cost criteria. It was submitted that FRCs have failed to appreciate that the State Government by resolution dated 20.09.2011 allowed the schools to increase fees by 10% on year to year basis. It was submitted that FRCs also failed to consider that the school is required to give increment of 8% to 10% per annum to their staff on annual basis in addition to increase in input cost by around 8 to 10% due to inflation on year to year basis and only 5% increase in the fees for the subsequent years would lead to heavy financial loss to the schools. It was submitted that the Fee Revision Committee also has not considered the fact that the order passed by the FRC did not provide for any future development allowance and provision for reasonable surplus which is permitted by the Hon'ble Supreme Court while deciding the criteria for fixation of fees in the various decisions already referred to here-in-above. It was submitted that the schools are entitled to include any activity in order to meet the standard of education

and FRC or Fee Revision Committee cannot impose any restrictions upon the school to make provisions towards reasonable surplus and development allowance. It was submitted that FRC at Rajkot has allowed 10% increase in the fees whereas FRC at Surat has allowed 7% increase though the cost of inflation is to be provided at minimum 10% per annum. It was therefore, pointed out that there is inconsistency amongst various FRCs of different zones for provision to create reasonable surplus and/or to increase the fees every year.

2) It was therefore, submitted that there should be consistent approach amongst all FRCs to decide the increase in fees considering the facts of each school separately without insisting on uniform straightjacket formula of standardisation for increase in fees for subsequent years. It was submitted that considering the cost for imparting education to the students and for maintaining the standard of education, every school requires to be treated separately considering the facts of each school to provide for increase in fees to have reasonable surplus for the subsequent years taking into consideration the inflation as

well as rise in salary which ranges from 12% to 14% every year.

3) It was submitted that FRC is required to allow the specific amount under specific head of reasonable surplus as contemplated under the Act, 2017 as well as order dated 25.04.2018 of the Hon'ble Supreme Court as referred to here-in-above.

**B) Disallowance of Rent:**

1) Next common issue is with regard to rent paid by the schools for the land and building/infrastructure of the school. It was submitted that FRC cannot disregard the terms of the agreement/lease deed executed by the school after considering the same and re-fix the rent/lease payable by the school in absence of any finding of fact emerging on record that the transaction of lease entered into by the particular school was not at arm's length.

2) It was submitted that when FRC comes to the conclusion on appreciation of the facts as well as inquiry which is required to be conducted as provided under the provisions of the Act, 2017 that the lease deed executed by the particular school was not at arm's

length, it is not necessary for the FRC to undertake the exercise to determine the rent/lease. It was submitted that in the facts of the case of each of the school when it is explained that rent is paid to independent third party under the terms of lease agreement, FRC has no jurisdiction to disregard the terms of the legal contract entered into between the two parties.

3) It was submitted that FRC has full authority and power to make inquiry under the provisions of the Act, 2017 to find out any foul play on part of the School but when such inquiry does not result in any finding contrary to the facts submitted by the School along with the proposal for determination of the fees, then the FRC cannot and should not have reduced or altered the lease rent paid by the school as per the terms of the lease deed. It was submitted that FRC and/or Fee Revision Committee cannot substitute their own reasoning to reduce or alter the rent paid by the school taking into consideration the strength of students of the particular school by arriving at a subjective analysis of the requirement of land and building by school considering the number of students and reduce the rent proportionately. It was

submitted that there is no justification on part of the FRC to modify the terms of the genuine contract of lease deed entered by the school with the third party. It was submitted that the FRC has come to the conclusion on the basis of inferences only without there being any material on record to justify such conclusion to hold that transactions entered into by the school with the third party are not genuine and bona fide and such transactions are entered into only with a view to derive profit by charging excessive fees from the students. It was submitted that reduction of lease rent which is actually paid by the respective school cannot be substituted by arbitrary amount.

4) Learned Senior Advocate Mr. Joshi submitted that without there being any fact available on record to hold that the transactions of lease entered into by a particular school is not at arm's length, lease deed executed by the school management cannot be discarded by the FRC or Fee Revision Committee.

5) It was submitted that if FRC or Fee Revision Committee is of the view that lease rent paid by a particular school is only with

a view to divert the fee income to be charged from students resulting into profiteering then in such circumstances, proper inquiry ought to have been held by the FRC instead of just reading the lease deed and drawing inferences therefrom. It was submitted that FRC has powers to conduct inquiry by issuing summons as well as by deputing officers for inspection and therefore, there is no basis for drawing adverse inference against the school.

6) It was submitted that FRC cannot substitute the rent paid by the school by recalculating the same on the basis of "Janrti" (Circle Rate) when there is no finding based on any material on record that the particular school has indulged in profiteering and/or recovery of capitation fees by entering into such lease deed. Hence, it was submitted that FRC cannot sit in chair of the management of the school and it has no jurisdiction to disallow the lease rent more particularly, when the premises in reference have been taken on rent from third party as per the terms of the rent agreement executed by the respective school. It was submitted that the subjective opinion of FRC regarding quantum of rent cannot be the foundation for

disallowing the lease rent which is actually incurred and paid by the School management without there being any basis for such disallowance.

7) It was submitted that "Jantri" rates referred to by the FRC in various orders for substitution of the rent paid by the school is in relation to minimum value of the land in the year 2011 which cannot be the basis for determining the rent in the year 2018-2019. It was submitted that in any event, "Jantri" rate is not reflective of the market value of the land but it is the minimum value to be considered for the purpose of payment of the stamp duty and therefore, such approach of the FRC to substitute the amount of rent on the basis of "Jantri" value is not tenable.

8) It was submitted that when the school has entered into a contract by executing the lease deed with the third party, FRC has no jurisdiction to sit in appeal over the quantum of rent, more particularly, when FRC has no authority to ensure that property is available or not at rate to be determined by it. It was therefore, submitted that FRC has no

authority to review/rewrite terms of agreement of lease and as such, disallowance of rent is illegal. It was submitted that in some cases findings given by the FRC stating that the rent stated in the proposal form and lease agreement does not match and prima facie, it appears that school is earning profit in terms of rent, are without any supporting evidence and contrary to the terms of the lease agreement. It was submitted that the rent paid by each school is subject to audit and as such, conclusion arrived at by FRC that school is earning profit by payment of rent and therefore such rent is not admissible, is based upon the subjective opinion of the FRC. It was submitted that determination of rent by FRC does not fall within the purview of the provisions of the Act, 2017 without providing any basis for such re-computation and to disallow actual rent and to recompute the rent on the basis of notional figures is completely against the spirit of the Act, 2017 and in contravention of the order dated 25.4.2018 passed by the Apex Court. It was therefore, submitted that FRC has no jurisdiction to deny the lease rent paid by the school as per the registered lease deed executed by the schools with the third party and to determine the rent as per



the "Jantri" rate discarding the actual rent paid by the school reflected in the audited income and expenditure statement, rent account ledgers, and the books of account and confirmation from the landlord for receipt of rent from the schools as well as the bank account details of the landlord to whom the rent is paid would be contrary to the order dated 25.4.2018 passed by the Apex Court.

**C) Disallowance of Depreciation:**

1) Next common issue pertains to depreciation disallowed by the Fee Revision Committee. Learned Senior Advocate Mr. Joshi submitted that the decision of the Fee Revision Committee of not considering the depreciation as expenditure for the purpose of determination of fee, is not legal. It was submitted that the reasons assigned by the Fee Revision Committee for not considering depreciation for working out surplus are contrary to the settled legal position, more particularly, when depreciation is treated as expense by the Fee Revision Committee (Technical) which is regulating the private colleges as well as the Fee Regulatory Committee (Medical) Gujarat while determining the fees for medical colleges.

2) Reliance was placed upon the instructions dated 11.07.2020 issued by the State Government to the Fee Regulatory Committee (Medical) to point out that as per the State Government, the Fee Regulatory Committee (Medical) is required to allow the depreciation on the fixed assets on straight line method as per the prescribed rate even if the assets are owned by the trust or governing body so long as the assets are exclusively used for the education purpose. It was submitted that the prescribed rates of depreciation are as under:

Building	5%
Furniture & Equipments	15%
Computers	33%
Books	33%
Vehicles & other	15%

3) Thereafter, learned Senior Advocate Mr. Joshi relied upon the report on Implementation of Accounting Standards in Educational Institutions of Department of Higher Education, Ministry of Human Resource Development prepared by the Institute of Chartered Accountants of India to submit that as per the said report so far as accounting standards pertaining to depreciation

accounting is concerned, the same is made mandatory to educational institutions to maintain uniformity in presentation of financial statement, proper disclosure and transparency.

4) Learned Senior Advocate Mr. Joshi for the respondent relied upon the Cost Accounting Standard on Depreciation and Amortisation (CAS-16) issued by the Institute of Council of the Cost Accountants of India to submit that depreciation is a measure of wearing out, consumption or other loss of value of a depreciable asset arising from use, efflux of time or obsolescence through technology and market changes and depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the estimated useful life of the asset.

5) Reference was also made to the publication issued by Fiscal Laws Committee of the Institute of Chartered Accountants of India titled as "Depreciation - Accounting, Taxation and Company Law Issues - A Study". It was submitted that the said publication gives detailed analysis as to what is depreciation, its definition and the

accounting issues vis-a-vis the Income-tax Act and the Company Law. Reference was also made to the various accounting issues, methods of depreciation, assets eligible for depreciation etc. to submit that depreciation as provided in the books of accounts, is required to be taken into consideration to determine the correct income measurement for proper estimation of periodic profit or loss. It was submitted that it is also necessary to generate adequate funds for replacement of the asset at the end of its useful life. It was submitted that though it is true that the depreciation is a non cash charge to the profit and does not result in any cash outflow, nor generate funds but out of gross revenue receipt by charging depreciation, certain amount is retained for replacement of the assets used for educational purpose. It was therefore, submitted that the Fee Revision Committee has committed an error in not considering the depreciation as an expenditure only on the ground that it is a non cash expense as an accounting expense and not a real expense and therefore, it is a statutory allowance being a notional deduction which does not affect the availability of cash surplus. It was submitted that the entire basis adopted by

Fee Revision Committee that while determining the fees, depreciation cannot be deducted as an outgo for working out the final figure of fees is contrary to the accepted and applied standards of accounting. It was submitted that the findings of the Fee Revision Committee that amount of depreciation would not be one of the relevant factors for arriving at the figure of reasonable surplus towards future expansion and/or replacement of obsolete assets is contrary to the very object of provision for depreciation to ensure that the funds are available at the time when the assets are required to be replaced. It was therefore, submitted that if while determining the cost, the cost of replacement is not taken into consideration there will be no funds available with the education trust to replace the asset for use of educational purpose. It was submitted that concept of cost remains universal to all education institutions and therefore, while considering the fees for unaided colleges in the State of Gujarat, the cost of depreciation is allowed as a cost of education then the same yardstick should be applied to the Self Finance School also while determining the fees under the provisions of the Act, 2017. It was therefore, submitted

that distinction sought to be made by Fee Revision Committee between the Gujarat Professional Technical Educational Colleges or institutions (Regulation of Admission and Fixation of Fees) Act, 2007 as well as circular/note of Fee Regulatory Committee (Technical) and Fee Regulatory Committee (Medical) and provisions of the Act, 2017 is without any basis. It was further submitted that the difference in rate of depreciation charged by various schools or not charging depreciation in the books of accounts, cannot be the basis for not considering the depreciation as cost of education or the number of students cannot be basis for not considering the depreciation as cost of education. The depreciation on the assets which are used for the purpose of imparting education has to be considered as cost of education which can be part of reasonable surplus inasmuch as there is no distinction between the actual cash outflow and the cost of education to be considered for the purpose of determination of the fees when land and building is solely used for the purpose of running the school.

6) In support of his submissions, learned Senior Advocate Mr. Joshi relied upon

the following decisions:

1) **J.K. Industries Limited and another v. Union of India and others** reported in (2017) 13 Supreme Court Cases 673, wherein the Apex Court has held as under:

“Depreciation

152. As stated above, timing difference is the difference between taxable income and accounting income for a period. Depreciation is one of the important items in computation of income, be it taxable income or accounting income. According to Pickles Accountancy, fourth edn., at page 0518, depreciation is the inherent decline in the value of an asset from any cause whatsoever. The wearing out of a machine is a simple example of depreciation. In double-entry system of accounting, there has to be complete double-entry for depreciation adjustment. The required entry under that system of Depreciation Adjustment is debit Trading and Profit & Loss account and credit the asset in respect of which depreciation is being recorded. Such an entry conforms with the principles enunciated, namely, that, the debit to Trading and Profit & Loss account is necessary because the amount written-off represents an expense and the credit to the asset is required, as the asset has, pro tanto, reduced in value. Therefore, from the above point of view in the principles of accountancy, even distribution in certain cases is treated as expenditure paid out over the years. The object of

providing for such distribution is to spread the expenditure incurred in acquiring the assets over its effective lifetime. The amount of provision to be made in respect of the accounting period is intended to represent the portion of such expenditure which has expired during the period. Therefore, in that sense, it is money expended which is spread out over the effective life of an asset. Even under the Income tax Act, Parliament has used the expression "allowances and depreciation" in several sections in Chapter IV within which section 44A appears. In this connection, reference may be made to section 37 which enjoins that, any expenditure not falling in sections 30 to 36 expended wholly and exclusively or laid out for business purposes should be allowed in computing the business income. Therefore, depreciation and allowances have been dealt with in section 32 and the expression "any expenditure" in section 37 covers both, allowances and depreciation. [See Commissioner of Income-tax v. Indian Jute Mills Association (1982) 134 ITR 68 (Cal)]. Depreciation under Income tax Act is an incentive/allowance. However, in commercial accountancy, it is reduction/deduction from the value of an asset on the balance-sheet.

#### Reserves & Provisions

153. In State Bank of Patiala v. CIT reported in (1996) 219 ITR 706 substantial amounts were set apart by the assessee- bank as reserves. No amount of bad debt was actually written off or adjusted against the amounts claimed as reserves. No claim for any



deduction by way of bad debts was made during the relevant assessment years. The assessee never appropriated any amount against any bad and doubtful debts. The amount remained in the account of the assessee by way of capital and the assessee treated the said amount as reserves and not as provisions designed to meet any liability, contingency, commitment or diminution in the value of assets known to exist on the date of the balance-sheet."

- 2) **Delhi Electricity Regulatory Commission v. Bses Yamuna Power Limited** reported in 2007 (3) SCC 33, wherein the Apex Court has held as under:

"40. For the following reasons, there is no merit in this civil appeal. Firstly, accounting for costs differs according to the object and the purpose for which the exercise is undertaken. Depreciation is Allocation of Costs so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset(s). Depreciation includes amortization of assets whose useful life is pre-determined. It includes depletion of resources through the process of use. Depreciation in Commercial Accounting differs from depreciation in Tax Accounting. In this case, we are concerned with Electricity Accounting. An asset is recognized in the Balance Sheet when one expects economic benefits associated with it to flow in future over a period of years. Accordingly, the

asset has a cost or value that can be measured. Matching of revenue and expenses is an important exercise under Accounting. Depreciation is a part of this exercise. The Allocated Cost of a given year has to match with the expected revenue for that year. The concept of matching is a concept according to which expenses are recognized in the Statement of Profit and Loss on the basis of direct connection between the costs incurred and the earning of specific items of income. Depreciation helps this concept of matching. The Full Cost Method ('FCM' for short) is a method of matching income (revenue) and expenses. This method proceeds on the basis that a proper matching of income and expenses can take place only if total costs are depreciated on a pro rata basis. The FCM, therefore, avoids distortion of reported earnings. It is in this context that one has to keep in mind the difference between distributable profits and the cash profits. Depreciation reduces the distributable profit without reducing the cash profit. The difference between the two is a sum which the company has to retain to meet the cost of replacement in future. We may clarify that depreciation is ordinarily not a "source of fund" under Commercial Accounting, however, as held by this Court in the case of Ahmedabad Miscellaneous Industrial Workers' Union v. Ahmedabad Electricity Co., Ltd. - AIR 1962 SC 1255, in the context of the Electricity Supply Act, depreciation enables the Utility to work out the charges to be recovered from consumers for supply of electricity, one has to follow the provisions of the schedule to the said Electricity Act and that one

has not to follow the provisions of Income-tax Act while calculating depreciation as one of the items of expense under the Electricity Accounting. Since, the charge is recoverable from the consumers, depreciation is a source of funding not for the current year but for replacement cost. According to "The Principles of Auditing" by F.R.M. de Paula, in the past the accepted principle behind providing for depreciation was to recover the original capital invested in the purchase of the assets. Revenue is required to be held back by means of depreciation charged to profit and loss account to recover the original capital invested in the purchase of the assets. Revenue is required to be held back in order to keep the original capital intact. However, that model of Original Cost had to be replaced by the concept of Replacement Cost in recent years owing to the increase in the level of prices due to inflation. Thus, the concept of Historical Cost to a large extent is replaced by the concept of Replacement Cost. In the past, according to De Paula, accounts were prepared upon the basis of Historical Cost but on account of inflation in an economy like ours which is cost push economy, the concept of Historical Cost as basis of accounting is replaced by the concept of the Cost of Replacement of fixed assets. The above analysis by De Paula has been accepted by this Court in its judgment in the case of Associated Cement Companies Ltd., Dwarka Cement Works, Dwarka v. Its Workmen and another AIR 1959 SC 967. We quote hereinbelow paras 28 and 34 of the said judgment:

"28. Besides, it is said, that the theory that the trading profits of the industry must provide for the whole of the rehabilitation expenses is not universally accepted by enlightened and progressive businessmen and economists. In this connection reliance is placed on the observations of F. R. M. de Paula in his "Principles of Auditing" that "the object of depreciation is the replacement of original investment capital and that an increase in replacement cost is an important matter and means that additional capital is required in order to maintain the original earning capacity".

It is also pointed out that the Institute of Chartered Accountants in England and Wales, in its recommendations made in 1949 under the heading "Rising price levels in relation to accounts" has pointed out that "the gap between historical and replacement costs might be too big to be bridged by a provision made for replacement spread over a period of years either by way of supplementing the depreciation charges or by setting up in lieu of depreciation a provision for renewals based on estimated replacement costs." It is therefore suggested that in revising the formula the claims for rehabilitation should be fixed at a reasonable amount and industry should be required to find the balance from other sources and if necessary from its share in the available surplus.

34. The theory that the whole of the rehabilitation charges need not come out of the trading profits of the industry does not appear to be generally accepted. As has been observed by Paula himself, "In the past the accepted principle has been that the main object of providing for the depreciation of wasting assets is to recoup the original capital invested in the purchase of such assets. As part of the capital of the concern has been invested in the purchase of these assets, therefore, when their working life comes to an end, the earning capacity of these assets ceases. Thus they will become valueless for the purposes of the business, and the original capital sunk in their acquisition, less any scrap value, will have been lost. Hence, in order to keep the original capital of a business intact, if any part thereof is invested in the purchase of wasting assets, revenue must be held back by means of depreciation charges to profit and loss account, in order to replace the capital that is being lost by reason of the fact that it is represented by assets that are being consumed or exhausted in the course of trading or seeking to earn income" (F. R. M. de Paula's Principles of Auditing', 1957, p. 136). It is also stated by the same author that "in all cases where one of the direct causes of earning revenue is gradually to consume fixed assets of wasting nature, the depreciation of such assets should be provided for out of revenue" (Ibid, p. 138).

It is true that the author recognises that "owing to the very considerable increase in the price level since the termination of the 1939-45 war, industry is finding its original money capital insufficient for its needs. Thus the cost of replacement of fixed assets has greatly increased and in addition, further working capital is required to finance a given volume of production. Many economists, industrialists, and accountants contend that provision should be made, in arriving at profits, for this increased capital requirement".

Having noticed this view the author adds that "at the time of writing this matter is still being debated and final decisions have not yet been reached", and he concludes that "until a final solution of this complex problem is reached it would be inadvisable for the auditor to act on any principle other than that recommended by the Institute" ((F.R.M. de Paula's Principles of Auditing', 1957, p. 80); and that principle appears to be that depreciation should be provided for out of revenue. Besides, it must be borne in mind that, in adjusting the claims of industry and labour to share in the profits on a notional basis, it would be difficult to repel the claim of the industry that a provision should be made for the rehabilitation of its plant and machinery from the trading profits. On principle the guaranteed continuance of the industry is as much for the benefit of the employer as for that of labour; and so

reasonable provision made in that behalf must be regarded as justified."

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43. Before concluding, we may state that the basic object of providing depreciation is to allocate the amount of depreciation of an asset over its useful life and not actual life so as to exhibit a true and fair view of the financial statements of an enterprise. Useful life is a period over which a depreciable asset is expected to be used. Useful life of an asset in a capital intensive industry is generally shorter than its physical life. Useful life is pre-determined by contractual limits or by amount of extraction or consumption dependent on the extent of use and physical deterioration on account of wear and tear which depends on operational factors such as the number of shifts, repair and maintenance policy of the Utility and reduced by obsolescence arising from technological changes, improvement in production methods etc. In the present case, DERC has not considered the difference between the physical life of an asset and the useful life of the asset."

3) **Commissioner of Income Tax - III, Pune v. Rajasthani and Gujarati Charitable Foundation, Poona** reported in (2018) 7 Supreme Court Cases 810, wherein the Apex Court has approved the decision of Bombay High Court in case of **CIT v. IBPS** reported in

2003 SCC OnLine Bom 642, wherein it is held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act, 1961. It was further held that income of charitable trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income Tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the trust.

4) **Industrial Credit and Development Syndicate Limited v. Commissioner of Income tax, Mysore and another** reported in 2013 (3) Supreme Court Cases 541, wherein the Supreme Court has made analysis for the purpose of providing depreciation as under:



"11. Depreciation is the monetary equivalent of the wear and tear suffered by a capital asset that is set aside to facilitate its replacement when the asset becomes dysfunctional.

"17. In P.K. Badiani Vs. Commissioner of Income Tax, Bombay [1976] 4 SCC 562, this Court has observed that allowance for depreciation is to replace the value of an asset to the extent it has depreciated during the period of accounting relevant to the assessment year and as the value has, to that extent, been lost, the corresponding allowance for depreciation takes place."

12. Black's Law Dictionary (5th Edn.) defines 'depreciation' to mean, inter alia:

"Depreciation - A fall in value; reduction of worth. The deterioration or the loss or lessening in value, arising from age, use, and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property.... Consistent gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings..."

The 6th Edition defines it, inter alia, in the following ways:

"Depreciation - In accounting, spreading out the cost of a capital asset over its estimated useful life. A decline in the value of

property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property."

13. Parks in Principles & Practice of Valuation (Fifth Edn., at page 323) states: As for building, depreciation is the measurement of wearing out through consumption, or use, or effluxion of time. Paton has in his Account's Handbook (3rd Edn.) observed that depreciation is an out-of-pocket cost as any other costs. He has further observed-the depreciation charge is merely the periodic operating aspect of fixed asset costs.

14. The provision on depreciation in the Act reads that the asset must be "owned, wholly or partly, by the assessee and used for the purposes of the business". Therefore, it imposes a twin requirement of 'ownership' and 'usage for business' for a successful claim under Section 32 of the Act."

7) THE LEARNED SENIOR ADVOCATE Mr. Joshi therefore submitted that depreciation charged is merely periodic aspect of the fixed asset cost and therefore, the same cannot be ignored for the purpose of determining the fees by the school for imparting education as per the provisions of the Act, 2017. Reliance was also placed on the decision of the Apex Court in case of **Commissioner of Central Excise, Ahmedabad v. Asarwa Mills** reported in (2015) 14 Supreme Court Cases 806 and

decision in case of **Modern School v. Union of India and others** reported in (2004) 5 Supreme Court Cases 583 and in case of **Premier Automobiles Ltd. v. Union of India** reported in AIR 1972 SC 1690 to submit that depreciation is part of actual cost for imparting education.

8) It was therefore, submitted that in determination of fees structure, the school exercises a great autonomy as they are entitled to generate the reasonable surplus for development of education and only prohibition is commercialisation of education and diversion of the profit/surplus for any other use or purpose and use thereof for personal gain or for other business or enterprise. It was therefore, submitted that only restriction is on profiteering and charging of capitation fees or exorbitant fees and therefore, balance is required to be struck between autonomy of the school and measures to be taken to prevent commercialisation of education. It was therefore, submitted that under the guise of prevention of commercialisation of education, the revisional authority was not justified in not considering the depreciation as cost for imparting education.

**D) Disallowance of Term Fees and Admission Fees:**

1) Next common issue which was arising for consideration is with regard to charging of term fees and admission fees as per the provisions of section 2(g) of the Act, 2017. It was submitted that the restriction put by the FRC that the school is not permitted to collect fees under any head causing any extra burden on the students is contrary to the provisions of the Act, 2017 as term fees and admission fees are contemplated in terms of the Act and therefore, FRC has no jurisdiction or authority to deny collection of such fees subject to restriction as per the said provision. It was submitted that the fees determined by the FRC does not include term fees and admission fees which is provided by the substantive provision under the Act, 2017. It was therefore, submitted that FRC has been adopting differential norms in relation to the collection of term fee and admission fee which is not permissible in law and the petitioners schools cannot be prohibited by the FRC to collect term fees and admission fees which are expressly provided for under the provisions of the Act, 2017.

**E) Disallowance of interest on loan:**

1) With regard to the common issue in respect of disallowance of interest paid on loan taken by the respective school for imparting education, it was submitted that though the school has paid the interest amount to the bank as per the terms and conditions of the sanctioned loan in normal course of borrowing during the tenure of loan period, FRC has allowed only 2.5% of the actual interest expenses on the ground that it would be highly unfair to burden only those students who are enrolled in the school during the tenure of the loan period which is said to be of 7 to 8 years and such students would be bearing interest cost of putting up the infrastructure which is going to be substantially used by the students to be enrolled in future and on such inference, FRC considering the life of building of 60 years and on assumption that school would function for such period of 60 years presumed it to be fair to amortize the total interest for entire tenure of loan over a period of 40 years for the purpose of ascertaining the cost of imparting education. It was submitted that interest is to be paid as and when due

and cannot be deferred for a period beyond the tenure of loan inasmuch as the interest expenditure is to be considered and allowed to be on payment basis and cannot be amortized over the useful life of the assets while determining the fees of the school and such amortization is impermissible and contrary to the principles of amortization while considering the cost of interest. It was therefore, submitted that FRC/Fee Revision Committee could not have assumed the role of management of the school so as to hold that loan is not required by particular school considering the availability of cash flow from the fees vis-a-vis the borrowed funds for acquisition of the assets. It was submitted that once it is established by the school that it has paid interest on the loan availed for the purpose of imparting education to the students, such expense ought to have been considered to be allowed as allowable expenses for the purpose of determination of the fees. It was submitted that in absence of any inquiry that the loan availed by the particular school is not for the purpose of imparting education, inference drawn by the FRC and the Fee Revision Committee are contrary to the provisions of the Act, 2017. It was submitted that when it

is not in dispute that sole activity of the trust is to manage and run the school to maintain holistic educational ecosystem, the income and expenditure account of the school and trust cannot be segregated.

**F) Disallowance of Curriculum Expenses:**

1) The next common issue which arises for consideration is disallowance of curriculum expenses. It was submitted that FRC has committed an error in disallowing the recurring expenditure incurred by the school towards a highly interlinked and advanced composite project involving development of the course curriculum, implementation of the course content delivery, creating innovative assignments every year to keep students engaged, testing students, training of teachers for this methodology, auditing of implementation because the particular school has its own course curriculum department and therefore, FRC could not have divided such expenditure over the period of years by amortization. It was submitted that while creating course contents for all the grades is only a miniscule part of the project, whereas large part of work involves engaging with teaching staff for the purpose of

ensuring effective delivery of the course content, their training and auditing of actual delivery in the classroom on ongoing basis and all such activities run throughout the year. It was submitted that unlike the course content which needs minor upgrading every year, the major portion of this expenses was of recurring nature. It was submitted that the Right to Education Act and the Rules framed thereunder by the State Government emphasize upon the system for ensuring actual delivery of the course contents and provide for ensuring that the learning outcome is achieved by the school. The school's project ensures such learning outcome on an end to end basis right from creation of content, delivery of content and assessment of learning outcome and therefore, FRC has failed to consider such facility to be an asset by amortization of the cost of the same over a period of five years. It was submitted that FRC has overlooked that the cost is annual and recurring and is not an asset which can be capitalized as the entire cost is incurred on recurring basis for the purposes of imparting education every year. It was submitted that effect of the order of amortization of such expenditure would result in static course content as developed in the



year 2017-2018 for all years to come without any auditing of classroom delivery. It was therefore, submitted that FRC was not justified in determining recurring revenue expenditure as a capital expenditure and deferring the same over the period of three to five years.

2) It was submitted that even Fee Revision Committee has also failed to consider curriculum expenditure which is bedrock of what makes a school a high standard school by drawing an adverse inference that these expenses are for teachers which have no nexus with imparting education. It was submitted that neither in the order passed by FRC or Fee Revision Committee, there is any discussion of any changed circumstances as such expenditure were allowed in earlier years.

3) It was therefore, submitted that there was no reason for disallowing such expenditure by ignoring the explanation provided by the respective school along with audited accounts as there is no inquiry made by FRC that such expenditure was not incurred by the school and the fee is to be determined on the basis of actual expenses incurred by

the school after providing for reasonable surplus. It was therefore, submitted that disallowance of such expenditure is contrary to the provisions of the Act, 2017 as well as order dated 25.4.2018 passed by the Apex Court.

**G) Issue of Quorum:**

1) Learned Senior Advocate Mr. Joshi submitted that another common issue which arises for consideration is "Quorum" of FRC. It was submitted that the orders passed by the FRC does not bear the signatures of all members of the Committee and it only bears the signature of Chief Coordinator of the Committee. It was submitted that on many occasions out of five members of the Committee only three members remained present during the hearing. It was submitted that FRC is a quasi judicial authority and therefore, all the members of the Committee appointed as per the provisions of section 3(4) of the Act, 2017 are required to conduct the proceedings and therefore, if hearing is conducted by less than 5 members of the Committee, it cannot be said that the hearing was afforded by the Committee as per the provisions of the Act, 2017. It was

submitted that in absence of the Chartered Accountant and representative nominees in the hearing of the Committee, the entire scheme of the Act is frustrated.

2) It was submitted that the Chairperson of the FRC, Ahmedabad was aged 72 years whereas the age limit provided under section 3 of the Act, 2017 is 65 years and therefore, the orders passed by the FRC, Ahmedabad would suffer from lack of authority of Chairperson who has been continued beyond the age of 65 years.

3) In support of his submissions, learned advocate Mr. Joshi relied upon the decision of the Supreme Court in case of **Karnal Improvement Trust Versus Smt. Parkash Wanti (Dead)** reported in 1995 (5) SCC 159 wherein the Apex Court held that the award passed by the President alone of the three members Tribunal was invalid and quasi-judicial function of the Tribunal cannot be held to be mere directory. In this context, the Apex Court held as under:

"6. A conspectus of the above provisions would given us unerring indication of the legislative animation that the Tribunal shall consist of three members, namely, the President and two assessors

and each is co-existent with the others. The Tribunal is a civil court and the President is the Presiding Judge of the Court. Being a judicial member, undoubtedly, he has been conferred with power to preside over the Tribunal, summon the witnesses secure the evidence and decide on questions of law and title and procedure. If he considers necessary he may also do so in association with other members. Even in matters of procedure to a limited extent, namely, in summoning the witnesses who would be competent or necessary or material witnesses to unfold the measurement of the land or the value thereof, the views of the assessor-members may be relevant, germane and sometimes necessary, as being local persons. It is true that no qualifications have been prescribed for appointment of a assessor, while qualifications for the member-president stood prescribed. The reason appears to be that the assessor being a local member, obviously, having had personal knowledge of the local conditions of the land and its prevailing value, the legislature appears to have intended that opinion of men of common experience, perhaps, would be more appropriate to determine compensation. That would not elevate the position of the President to be pivotal and relegate the assessors to be adjunct or ancillary to the President. If it were to be otherwise, the legislature would have employed the language that the President, with the assistance of the assessors, would determine the compensation or have the land measured etc. etc. The power to decide on question of law and title and in some case the procedure solely given to the President, in obviously for the reason

that the President has had judicial or legal experience of questions relating to disputes of title and also conversant with the procedure in the Code of Civil Procedure. Section 59(c) amplifies that scope and gives power to the presiding member the status of civil judge to summon the witnesses, enforce their evidence and to compel production of the documents as it provided in CPC.

7. The award of the Tribunal has been designated to be the award of the Court and the Tribunal is the Court and each member is entitled to his own opinion in determination of the compensation or measurements of the land. The Chairperson as a Civil Judge is empowered to sign the award on behalf of the Tribunal. In case of difference of opinion, the majority opinion of the members shall be the decree of the Tribunal. The mandatory quorum, therefore, is three members and the award of the Tribunal is a decree of a civil court. The President also is a member of the Tribunal and everyone of them is liable to be removed for any of the grounds enumerated in s.10. Each member qua discharge of the functions is an independent member. Mere fact that the President will record the evidence, in the absence of the assessors, or that he is given power to preside over the Tribunal and to compel the presence of the witnesses or to secure the evidence does not per force minimise or undermine the composition of, continuance and functions of the assessors as members of the Tribunal. Temporary absence of a member including President, may entail, by implication, his removal and appointment of a substitute member, which would reinforce that in the

discharge of the functions as a member, the presence and participation of each member of the Tribunal should be mandatory, unless his absence becomes unavoidable and beyond his control. Take for instance, absence due to being out of station. The power to record evidence in the absence of the assessors does not clothe the President with the power to decide himself the question of compensation or measurement of land as sole member Tribunal. When the Tribunal consists of three members, the opinion has to be of the composite body, and not of the sole President. The power vested in the President to decide questions of law and title and procedure does not undermine the position of assessor members of the Tribunal and other matters. The President need not necessarily be a local man. He may be a judicial officer drafted from the service of the respective State; and the assessors, by implication, may be only local men having acquaintance with the prevailing prices of the land. The President must be necessarily be either judicial trained or administratively experienced person. When the Tribunal determines compensation or dispute as to the extent of the land acquired or of the quality of the land under acquisition, the decision is that of the Tribunal. In case of difference of opinion, the majority view would be the executable decree. In other words, it indicates that it is a three-member statutory body and does not consist of the presiding Judge only. He is left with no option but has to associate the other member in determining the compensation of the acquired land for the trust or its nature or extent. Any other interpretation would be

inconsistent with and derogatory to the scheme, purpose and intendment of the Act. The presence and participation of each member in the adjudication of the compensation or measurement or quality of land, is of necessity mandatory. The Tribunal will have the assistance of the counsel for the trust and of the claimant or/and counsel for the claimant, if any, engaged by the claimant in determining the compensation or for the measurement and quality of the land. It would, therefore, be clear that all the three members should be present and should participate at the time of enquiry unless unavoidable, hear the matter on merits and the decision of the Tribunal, if not unanimous and if there be difference of opinion, be as per the majority."

4) Reliance was also placed on the decision in case of **P.A. Inamdar and others v. State of Maharashtra and others** (supra), wherein the Apex Court in this context held as under:

"149. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious

criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their job and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution."

5) It was therefore, submitted that without having the assistance of experts in accounts and management, FRC could not have determined the fees of the respective schools.

**28.** Thereafter, it was submitted that there are other issues arising in this group of petitions which are not common and therefore, such issues shall be dealt individually.



29. Learned Senior advocate Mr. Tushar Hemani assisted by learned advocate Ms. Vaibhavi Parikh appearing in Special Civil Application No.18894/2019 and allied matters submitted that considering the scope of the Act, 2017 concept of reasonableness/necessity is not prescribed under the Scheme of the Act inasmuch as the only criteria to be considered for determination of the fees is whether Self Financed school is indulging in profiteering or charging exorbitant fees or not. In support of his submissions, reference was made to section 66 of the Gujarat Cooperative Societies Act, 1961 which stipulates for appropriation of profits so as to draw analogy that even the cooperative society which function on the principle of mutuality, the statute provides for considering the profit to be appropriated in relation to the accrued interest, bad debts, depreciation statutory liabilities of the employees etc.

30. Learned Senior Advocate Mr. Hemani also referred to the provisions of the Companies Act, 2013 more particularly sections 123, 198 and Schedule-II thereof which provides for

declaration, payment of dividend and calculation of profit along with calculation of depreciation prescribed in Schedule-II thereof so as to submit that statutory provisions are prescribed under various Act to calculate and provide for depreciation so as to determine the profit of the organization.

**31.** Learned Senior Advocate Mr. Hemani also referred to and relied upon the Technical Guide on "Accounting for Nonprofit Organisation" issued by the Institute of Chartered Accountants of India which also provides for consideration of non monetary expense of depreciation by the nonprofit making organization. It was submitted that Supreme Court has held that School managements are required to have reasonable surplus without there being profiteering or charging exorbitant fees and therefore, for determination of the fees, guidelines provided by the Institute of Chartered Accountant with regard to accounting for nonprofit organization would be relevant for calculation of deprecation to be charged to determine the reasonable surplus.

**32.** Learned Senior Advocate Mr. Hemani also

relied upon the decision of the Apex Court in case of **Delhi Electricity Regulatory Commission v. BSES Yamuna Power Limited and others** reported in 2007 (3) SCC 33, wherein the Apex Court while dealing with the issue of electricity tariff fixation has held that depreciation is allocation of cost so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is pre-determined and it includes depletion of resources through the process of use. It was further held that an asset is recognized in the balance sheet when one expects economic benefits associated with it to flow in future over a period of years. Accordingly the asset has a cost or value that can be measured and matching of revenue and expenses is an important exercise under Accounting and depreciation is a part of this exercise so as to allocate the cost of a given year which has to match with the expected revenue for that year. The Apex Court therefore, invoked the concept of matching according to which expenses are recognized in the Statement of Profit and Loss on the basis of direct connection between the costs incurred and earning of

specific item of income and it was held that depreciation helps this concept of matching and the Full Cost Method (FCM) is a method of matching income (Revenue and Expenses). This method proceeds on the basis that a proper matching of income and expenses can take place only if total assets are depreciated on a pro-rata basis. The FCM, therefore, avoids distortion of reported earnings and it is in this context that one has to keep in mind the difference between distributable profits and the cash profits. Depreciation reduces the distributable profit without reducing the cash profit and the difference between the two is a sum which the company has to retain to meet the cost of replacement in future. In this context, relying upon the decision in case of Ahmedabad Miscellaneous Industrial Workers' Union v. Ahmedabad Electricity Co., Ltd. - AIR 1962 SC 1255, the Apex Court held that depreciation enables the Utility to work out the charges to be recovered from consumers for supply of electricity and has not to follow the provisions of the Income-tax Act while calculating the depreciation as one of the items of expenses under the electricity accounting. It was therefore submitted that in facts of the case of Self Financed School also depreciation is required

to be considered as necessary cost for imparting education so as to enable the schools to meet with the cost of replacement in future as it cannot be held that the Schools have to charge fees only to meet with the expenses which are actually incurred. It was submitted that schools have to generate revenue for the purpose of replacement of assets also and in that context disallowance of depreciation cannot be contemplated under the provisions and the Scheme of the Act, 2017.

33. Reliance was placed on section 36 of the Income Tax Act, 1961 as well as decision of Apex Court in case of **S.A. Builders Ltd v. Commissioner of Income Tax** reported in (2007) 288 ITR 1 (SC) with regard to allowance of interest on borrowed capital wherein the Apex Court while interpreting the provisions of section 36(1)(iii) of the Income Tax Act, 1961 held that expression "for the purpose of business" occurring under the provision of section 36(1)(iii) is wider in scope than the expression "for the purpose of earning income, profits or gains" and thereafter, it was held that interest on borrowed loan has to be allowed if the advances are obtained for the purpose of the business. It was

therefore, submitted that when the schools take loan for the purpose of imparting education, interest payable on such loan is required to be considered as allowable expenditure with regard to repayment schedule and not with regard to life of assets for which such loan is obtained by the school.

**34.** Learned Senior Advocate Mr. Dhaval Dave and Learned Senior Advocate Mr. Percy Kavina appearing for the respective petitioners adopted the submissions made by other counsels.

**IV- SUBMISSIONS OF PETITIONERS FOR OTHER ISSUES IN EACH PETITION:**

**35.** Thereafter, learned advocate Mr. Mitul Shelat and other learned advocates appearing for the respective petitioners referred to facts of following petitions with regard to the fact relating to issues which are not common, however, petitions involving common issues are not referred here-in-below.

- 1) Special Civil Application No. 2356/2021**
  - a) Disallowance of Expenses towards snacks:**

It was submitted that Fee Revision

Committee quashed and set aside the order passed by FRC and directed the FRC to pass fresh de novo order without including/making provision of expenses towards snacks. It was submitted that FRC completely changed the previous order and substantially reduced the amount of fees compared to that it had fixed earlier. It was submitted that the Fee Revision Committee had made provision of snacks separately to the tune of Rs. 3000/- though it was not within its powers. It was submitted that revision authority had remanded the matter back only to the extent wherein the order be passed without considering the additional expenses towards snacks. However, FRC reduced the fees from Rs. 21,000/- to Rs. 16,000/- for no rhyme or reason. Therefore, it was submitted that the same may be quashed and set aside.

**2) Special Civil Application No.2131/2021**

**a) Disallowance of Expenses towards snacks:**

It was submitted that Fee Revision Committee quashed and set aside the order passed by FRC and directed the FRC to pass fresh de novo order after excluding expenditure relatable to snacks/brunch/meals. It was submitted that FRC completely changed the previous order and substantially reduced

the amount of fees compared to that it had fixed earlier. It was submitted that the Fee Revision Committee had made provision of snacks separately to the tune of Rs. 3000/- though it was not within its powers. It was submitted that revision authority had remanded the matter back only to the extent wherein the order be passed without considering the additional expenses towards snacks. However, FRC reduced the fees from Rs. 21,000/- to Rs. 13,000/- for no rhyme or reason. Therefore, it was submitted that the same may be quashed and set aside.

**3) Special Civil Application No. 3959/2021**

**a) Non consideration of accounts of the relevant year:**

It was submitted that the order of FRC is erroneous inasmuch as the FRC had proceeded to consider the audited accounts of 2016-2017 as against the audited accounts of 2017-2018. It was submitted the Fee Revision Committee has not considered the issues raised by the petitioner-school and only held that insofar as figures of 2016-2017 being adopted by FRC is concerned, though the representatives of the petitioner-school could not point out the details and



figures to reconcile, there is an apparent error in adopting the number of students relatable to 2016-2017. It was submitted that Fee Revision Committee has not given any specific finding in relation to non consideration of accounts of the relevant year raised by the petitioner-school.

**b) RTE students considered in total number of students:**

It was submitted that the out of total strength of the students of 629, students strength under RTE was 11 and free students was 26 and therefore, the real strength of the student was 592 and therefore, average expenditure per student will have to be worked out on the basis of 592 student strength and accordingly average expenditure per student would come to Rs. 72,785/-. However, FRC has considered 4% of total number of students to be students strength under Right to Education Act and arrived at cost per student which is not correct method and requires to be quashed and set aside. It was submitted that Fee Revision Committee has not considered such findings and calculation arrived at by the FRC and gave independent finding and worked out such figures which has no basis at all and therefore, the impugned

order passed by the Fee Revision Committee is also required to be quashed and set aside.

**c) Return on Investment (ROI) :**

It was submitted that certain fixed assets which are reflecting as an assets in the Books of the petitioner school are exclusively used by the school and since at that point of time the school was not having enough surplus fund, the said assets were brought by the petitioner school and as such the said fixed assets belonging to the school is accounted in the books of accounts. It was further submitted that as the fixed assets are exclusively used by the school, Return on Investment (ROI) on cost value of fixed assets owned by the society in lieu of the same must be allowed. It was submitted that FRC however did not consider such submission of the petitioner school. It was submitted that Fee Revision Committee has not given independent findings on the issue raised and has held that in case of petitioner-school, the return of investment worked out by the FRC is just and proper.

**d) Disallowance of Maintenance expenses:**

It was submitted that FRC has disallowed

75% of the maintenance expenses claimed by the petitioner without considering the contentions raised by the petitioner-school which was also confirmed by the Fee Revision Committee without giving independent findings.

**e) Non-allowance of optional expenses:**

It was submitted that FRC as well as Fee Revision Committee fixed the fees for optional activity for imparting education by the school without considering the proposal made by the petitioner school and without providing any reasons for fixing the same.

**4) Special Civil Application No. 1341/2022**

**a) Notional number of students considered:**

It was submitted that FRC in review application has proceeded to determine the fees by taking an arbitrary figure of number of students studying in the school. It was submitted that the figure which is taken into consideration by the FRC is 817 students for 2017-2018 and 844 students for the year 2019-2020, when in fact total number of students studying in the year 2017-2018 were only 703 and accordingly arrived at figure of Rs,

82,850/- towards fees per student. Thus notional figures are adopted as per the whims and will of the FRC.

**b) Inclusion of students who are children of staff from the total number of students:**

It was submitted that the FRC has overlooked the fact that the children of the member of the staff of the school are imparted free education as part of the inclusiveness and incentive policy of the school. For the purpose of considering the fees, the number of students who are paying the fees is required to be considered. The FRC in review was therefore required to exclude the students who are studying in the school but are not paying the fees for the purpose of determining the per student revenue to be generated by the school for meeting with the cost of education.

**c) Wrong presumption of proposed fees of Class VI to Class VIII:**

It was submitted that FRC while reviewing its earlier order has erroneously determined the cost of education for Class-6 to 8 at Rs. 82,500/-. The FRC however did not give effect to the said determination on

finding that the petitioner had proposed the fees of Rs. 80,000/- and the petitioner is not entitled to seek Rs. 82,500/- which is the fees determined by the FRC as per the student cost. It was submitted that in fact in the proposal submitted by the petitioner school, the fees proposed for class-6 to 8 were Rs. 1,80,000/-. Thus the figure of Rs. 80,000/- reflected in the table was a typographical error and FRC committed an error apparent on record.

**d) Determination of fees of optional activities:**

It was submitted that FRC in the review has not considered the expenses incurred by the petitioner school for the optional activities undertaken by the petitioner-school for imparting education and therefore the impugned order is required to be quashed and set aside.

**5) Special Civil Application No.454/2022**

**Disallowance of building and maintenance expenses and advertising expenses:**

It was submitted that FRC has disallowed 2/3rd of the total expenses incurred towards building maintenance charges

as well as 100% of the advertisement expenses i.e. Rs.1,56,612/- without giving any opportunity to the petitioner school to submit any details/clarification. It was submitted that Fee Revision Committee confirmed the order passed by the FRC on the ground that it is the duty of the petitioner school to justify the claim for the determination of the fees and the onus is upon the petitioner-school to place any special or peculiar facts which deviate from the head under which the particular expenditures have been shown the audited account. It was however submitted that the petitioners were never given the opportunity to give explanation or discharge the onus with regard to the expenditures claimed by the petitioner-school.

**6) Special Civil Application No.3341/2022**

**a) Fees determined per student is lower than the acceptable cost per student:**

It was submitted that FRC has not considered the actual number of students studying in the school for the purpose of determining the per student cost of education. It was submitted that FRC has determined the cost per student for Primary

and Upper Primary at Rs. 68,575/- whereas the fee given by the FRC is significantly lower at Rs. 41,700/- and Rs. 46,200/- respectively. Thus as per the order passed by FRC, the school has to run at a loss per student of Rs. 26,875/- for primary section and Rs. 22,375/- for upper primary section. It was submitted that such arbitrary and unjust manner of determination of fees by the FRC was upheld by the Fee Revision Committee without assigning any reason for confirmation of such disallowance of expenditures and without any discussion in the impugned order.

**b) Disallowance of expenses such as Building and Maintenance expenses, advertising expenses etc.:**

It was submitted that FRC has disallowed 2/3rd of building and maintenance expenses as well as 100% of the advertisement expenses of Rs. 8800/- incurred by the school management. It was submitted that building maintenance represents expenditure incurred for the upkeep and maintenance of school building as well as ensuring electrical and mechanical safety. It was submitted that disallowance of such expenses as not being incurred for education is not correct as any negligence on maintenance can endanger life

of the students and therefore, the FRC committed an error in disallowing such expenditure. It was further submitted that the FRC has not considered that the academic year 2017-2018 was the first year of school and the school had to incur some expenses for informing parents about the opening of the school and admissions. It was submitted that Fee Revision Committee without any discussion on the issues or without assigning any reason whatsoever confirmed the order passed by the FRC holding that no interference is required to be made in the impugned order more so when the Committee has taken similar view with regard to disallowance of expenses in other schools run by the trust who runs the school in the present petition.

**7) Special Civil Application No. 5302/2020**

**a) Disallowance of Medical expenses:**

It was submitted that against the Miscellaneous expenses of RS.19,95,510/-, amount of Rs.18,34,932/- was allowed by the FRC and amount of Rs.20,12,694/- towards medical expenses were not considered in absence of any details available on record by the FRC. It was submitted that Fee Revision Committee has not at all considered



this aspect and straight-away proceeded to confirm the order passed by the FRC which is illegal and arbitrary.

**b) Optional activities fees is fixed, particularly in respect of meal expenses:**

It was submitted that in the proposal form of the petitioner-school, 50% of amount being Rs. 22,000/- was claimed which included brunch/meal expenses and cost per student was claimed to be Rs. 21,358/- in the proposal given by the petitioner-school. It was submitted that FRC has held that the petitioner-school in the audited accounts for the year 2016-2017, has shown Rs. 28,74,000/- towards meals expenses and since 50% of students are taking meals, out of 1710 students, 855 students would be utilising such meals facilities and therefore, Rs.3361/- would be worked out as per FRC towards meals expenses. It was submitted that FRC has held that amount of Rs.1,63,96,988/- expended by the petitioner school towards meals expenses is not borne out from the record and accordingly the FRC fixed the optional fees at Rs.3500/- which is unjust and without assigning any reasons for coming to such conclusion. It was submitted that Fee Revision Committee allowed only

Rs.11,31,760/- towards optional activities considering the audited accounts as on 31.3.2018 without assigning any reason on coming to such figure and thus the order passed by the Fee Revision Committee is without application of mind and not justified.

**8) Special Civil Application No.6854/2020 with Special Civil Application No.4236/2022 with Special Civil Application No.4395/2022**

**a) Disallowance of Field Trip expenses:**

It was submitted that FRC has disallowed the expenditure incurred under the head Field Trip Expenses. It was submitted that FRC disallowed Rs.6,34,387/- towards Field trip expenses for primary and upper primary class consisting of 1053 students and Rs.1,46,497/- for Secondary class consisting of 276 students. FRC also disallowed Rs.1,00,403/- towards field trip for Higher secondary section consisting of 208 students. It was submitted that FRC failed to consider that field trip engages the children in real-time experience which is essential for the purposes of their education and without any justification whatsoever disallowed such expenses. It was submitted that Fee

Revision Committee without considering the submissions made by the petitioner-school and without assigning any reasons, proceeded to uphold the order passed by the FRC by stating that FRC has on the basis of audit report computed certain expenses and determined the fees without providing any justification whatsoever and therefore, such order is required to be quashed and set aside.

**b) Disallowance of Education expenses:**

It was submitted that FRC has disallowed the expenditure incurred under the head Education Expenses. It was submitted that FRC disallowed Rs.9,24,000/- towards Education expenses for primary and upper primary class consisting of 1053 students and Rs.2,22,000/- for Secondary class consisting of 276 students. FRC also disallowed Rs.1,65,000/- towards Education expenses for Higher secondary section consisting of 208 students. It was submitted that without any justification whatsoever, FRC disallowed such expenses. It was submitted that Fee Revision Committee has not dealt with the said issue and merely concurred with the findings arrived at by the FRC without assigning any reasons for confirming such order passed by

the FRC.

**c) Disallowance of Consultancy expenses:**

It was submitted that FRC has disallowed the expenditure incurred under the head Consultancy Expenses. It was submitted that FRC disallowed Rs.9,42,000/- towards Consultancy expenses for primary and upper primary class consisting of 1053 students and Rs.4,95,000/- for Secondary class consisting of 276 students. FRC also disallowed Rs.4,50,000/- towards Consultancy expenses for Higher secondary section consisting of 208 students. It was submitted that without any justification whatsoever, FRC disallowed such expenses. It was submitted that Fee Revision Committee also confirmed such order passed by FRC without assigning any independent reasons.

**d) Disallowance of Computer expenses:**

It was submitted that FRC has disallowed the expenditure incurred under the head Computer Expenses. It was submitted that FRC disallowed Rs.8,55,000/- towards Computer expenses for primary and upper primary class consisting of 1053 students and Rs.2,03,000/- for Secondary class consisting of 276

students. FRC also disallowed Rs.1,50,000/- towards Computer expenses for Higher secondary section consisting of 208 students. It was submitted that without any justification whatsoever, FRC disallowed such expenses. It was submitted that Fee Revision Committee was not justified in confirming such order passed by FRC while determining the fees.

**9) Special Civil Application No.6739/2020**

**a) Notional number of students considered:**

It was submitted that the FRC had proceeded to consider an arbitrary number of students while determining the per student cost inasmuch as the FRC has considered the maximum number of students permissible in class while determining the fees. It was submitted that said figure is factored by an arbitrary 70% to determine the class strength in the school. It was submitted that every school is entitled to determine the number of students in their class so long as it does not exceed the maximum permissible limit. It was submitted that as against the existing 530 students, the FRC has taken the number of students as 600 which is not permissible as it is arbitrary. It was submitted that Fee Revision Committee has confirmed the order

passed by FRC by holding that FRC has determined the fees as per the ratio of the students and therefore, FRC has not committed any error. It was submitted that Fee Revision Committee is not justified in confirming the findings of the FRC inasmuch as there is no independent application of mind to arrive at such a conclusion.

**b) Disallowance of Legal expenses:**

It was submitted that FRC has disallowed legal expense to the tune of Rs.12,00,000/-. It was submitted that approach and methodology adopted by the FRC is contrary to the provisions of the Act, 2017 and the Rules, 2017. It was submitted that Fee Revision Committee also erred in confirming such order passed by the FRC without independently considering the issues raised by the petitioner school.

**10) Special Civil Application No. 4221/2021**

**a) Non consideration of accounts of the relevant year:**

It was submitted that FRC had proceeded to consider the audited accounts of the year

2016-2017 as against the audited accounts of 2017-2018. It was submitted that FRC had calculated the fees per student without any basis and on its own without clarifying as to on what basis the FRC arrived at such figure. It was submitted that Fee Revision Committee vide order dated 2.1.2020 remanded the matter back to FRC to pass fresh denovo order. It was submitted that the order required the entire exercise to be undertaken de novo however, grievance of the petitioner was limited to non consideration of the audited accounts of the year 2017-2018.

**b) RTE students considered in total number of students:**

It was submitted that the FRC after considering the expenditures to be incurred by the school arrived at figure of Rs. 87,919/- towards fees per student and after adding 4% of such fees towards RTE students which comes to Rs.3517/- and adding 5% Development expenses arrived at figure of Rs. 95,831/- towards fees per student. It was submitted that there is nothing in the order of FRC to suggest on what basis such amount has been determined towards the fees per student. It was submitted the Fee Revision Committee also arrived at different figures

towards fees per student for Primary, Pre-Primary, Secondary and Higher Secondary school. However, the order neither contains any methodology or logic behind such calculation worked out by the Fee Revision Committee. Even after remanding the matter, FRC in the fresh de novo order has also not clarified about logic behind RTE students being considered in total number of students.

**c) Return on Investment:**

It was submitted that FRC has allowed very nominal amount of return on investment at the rate of 7% i.e. Rs. 57,63,312/- as compared to jantri value of the property and market value of the property. It was submitted that Fee Revision Committee without fixing such amount towards return of investment remanded the matter back to FRC and FRC in review application arrived at different figure towards return on investment for different sections of school without clarifying the methodology adopted for arriving at such amount towards return on investment.

**d) Disallowance of Maintenance expenses:**

It was submitted that FRC in review



application disallowed 75% of maintenance expenditure incurred by the petitioner school and thus disallowed maintenance expenses of pre-primary section at Rs.14,54,332/-, Primary section at Rs.2,07,29,659/-, Secondary section at Rs. 43,95,556/- and Higher Secondary section at 40,15,693/- totaling to Rs.3,05,95,240/-. It was submitted that from the impugned order it is not clear as to what methodology or basis was taken to come to such figures.

**e) Disallowance of Electricity Expenses:**

It was submitted that the FRC in review application disallowed the difference in electricity expenses of Rs.5,28,000/- for pre-primary section, Rs.26,88,000/- for primary section, Rs. 7,31,250/- for Secondary section and RS.8,16,000/- for Higher Secondary Section, totaling to Rs. 47,63,250/- without assigning any reason.

**11) Special Civil Application No.1272/2021**

**a) Non consideration of Accounts of relevant year:**

It was submitted that the Fee Regulatory Committee has taken into consideration the

audited accounts for the year 2016-2017 only for the purpose of determination of the fee structure though the audited accounts for the year 2017-2018 and 2018-2019 were placed on record. It was submitted that the impugned order passed by the FRC and Fee Revision Committee without taking into consideration the audited accounts for the year 2017-2018 and 2018-2019 is arbitrary and without application of mind since such order is passed without examination of actual expenses for the years under consideration.

**b) Amortization of expenses:**

It is further submitted that FRC has also not taken into consideration the impact of its own amortisation of expenses and reduction in fees for the years 2017-2018 and 2018-2019. It was submitted that the Schoogle department of the institution ensures that all teachers are properly trained. This task is completed by human resources who have to be paid year over year. It was submitted that the FRC has overlooked that such cost is annual and recurring and is not an asset which can be capitalised. It was submitted that such cost is incurred solely for the purposes of imparting and improving education

and therefore, such cost is recurring year after year. It was submitted that the Fee Revision Committee has merely confirmed the order passed by the FRC without applying its mind or even considering the submissions made by the petitioners or without any discussion on such issues, by holding that there is no infirmity in the order passed by the FRC and therefore, calls for no interference.

**12) Special Civil Application No.15241/2021**

**a) Wrong number of students considered for fee fixation:**

It was submitted that there is an arithmetical error in determination of cost allowed by the FRC as the FRC has considered the number of students for Pre-primary, Primary, Secondary and Higher Secondary section as per the data of 2016-2017 and not actual number of students who were studying in the year 2017-2018 for determination of the fees for the year 2017-2018. It was submitted that FRC has thus committed an error by calculating the average expense per student for determination of the fees per student for different sections incorrectly. It was submitted that the Fee Revision Committee while upholding the order passed by

FRC has also not considered this aspect of the error of taking wrong number of students on the ground that proposal submitted by the school also is based upon such data.

**13) Special Civil Application No.16585/2021**

**a) Non-determination of Fees by FRC for the year 2017-2018 and 2018-2019:**

It was submitted that FRC committed an error in not considering the fresh proposal for the Academic Year 2017-2018. It was submitted that as per the requirement, the School has segregated proposal of the expenditure for the Academic Year 2017-2018 and 2018-2019 so that FRC can consider the same for determining the fees for the School. It was submitted that the Fee Revision Committee confirmed the order passed by the FRC without dealing with the contention raised by the petitioner.

**b) Notional number of Students:**

It was submitted that FRC committed an error in considering the total strength of the students in 2019-2020 as 40 students and the total number of class as 21. It was submitted that FRC could not have considered

notional number of 630 students while determining the fees. It was submitted that the Fee Revision Committee was not justified in confirming the order passed by the FRC by considering the number of students to be 404 and accordingly, working out the fees per student.

**c) Disallowance of expenses:**

It was submitted that FRC committed an error while disallowing advertisement expenses of Rs.4,13,291/-, Bus (Gas and Petrol) Expenses of Rs.31,07,729/-, Bus Maintenance Expenses of Rs.41,62,743/-, Consultancy Fees Expenses of Rs.33,18,716/-, Interest on TDS of Rs.1,24,817/-, Insurance Expenses of Rs.3,21,375/-, Printing and Stationery Expenses of Rs.3,61,494/-, Student Nutrition and Beverages Expenses of Rs.13,69,404/- etc. It was submitted that the petitioner-School had produced on record the ledger accounts in support of such expenses claimed by the petitioner-School. It was submitted that Fee Revision Committee erred in confirming the order passed by the FRC by holding that in absence of any specific ground, it was not possible to record any finding as to whether any of the expense is partially or fully allowable.

**d) Findings on audited accounts:**

It was submitted that FRC as well as Fee Revision Committee erred in holding that the emphasis laid by the petitioner-School on the audited accounts is misplaced since the scope of audit of books of accounts is limited to certifying by the auditor whether financial statements prepared from the books of accounts show a true or fair view or not. It was submitted that it was a duty of the FRC to call for further details to check the veracity of the accounts.

**14) Special Civil Application No.17821/2021**

**Disallowance of management expenses and considering the expenses of only primary standards:**

It was submitted that the fees fixed by the FRC will result in financial loss to the petitioner school as the actual expenses mentioned in audited income and expenditure statement is not considered by the FRC. It was submitted that the order of FRC does not provide any basis for determining the total expenses per student of primary standards only. It was further submitted that the FRC has disallowed the actual expenses while

determining the fees by approving expenses. It was submitted that Fee Revision Committee erred in holding that management expenses are not required for imparting education and have no nexus with the same and therefore, the school management cannot claim management expenses in the fees and burden the students. It was submitted that Fee Revision Committee without discussing any issues and without assigning any reason on the specific issues raised merely upheld what has been stated by the FRC in its impugned order.

**15) Special Civil Application No. 18068/2019**

**a) Disallowance of Computer expenses:**

It was submitted that FRC has held that the expenditure on the computer amounting to Rs. 4,99,605/- being capital expenditure deserves to be spread over in five years and were disallowed. It was submitted that such expenses were incurred during the course of imparting education to the students and were therefore, required to be allowed. It was submitted that Fee Revision Committee has not considered the issue of computer expenses and merely confirmed the order passed by FRC without assigning any separate reasons.

**b) Disallowance of Other expenses:**

It was submitted that FRC has erred in disallowing the other expenses of Rs. 1,14,50,903/- by holding that exact items of other expenses are not shown by the school and hence it is difficult to ascertain the amount of such disallowance. It was submitted that Fee Revision Committee confirmed the order passed by the FRC without giving any reason for upholding the order passed by the FRC.

**c) Disallowance of Repair and Maintenance expenses:**

It was submitted that the FRC did not allow the maintenance expenses of Rs.6,70,147/- without considering the audited accounts and documents produced in support of such claim. It was submitted that Fee Revision Committee upheld the order passed by the FRC without assigning any reason on such claim.

**d) Disallowance of Employee Benefits expenses:**

It was submitted that FRC erred in



disallowing the Employee Benefit expenses to the tune of Rs.1,81,47,276/- by holding that no details are furnished in respect of such claim. It was submitted that all the details required were supplied to the FRC inspite of which FRC disallowed such expenditure. It was submitted that Fee Revision Committee has not dealt with the said issue and merely confirmed the order passed by the FRC without assigning any independent reasons on such issue.

**e) Discrepancy in affidavit and documents before FRC:**

It was submitted that the Fee Revision Committee erred in holding that the averments made in the affidavit are at variance with the original record of the FRC. It was submitted that Fee Revision Committee has erroneously held that the petitioner school has tried to consciously place on record the documents which were not filed before the FRC.

**16) Special Civil Application No. 18076/2019**

**a) Disallowance of Expenditure in respect of the properties:**

It was submitted that FRC while determining the fees disallowed the expenditure in respect of properties to the tune of Rs. 20,00,000/- on ad-hoc basis without any basis. It was submitted that the Fee Revision Committee also without giving any reason and without considering the submissions made by the petitioner confirmed the order passed by the FRC with respect to disallowance of expenditure in respect of the properties.

**b) Disallowance of Syllabus and Upgradation Expenses:**

It was submitted that the FRC disallowed a sum of Rs.3,00,000/- towards Syllabus and Upgradation expenses pertaining to Academic Advisor's Remuneration as well as academic resource upgradation material. It was submitted that the petitioner-school raised the ground before the Fee Revision Committee for ad-hoc disallowance made by the FRC without any basis but the Fee Revision Committee has confirmed the order passed by FRC without giving any reason by holding that FRC has considered all the submissions and passed the order determining the fees by discussing the issues. However, no such discussion is found in the order of the FRC.

**c) Disallowance of Utsav Expenses:**

It was submitted that FRC has similarly disallowed Rs. 5,00,000/- out of Utsav expenses pertaining to education and field trip expenses which are incurred by the petitioner on the ground that same are not strictly considered for educational purpose. It was submitted that FRC has disallowed such expenses only on the basis of the assumption and presumption without there being any basis for disallowing such expenditure incurred by the petitioner.

**d) Disallowance of Miscellaneous expenses:**

i) Miscellaneous expenses of Rs. 10,00,000/- is also disallowed out of Rs.27,27,590/- in absence of any detailed break-up. It was submitted that details of miscellaneous expenses were provided before FRC as well as Fee Revision Committee but the same is not considered and ad-hoc disallowance is made without any basis.

ii) It was further submitted that FRC as well as Fee Revision Committee wrongly considered the students admitted under the Right to Education Act in total number of

students though such students are not required to pay the fees on the ground that other students should not be asked to pay the same fees simply because concession was given to some of the students and on the basis of such logic, other students cannot be burdened with the cost incurred over the students admitted under the Right to Education Act and total number of students admitted under Right to Education Act are also included in the total number of students of the school.

**e) RTE students considered in total number of students:**

It was submitted by the petitioner-school that FRC has overlooked that students who do not pay the fees either on account of scholarship received by them or on account of they being admitted under the Right to Education Act, do not contribute to the revenue and therefore, the school is entitled to ensure that revenue received by it is sufficient for the purpose of meeting its costs and it is within the right of the petitioner school to determine its policy for providing scholarship/free-ship to the students studying in its establishment. It was further submitted that while determining the fees, FRC is required to consider the

existing income and expenditure of the school and FRC cannot sit in the appeal over the policies of the school management concerning grant of scholarship/free-ship. It was therefore, submitted that the Fee Revision Committee has also not given any finding on this issue for including the students admitted under Right to Education Act and/or scholarship granted by the petitioner to the students in total number of students to determine the fees.

**17) Special Civil Application No.19063/2019**

**a) Disallowance of Housekeeping, Kitchen, Transport, Repairs and Maintenance, Legal, travel, newspaper, magazine, garden events, celebration expenses:**

It was submitted that the school management had claimed housekeeping expenses at Rs. 12,38,776/-, kitchen expenses at Rs. 39,38,261/-, transport expenses at Rs. 1,09,30,579/-, repair and maintenance expenses of Rs. 17,43,674/- and also legal expenses, travel expenses, newspaper and magazine expenses, garden expenses as well as events celebration expenses. It was submitted that FRC without considering the submissions

of the school management held that certain expenses claimed by the school management are on the higher side and not directly connected with the educational activity and as a matter of fact, food expenses and transport expenses should not form part of the income and expenditure account of the school. It was further submitted that FRC has ignored the fact that legal processing fees and other such fees claimed by the school management is directly linked with the educational activities of the school. It was submitted that the Fee Revision Committee has erred in law in overlooking that the approach and methodology adopted by the FRC was contrary to the provisions of the Act, 2017 and the Rules and orders passed by the Apex Court. It was submitted that the Revision Committee has committed a grave error in holding that the expenditure incurred towards event and celebration, garden expense, house-keeping expenses, legal process fees, news paper and magazine expenses, tour and travel expenses cannot be linked with the education activities and the Revision Committee ought to have allowed such expenditures.

**18) Special Civil Application No.20881/2019****a) Disallowance of Membership expenses:**

It was submitted that the FRC has wrongly disallowed the membership expenses of Rs. 3,60,000/- without considering the fact that such expenses are related to educational purposes. The Fee Revision Committee also confirmed the order passed by the FRC without assigning separate reasons on such issue raised before it.

**b) Disallowance of Legal fee expenses:**

It was submitted that FRC erred in disallowing the legal expenses of RS.59,000/- without considering that such expenses are incurred during the course of imparting education. Fee Revision Committee also did not give independent findings and merely confirmed the order passed by the FRC.

**c) Disallowance of Stamp paper and legal expenses:**

It was submitted that FRC has disallowed the stamp paper and legal expenses to the tune of Rs.8674/- without considering the

documentary evidence produced on record. It was submitted that Fee Revision Committee also confirmed such order without independently considering the issues raised by the petitioner-school.

**d) Disallowance of repair and maintenance expenses :**

It was submitted that FRC has disallowed the maintenance expenses to the extent of 25% being Rs. 11,01,265/- without considering that such expenses were borne for imparting education. It was submitted that the Fee Revision Committee erred in upholding such order passed by the FRC without giving any justification for upholding such order of FRC.

**19) Special Civil Application No.21566/2019**

**a) Audited accounts of year 2016-2017 are considered instead of 2017-2018:**

It was submitted that the FRC has determined the fees only on the basis of accounts of the year 2016-2017. It was submitted the petitioner-school had submitted the audited accounts of the school for the year 2016-2017 and 2017-2018. It was



submitted that despite the fact that audited accounts were available for consideration, which reflected the actual expenditure incurred by the school management for the year 2017-2018, the FRC has proceeded to determine the fees solely on the basis of accounts of the year 2016-2017. It was submitted that assuming without admitting that for the year 2017-2018, the relevant accounts would have been for the year 2016-2017, for the year 2019-2020, the relevant account would be for the year 2017-2018 and despite the same FRC has not taken into consideration the audited accounts for the year 2017-2018. It was submitted that Fee Revision Committee has confirmed the order passed by the FRC holding that FRC has rightly determined the final fees for pre-primary, primary, upper primary, secondary, higher secondary general and higher secondary science stream. It was held by Fee Revision Committee that FRC has considered the strength of student in the school for years 2015-2016, 2016-2017 and 2017-2018. It was submitted that without evaluating the documents produced on record, the Fee Revision Committee came to the conclusion that FRC has considered the documentary evidence and the income and expenditure for

the academic years 2016-2017, 2017-2018 and 2018-2019. It was therefore, submitted that Fee Revision Committee without independent application of mind and without evaluating the documents produced on record proceeded to confirm the order passed by the FRC which is illegal and unjust.

**b) Disallowance of Computer expenses:**

It was submitted that FRC had earlier reduced the amount of computer expenses to Rs.9,28,813/- and in the review application it was further reduced to Rs.4,28,813/- and accordingly determined the fees. It was submitted that on what basis or methodology such reduction of computer expenses was made is not coming out from the order passed by the FRC. It was submitted that Fee Revision Committee has not at all considered any submission made on behalf of the petitioner school nor has considered any documents on record and proceeded to confirm the order passed by the FRC without independent application of mind and therefore, the impugned order is required to be quashed and set aside.

**20) Special Civil Application No.22939/2019**

**Expenses not disallowed however the fees of Higher Secondary (Science and Commerce) is reduced:**

It was submitted that FRC while provisionally fixing the fees accepted the fees laid down in the proposal for the Primary, Pre-Primary and Secondary sections, however in the order passed by FRC, for Higher Secondary (11-12) (Science) it provisionally fixed the fees at Rs. 35,000/- when the fees proposed by the petitioner-school was Rs. 50,000/- whereas for Higher Secondary (11-12<sup>th</sup>) (Commerce), FRC provisionally fixed the fees at Rs. 30,000/- when the fees proposed was Rs. 40,000/-. It was submitted that the objective of the petitioner-school is to provide education to the lower middle class and the underprivileged section of the society and therefore, not fixing the fees of the Higher Secondary sections as proposed by the petitioner would result in the school incurring more deficit and would disable it from continuing with the object with which the school has been established. It was further submitted that fees proposed by the petitioner is nominal as it will still make

the petitioner incur deficit for the year 2018-2019 and 2019-2020. It was further submitted that on implementation of fees as fixed by the FRC, the trust would suffer an annual deficit and would be unable to continue with the educational activities in the manner being undertaken by it. It was submitted that Fee Revision Committee has brushed aside the contentions raised by the petitioner-school without assigning any specific reasons or discussion upon the issues raised before it. It was submitted that Fee Revision Committee has confirmed the order of FRC only on the ground that FRC has not altered the fee-structure for pre-primary, primary, secondary section of the school and has only made minor changes insofar as higher secondary section for science and commerce faculty is concerned. It was therefore, submitted that the impugned orders are required to be quashed and set aside.

## **21) Special Civil Application No.6186/2021**

### **a) Disallowance of Notional rent:**

It was submitted that FRC assumed Rs. 1,08,79,747/- towards guest house rent but granted RS.89,21,900/- towards notional

rent. It was submitted that Fee Revision Committee upheld such order passed by the FRC without assigning any separate reason for confirming such order.

**b) Provision made for payment of salary:**

It was submitted that FRC completely disallowed the provision made by the petitioner school for payment of salary to the teachers as per grades of 7<sup>th</sup> Pay Commission to the tune of Rs.1,49,76,486/- without even discussing as to why the same has been disallowed. It was submitted that the Fee Revision Committee confirmed the order passed by FRC by holding that it is merely a provision which cannot be equated with actual expenditure for the purpose of imparting education which is not correct as such expense was incurred for imparting education to the students.

**c) Disallowance of Education expenses:**

It was submitted that out of Rs.64,50,185/- claimed towards the Education expense, only 50% has been allowed by the FRC without affording any cogent reasons for such partial disallowance. It was submitted that Fee Regulation Committee held that no details

were forthcoming as to the expenditure was made for how many children of how many teachers. It was submitted that with regard to other heads, no interference is warranted in the order passed by FRC.

**d) Disallowance of Legal Professional and Consultancy Expenses:**

It was submitted that out of total expense of Rs.55,37,980/- toward legal, professional and consultancy expense, the FRC allowed only 50% of the total expenses. It was submitted that FRC has given no reason for partially allowing such expense. The Fee Revision Committee completely disallowed the 50% expenses allowed by the FRC on the ground that such expenses do not have nexus with the activity of imparting education and that the cost has to qualify as cost for imparting education.

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**e) Disallowance of Repair and maintenance expenses:**

It was submitted that out of total expense of Rs.1,48,01,641/- towards repair and maintenance, the FRC has allowed only 50% being Rs.74,00,080/- without assigning any reason whatsoever for such disallowance. It

was submitted that Fee Revision Committee confirmed the order passed by the FRC by assuming that all expenses claimed cannot be on revenue account and was bound to fall under capital expenditure, which is impermissible and therefore, the impugned order is required to be quashed and set aside.

**f) Disallowance of Extracurricular and other activities:**

It was submitted that FRC completely disallowed Rs.21,97,821/- towards extracurricular activities and other activities without assigning any reason or even discussing on such head of expense. It was submitted that Fee Revision Committee confirmed the order passed by the FRC on the ground that no details were available on record with regard to such expense.

**g) Disallowance of Transport expenses:**

It was submitted that FRC completely disallowed the transport expense to the tune of Rs.24,25,817/- without assigning any reason or without even any discussion on such expense being claimed by the petitioner

School. It was submitted that Fee Revision Committee confirmed the order passed by the FRC holding that the claim raised by the petitioner School does not merit acceptance as the students who do not avail the transport facilities cannot be saddled with the cost of transportation incurred for free transport for teachers and others. It was submitted that the Fee Revision Committee has come to such conclusion merely on assumption and presumption without appreciating the submissions made by the petitioner School.

**22) Special Civil Application No.6185 of 2021**

**a) Provision for payment of salary to teachers:**

It was submitted that FRC completely disallowed the provision made for payment of salary for teachers as per 7<sup>th</sup> Pay Commission to the tune of Rs.2,81,31,713/- without assigning any reason or even discussing on the said head of the expense. It was submitted that the Fee Revision Committee confirmed the order passed by the FRC on the ground that the same is merely a provision which cannot be equated with actual expenditure incurred for the purpose of



imparting education. It was submitted that the Fee Revision Committee committed an error in not appreciating that payment of salary to teacher was for imparting education to the students and therefore, Fee Revision Committee was not justified in disallowing such expense.

**b) Disallowance of Education Expense:**

It was submitted that FRC completely disallowed education expense to the tune of Rs.1,44,59,766/- without giving any finding with regard to disallowance to such expense. It was submitted that the Fee Revision Committee confirmed the order passed by the FRC on the ground that no details were forthcoming as to the expenditure was made for how many children or how many teachers. It was submitted that FRC only observed that no interference was warranted without dealing with the expense claimed by the petitioner School.

**c) Disallowance of Legal, professional and consultancy expense:**

It was submitted that out of total expense of Rs.55,37,980/- towards legal, professional and consultancy expense, FRC

allowed only 50% of such expenses being Rs.27,68,990/- without assigning any reason for such partial allowance of the expense. It was submitted that the Fee Revision Committee disallowed even such 50% granted by the FRC on the ground that such expense do not have any nexus with the activity of imparting education. It was submitted that the Fee Revision Committee committed an error in not appreciating that such expenses were incurred during the course of imparting education and therefore, the same were required to be allowed.

**d) Disallowance of Extracurricular and other activities:**

It was submitted that the FRC completely disallowed extracurricular and other activities to the tune of Rs.30,08,421/- without assigning any reason or without any discussion on such expenses. It was submitted that the Fee Revision Committee also confirmed the order passed by the FRC on the ground that no details were available on record with regard to such expense.

**e) Disallowance of Transport expense:**

It was submitted that FRC completely

disallowed the transport expense of Rs.34,42,580/- without assigning any reason or without any discussion on such head of expense. It was submitted that the Fee Revision Committee confirmed the order passed by FRC on the ground that expenses claimed by the petitioner were misleading and unbelievable. It was submitted that Fee Revision Committee was not justified in observing that claim does not merit acceptance as the students who do not avail the transport facility cannot be saddled with the cost of transportation incurred for free transport for teachers and others.

**f) Disallowance of Donation expenses:**

It was submitted that FRC disallowed the donation expenses to the tune of Rs.1,31,66,000/- without giving any finding for such disallowance. It was submitted that Fee Revision Committee also confirmed the order passed by FRC holding that donation expense is a capital investment and not a cost having direct nexus with imparting education. It was submitted that such expenses were related to imparting expenses and therefore, same should have been allowed.

**g) Disallowance of Guest House Rent:**

It was submitted that FRC disallowed the Guest House Rent expense of Rs.9,00,000/- without arriving any finding as to disallowance of such expenditure. It was submitted that Fee Revision Committee confirmed the order passed by the FRC on the ground that such expense not being incurred for the purpose of imparting education to the students. It was submitted that such expenses are related to imparting education and therefore, same ought to have been allowed.

**h) Disallowance of Housekeeping and security:**

It was submitted that out of total expense of Rs. 1,73,18,133/- towards housekeeping and security, only 50% i.e. Rs.86,59,067/- were allowed by the FRC without assigning any reason as to why the actual amount incurred by the petitioner school ought not to be allowed. It was submitted that Fee Revision Committee upheld such partial allowance of expense by the FRC on the ground of details not forthcoming from the record. It was further held that CCTV installation was onetime expense and no details are forthcoming as to number of guards deployed and whether any outside

agency has been given the contract to deploy security and housekeeping. It was submitted that Fee Revision Committee was not justified in disallowing such expenditure on such vague considerations.

**23) Special Civil Application No. 7232/2021**

**a) Disallowance of Extra-curricular and other activities:**

It was submitted that amount of Rs.3,58,037/- claimed by the petitioner under the head Extra-curricular activities was completely disallowed by the FRC without any discussion on such expenses claimed by the petitioner. The Fee Revision Committee confirmed the order passed by FRC on the ground that no details were available on record to substantiate the claim put forth by the petitioner school.

**b) Disallowance of Transport expense (Optional Activity):**

It was submitted that the petitioners had claimed only Rs.9,47,655/- under the head of transport expense, however, the FRC by its order disallowed a sum of Rs. 31,58,839/- which was not justified. It was submitted

that Fee Revision Committee committed an error in confirming the order passed by the FRC by putting the onus upon the petitioner for providing proof as to how the difference in the amounts have arisen. It was further submitted that Fee Revision Committee erred in holding that claim does not merit acceptance as the students who do not avail the transport facility cannot be saddled with the cost of transportation incurred for free transport for teachers and others.

**24) Special Civil Application No. 8457/2021 and Special Civil Application No.17957/2021**

**a) Disallowance of Printing and stationery expenses:**

It was submitted that FRC had disallowed printing and stationary expenses of Rs.37,14,886/-, out of total expenses claimed of Rs.57,24,520/-. It was further submitted that FRC committed a grave error in treating books and stationary to be optional and no student shall be compelled to avail and pay the fees for the same. It was submitted that the Fee Revision Committee confirmed the order passed by the FRC without assigning any reason whatsoever or independent findings on arriving at such a conclusion.

**b) Disallowance of Maintenance and Upkeep:**

It was submitted that though the petitioner school had claimed expenditure of Rs.88,93,543/- towards maintenance and upkeep charges, the FRC had granted deduction to the tune of 75% and disallowed 25% i.e. Rs. 22,23,000/-. It was submitted that expenditure claimed should have been fully allowed as the petitioner school has entered into contract for housekeeping and payment has been made through bank account and necessary entries are reflected in the books of account. It was submitted that Fee Revision Committee confirmed the order passed by FRC without assigning separate reasons or finding to confirm the order passed by the FRC.

**25) Special Civil Application No.18722  
of 2021**

**a) Disallowance of Salary:**

It was submitted that the petitioner-School had debited an amount of Rs.1,00,65,424/- towards salary. However, FRC holding that there is no justification in respect of salary claimed by the petitioner

calculated expenses towards salary on its own and allowed Rs.24,36,000/- and disallowed the rest of the amount that is Rs.76,29,424,- which was unjust and without adopting any methodology for arriving at such figure. It was submitted that Fee Revision Committee was not justified in upholding the order passed by the FRC. It was submitted that Fee Revision Committee relying on Section 10(vi) of the Act, 2017 observed that if 27 teachers are permitted for 106 students, it would give a ratio of one teacher for every three students which cannot be permitted. It was further submitted that though all documentary evidences were produced in support of salary expenses, Fee Regulation Admission Committee was not correct in holding that in absence of the details in the certificate issued by the Axis Bank in relation to salary, there is no infirmity in the order passed by the FRC.

**b) Disallowance of Miscellaneous Expenses:**

It was submitted that FRC was not justified in disallowing the miscellaneous expenses to the tune of Rs.19,82,217/-. It was submitted that Fee Revision Committee was not correct in holding that there was no nexus of the expenditure incurred with the activity of imparting education. It was



submitted that Fee Revision Committee erred in holding that because a particular expenditure is the part of audited accounts under one or other head, such expenditure does not ipso facto become the cost of imparting education.

## **26) Special Civil Application No.11813/2020**

### **a)Capital Loss on write-off of vehicle:**

It was submitted that the petitioner school had in its fee proposal claimed a capital loss on write-off of vehicle expense of Rs.7,20,437/- for the year 2017-2018 which was disallowed by the FRC without assigning any reason or giving any justification for disallowance. It was submitted that Fee Revision Committee confirmed the order passed by the FRC without independently giving findings on the head of expense claimed by the petitioner-school.

### **b)Disallowance of Building Repairs and Maintenance:**

It was submitted that FRC has erroneously disallowed the expense of Rs.6,59,410/- from a total of Rs. 13,18,820/- for the year 2017-2018 towards building

repairs and maintenance without assigning any reason for such disallowance. It was submitted that Fee Revision Committee confirmed the order passed by the FRC without considering the audited accounts produced on record and without giving any justification for such findings.

**c) Disallowance of Advertisement expense:**

It was submitted that the petitioner school had in its fees proposal claimed advertisement expense of Rs. 77,473/- towards advertisement expense for the year 2017-2018, out of which Rs. 25,000/- has been disallowed by the FRC without any justification or without considering the audited accounts produced on record. It was submitted that the Fee Revision Committee confirmed such order passed by FRC without giving any independent finding on such head of expense.

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**27) Special Civil Application No.15866/2019**

**a) Notional number of students considered :**

It was submitted that FRC has considered total expenses incurred by the school at Rs. 96,86,553/- whereas the petitioner-school had collected total fees of Rs. 76,08,300/- and

therefore, the petitioner school is short of the expenses and incurred loss. It was submitted that FRC has determined the fees on the basis of notional number of students which is unjustified. It was submitted that Fee Revision Committee was not justified in confirming the order passed by the FRC without giving independent finding on the issues raised by the petitioner school.

**28) Special Civil Application No.15656/2019**

**a) Disallowance of Advertisement expenses:**

It was submitted that the petitioner school had proposed Rs. 12,87,611/- towards advertisement expenses. However, the FRC without any justification allowed the amount of Rs. 2,87,611/- and disallowed Rs. 10,00,000/-. It was submitted that Fee Revision Committee has given no justification for confirming the order passed by the FRC. It was submitted that the ledger of the advertisement expense is produced along with the copies of bill and vouchers which was not considered by the Fee Revision Committee.

**b) Disallowance of Consultancy charges:**

It was submitted that FRC has disallowed

the entire claim of RS. 5,53,084/- towards consultancy charges without giving any justification for such disallowance. It was submitted that Fee Revision Committee confirmed the order passed by the FRC on the ground that there was no supporting evidence to claim such expense. It was submitted that Fee Revision Committee was not justified in confirming the order passed by the FRC as the ledger accounts of the consultancy charges along with the bills and vouchers are produced on record.

**c) Disallowance of House Keeping:**

It was submitted that the petitioner-School had proposed Rs.6,93,367/- towards House Keeping, however, FRC on notional basis allowed an amount of Rs.1,15,000/- and disallowed Rs.5,78,367/- which was unjustified. It was submitted that the Fee Revision Committee erroneously confirmed the order passed by the FRC though the petitioner-School had produced ledger accounts with bills and vouchers and all the payments were made through Bank.

**d) Disallowance of Transportation (Optional Activity) :**

It was submitted that FRC completely disallowed the transportation fees to the tune of Rs.19,08,991/- without assigning any reason whatsoever. It was submitted that the Fee Revision Committee was not justified in confirming the order passed by the FRC. It was submitted that the School actually incurred transportation expenses out of which 20% is for conveyance of the teaching and non-teaching staff.

**e) Disallowance of General expenses :**

It was submitted that though the petitioner-School had proposed Rs.10,90,000/- towards general expenses, FRC without any justification allowed only Rs.1,72,500/- and disallowed the remaining amount. It was submitted that Fee Revision Committee erred in confirming the order passed by the FRC without giving any justification for the same. It was submitted that the petitioner-School had produced ledger accounts along with bills and vouchers in support of such claim which was not considered by the Fee Revision Committee.

**f) Disallowance of Printing and Stationery expenses:**

It was submitted that FRC has allowed only Rs.1,15,000/- out of Rs.7,51,467/- proposed by the petitioner towards printing and stationery which is unjust as the petitioner had already produced ledger accounts for the same showing the actual expense incurred by the School. It was submitted that the Fee Revision Committee has erred in confirming the order passed by the FRC without independently applying its mind to deal with such head of expense.

**g) Disallowance of Salary:**

It was submitted that the petitioner had incurred total expense of Rs.77,51,319/- towards the salary out of which the FRC had allowed salary to the teacher at the rate of Rs.15,000/- per month on notional basis.

**29) Special Civil application No.15657/2019**

**a) Disallowance of Advertisement expenses:**

It was submitted that the petitioner school had proposed Rs. 11,65,965/- towards

advertisement expenses. However, the FRC without any justification allowed the amount of Rs. 3,65,965/- and disallowed Rs. 8,00,000/-. It was submitted that Fee Revision Committee has given no justification for confirming the order passed by the FRC. It was submitted that the ledger of the advertisement expense is produced along with the copies of bill and vouchers which was not considered by the Fee Revision Committee.

**b) Disallowance of Consultancy charges:**

It was submitted that FRC has disallowed the entire claim of Rs. 34,64,400/- towards consultancy charges without giving any justification for such disallowance. It was submitted that Fee Revision Committee confirmed the order passed by the FRC on the ground that there was no supporting evidence to claim such expense. It was submitted that Fee Revision Committee was not justified in confirming the order passed by the FRC as the ledger accounts of the consultancy charges along with the bills and vouchers are produced on record. It was submitted that both FRC as well as Fee Revision Committee committed an error in not considering that the consultancy charges mainly related

towards the advertiser to the teaching and non-teaching staffs and for the training expense and though the petitioner-school actually incurred such expenses which is related to educational expenses, the same was not considered.

**c) Disallowance of General expenses:**

It was submitted that FRC has disallowed the entire claim of Rs. 10,08,133/- towards General expense without giving any justification for such disallowance. It was submitted that Fee Revision Committee erred in confirming the order passed by the FRC without giving any justification for the same. It was submitted that the petitioner-School had produced ledger accounts along with bills and vouchers in support of such claim which was not considered by the Fee Revision Committee.

**d) Disallowance of Computer expense :**

It was submitted that the petitioner school had proposed Rs.29,25,528/- towards Computer expense. However, the FRC without any justification allowed the amount of Rs. 20,00,000/- and disallowed the rest of the expense claimed under the said head. It was submitted that Fee Revision Committee has



given no justification for confirming the order passed by the FRC. It was submitted that the ledger account of software Expense and computer expense along with copy of bills and vouchers were produced on record and the computer expenses included software expenses and computer expenses actually paid by the petitioner-school. However, neither FRC nor the Fee Revision considered such submission of the petitioner-school and partially allowed the claim of the petitioner-school.

**30) Special Civil Application No.20400/2019**

**a) Disallowance of Advertisement and Printing Expenses:**

It was submitted that FRC disallowed the entire expense of advertisement and printing to the tune of Rs.10,70,120/- on the ground that these expenses cannot be said to have been incurred for the purpose of imparting education. It was submitted that Fee Revision Committee committed an error in confirming the order passed by the FRC without giving any independent finding on the said head of expense.

**b) Disallowance of Gardening Expense:**

It was submitted that FRC was not justified in disallowing gardening expenses to the tune of Rs.2,41,940/- on the ground that such expenses cannot be said to be incurred for educational object of the School. It was submitted that Fee Revision Committee could not have confirmed the order passed by the FRC without assigning separate reasons and without discussing the head of expense raised by the petitioner.

**c) Expenditure allowed but not given effect while fixing the Fee:**

It was submitted that FRC on the basis of assumption and presumption added an amount of Rs.8,95,776/- to the other allowable expenses and thereby revised the allowable expenses at Rs.7,95,63,161/-. It was further submitted that though the FRC calculated a cost per student to be Rs.51,198/-, it granted only an amount of Rs.40,000/- for the year 2017-2018 with a 5% increase for the year 2018-2019, which was not just and proper. It was submitted that the Fee Revision Committee was not justified in confirming the order passed by the FRC on the basis of assumption and presumption.

**d) Optional Expenditure disallowed but  
Optional Income considered:**

It was submitted that FRC was not correct in holding that the School had surplus while rendering optional services and therefore for determining the Fees of year 2018-2019, rise of 5% in the final Fees determined for the year 2017-2018 is not proper. It was submitted that this assumption by the FRC is erroneous in view of the fact that when expenses in a relation to optional services are wholly disallowed, income arising out of optional service also must not be taken into consideration to avoid double jeopardy.

**31) Special Civil Application No.21384/2019**

**a) Determination of fees:**

It was submitted that FRC has approved the fees for the academic year 2018-2019 by giving 10% rise instead of 5% in the final fees as determined for the academic year 2017-2018 and accordingly the FRC determined the fees for both academic year 2017-2018 and 2018-2019. It was submitted that Fee Revision Committee erred in confirming the order passed by the FRC by holding that reasons for

deciding the final fees assigned by the FRC are just and proper.

**32) Special Civil Application No.18895/2019**

**a) Disallowance of Cleaning expenses:**

It was submitted that the petitioner-School had in the proposal claimed cleaning expense of Rs.11,51,659/-, however, FRC has only mentioned about the said amount but has not dealt with the said expense claimed by the petitioner. It was submitted that the Fee Revision Committee confirmed the order passed by the FRC without making any observation or discussion with regard to the cleaning expenses.

**V. SUBMISSIONS OF THE RESPONDENTS:**

**36.** Learned Senior Advocate Ms. Manisha Luvkumar Shah assisted by learned advocate Mr. K.M. Antani submitted that in this entire group of petitions, the petitioners have challenged the order passed by FRC and/or Fee Revision Committee which are statutory authorities created under the provisions of the Act, 2017. Learned Senior Advocate Ms. Shah thereafter referred to the objects of

the Act, 2017 and submitted that the object of the Act, 2017 is to be realised through FRC and/or Fee Revision Committee whose powers and jurisdiction are defined under sections 4, 8 and 12 of the Act, 2017.

**37.** It was submitted that the respondent authorities are required to determine/fix/verify the school fees to be charged by the self finance school as defined under section 2(g) of the Act, 2017 as per the procedure prescribed under the said Act. It was further submitted that the powers vested in the respective Committees are not in question in this batch of petitions as the validity of the Act, 2017 is at large before the Apex Court wherein the judgment and order passed by this Court upholding the validity of the Act, 2017 is challenged being SLP(C) No.314/2018 and allied matters. It was therefore, submitted that the only question which arise is as to whether the respondent authorities have exercised their powers as per the provisions of the Act, 2017 for determination of the fees, more particularly, as per the factors prescribed under section 10 of the Act, 2017.

**38.** Learned Senior Advocate Ms. Shah

thereafter referred to the case laws beginning from **Islamic Academy of Education and another** (supra) up to **Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others** reported in (2016) 7 Supreme Court Cases 353 to submit that the Apex Court has consistently not only upheld the constitution of statutory committees but also acknowledged the vitality of the exercise of the powers by such committees in regulating the fees chargeable by the educational institutions.

39. It was pointed out that the Supreme Court has laid down the criteria for determination of fees in the context of professional medical institutions which have been held to be made applicable by this Court in the judgment dated 27.12.2017 passed in Special Civil Application No.10035/2017 and allied matters while upholding the validity of the Act, 2017.

40. It was submitted that the Apex Court in case of **Vasavi Engineering College Association v. State of Telangana** reported in 2019 (7) SCC 172 has delineated extent of exercise of jurisdiction under Article 226 of the Constitution of India with regard to the

determination of fees done by the expert bodies such as FRC and/or Fee Revision Committee.

41. Reliance was placed on the decision of the Apex Court in case of **Modern School** (supra) to submit that principles employed to assess the accounts for the purpose of determination of fees must be applied in context of law under which such assessment is undertaken. It was therefore, submitted that while determining the fees of the Self Finance Schools, FRC as well as Fee Revision Committee was justified in examining the accounts of the schools for the purpose of determining/fixing/verifying the fees as required to achieve the object of the Act, 2017.

42. It was submitted that even the Apex Court in its order dated 25.4.2018 has held that the schools should be entitled to fix the fees structure to meet the cost of providing facilities and standards.

43. It was submitted that out of 14902 schools across the State of Gujarat, only 1864 schools submitted proposals for determination of the fees under the

provisions of the Act, 2017 and out of such schools, only 57 schools have approached this Court alleging irregularities in exercise of powers by the respondent authorities. It was pointed out that all the petitioners have also approached the Apex Court challenging the validity of the Act, 2017 on more or less similar grounds which are raised in these petitions while challenging the order passed by FRC and Fee Revision Committee.

**44.** Learned Senior Advocate Ms. Shah before adverting to the common issues and grounds raised by the petitioners submitted that on a larger canvas while questioning the process of determination or its validity and/or faulting with the process undertaken by FRC/Fee Revision Committee, the petitioners have raised such issues on the premise that such process of determination is not in synchronisation with the accounting standards as accepted under the Income Tax Act, 1961 and there has to be presence of element of profiteering as a precondition for exercising powers under the Act, 2017, apart from applicability of Right to Education Act, capital costs, Head of Fees, quorum etc. which are essentially overlapping with the challenge to the validity of the Act, 2017



before the Hon'ble Supreme Court. It was therefore, submitted that the petitioners under the garb of questioning the process of determination/regulation of fees made by the FRC/Fee Revision Committee have set into motion a challenge fundamentally based on the grounds of law which are under consideration of the Hon'ble Apex Court while scrutinizing the constitutional validity of the Act, 2017. It was therefore prayed that challenge made by the petitioners is required to be turned down on the grounds raised in this group of petitions since any adjudication with regard to the process of fee determination as prescribed under the Act for the purpose of questioning the regulation of fees may tantamount to interfering with the applicability of the Act, 2017.

- 45.** It was therefore, submitted that contours of the challenge to the process of determination of the fees by FRC/Fee Revision Committee would result in challenge to the provisions of the Act, 2017 inasmuch as they are overlapping on the grounds raised in these petitions to question the orders of FRC for determination of fees with those raised in the SLP pending before the Hon'ble Supreme Court questioning the validity of Act, 2017.

**46.** Learned Senior Advocate Ms. Shah thereafter referred to the various grounds raised in the memo of the SLP filed by the petitioners before the Apex Court challenging the validity of the Act, 2017 to demonstrate that similar grounds which are raised in these petitions are already taken by the petitioners in the pending proceedings before the Apex Court.

**47.** It was further submitted that there are largely disputed questions of facts and the prayers are made merely to substitute the views taken by the FRC and Fee Revision Committee which cannot be permitted, more particularly, when the orders passed by the FRC and Fee Revisions Committee are based upon the procedure prescribed under the Act, 2017. Therefore, in view of disputed questions of fact, vis-a-vis the process of fee determination by the FRC which may be different than the perception of the petitioners, this Court may not exercise the writ jurisdiction so as to analyse the views of FRC/ Fee Revision Committees on one hand and the views and perceptions of the petitioners on the other hand in different facts of the case of each petition. It was

therefore, prayed that the petitions may be dismissed as not maintainable.

48. Learned Senior Advocate Ms. Shah thereafter referred to the provisions of the Act, starting with objects of the Act, 2017. Reference was made to the statistical information since 2017-2018 with regard to the proposals filed before FRCs as well as Fee Revision Committee to point out that only 57 matters are filed though fees are determined for total number of 14902 schools.

49. Learned Senior Advocate Ms. Shah submitted that as per the provisions of section 2(g) read with sections 2(h)(iii), 2(r), 3, 8(v), 10, 11 of the Act, 2017, a detailed scheme is provided for determination of fees by the Act, 2017 and FRC as well as Fee Revision Committee adhering to the Scheme has determined the fees and as such, there is no error on part of the FRC to determine the fees keeping in mind the object and scheme of the Act, 2017.

50. It was submitted that the Apex Court in case of **Indian School, Jodhpur and anr. v. State of Rajasthan** reported in 2021 (10) SCC 517 while considering the validity of

Rajasthan Schools (Regulation of Fee) Act, 2016 and Rules framed thereunder as well as the order of reduction of fees in view of reduction of syllabus by respective Boards due to aftermath of pandemic lock-down from March 2020 has analysed the entire scheme of Rajasthan Act of 2016 and in this context, it was held as under :

"43. The procedure to be followed by the Revision Committee is specified in Section 11 of the Act of 2016, which provision makes it amply clear that the decision of the Revision Committee shall be final and conclusive and shall be binding on the parties for three academic years. Setting up of an independent final adjudicatory authority especially created for considering the question as to whether the fee structure proposed by the school Management results in profiteering or otherwise, it does not impinge upon the fundamental right of the school Management guaranteed under Article 19(1)(g) of the Constitution."

**51.** It was therefore, submitted that on similar analogy, once the Fee Revision Committee has taken the decision, the same shall be binding on the parties for three academic years and such independent final adjudicating authority headed by the retired Judge of the High Court has been created for

considering the question as to whether fee structure proposed by the school management results in profiteering or otherwise.

**52.** Learned Senior Advocate Ms. Shah thereafter relied upon Rule 7(3) and Rule 7(4) of the Rules 2017 with regard to the procedure to be adopted by the FRC for determining fee or fee structure to submit that FRC is required to take a decision after considering all relevant factors as provided in the Act and the Rules on the proposal for determination of total fees under single head which may be levied or collected to be operative for a period of three years. It was therefore, submitted that the impugned orders are passed by the FRC determining the fees under the single head to be collected and levied by the respective schools to be operative for the period of three years and accordingly, no interference may be made in the process of determination of the fees of the FRC as such process cannot be the subject matter of judicial review.

**53.** It was further submitted that the jurisdiction and powers exercised by FRC for determination of the fee and fee structure are in accordance with the provisions of the Act, 2017 and the Rules, therefore, reliance

placed by the petitioners on the accounts computed by them considering the criteria prescribed for the preparation of accounts for charitable institution, as all such schools are run by the trust is misplaced, and as such the accounts prepared by the schools are not binding upon FRC or Fee Revision Committee and they can determine the fees or fee structure keeping in mind the object and scheme of the Act and the Rules.

**54.** Learned Senior Advocate Ms. Shah thereafter submitted in respect of each of the common grounds or issues raised by the petitioners in this group of petitions:

**I)** With regard to ground raised by the petitioner that in absence of a finding of profiteering, exercise of the powers under the Act and the Rules to regulate the fees by FRC is not permissible, it was submitted that the FRC and Fee Revision Committee, through Section 8(2)(b) of the Act, 2017 is obligated to ensure that the fee proposed is justified in addition to verify whether such proposed fees amounts to profiteering or charging exorbitant fees and as such the interpretation of the provisions and the scheme of the Act in consonance with the

object of the Act would indicate that the statutory mandate is to prevent profiteering, incidence thereof however is not a condition precedent to exercise power to determine the fees or fee structure under the Act. It was submitted that verification and approval of the fee structure, is the primary function of the FRC and subject to revision by Revision Committee, and it is in the course of dispensation of such function that the FRC is obligated to ensure that the fees proposed by the Self Financed School is justified in terms of the expenditure being cost of imparting education and does not result to profiteering or charging exorbitant fees ,hence, FRC and Fee Revision Committee have exercised their powers as provided under the Act, 2017 being regulatory body to determine the fees or fee structure by the Self Finance Schools and such exercise of powers is neither subject to nor incumbent upon happening of an event of profiteering. It was submitted that the duty cast upon FRC by the Scheme of the Act, 2017 is to regulate the fees to justify the fees charged by the schools considering the cost of imparting education and in order to discharge such function, FRC has rightly disallowed the expenditure which according to the FRC are

not justified as cost of imparting education which would result in increase in the fees. It was therefore submitted that so as to justify the fees, it would be incumbent upon the FRC to determine that the cost of imparting education is also justified because determination of fees would depend upon justified cost of imparting education.

**II)** With regard to common issue of disallowance of expenditure incurred by schools for providing better educational and related facilities and/or activities deemed to be adapted for developing a methodology for attaining excellence on the ground that the same are unnecessary or beyond the requirement of law, it was submitted that verification and approval of fee structure, is as per the scheme of the Act to be determined by the FRC and Fee Revision Committee and such function is discharged by FRC so as to ensure that the fees proposed by the Self Financed School is justified in terms of the expenditure being commensurate with cost of imparting education, so that such determination of fees would not result in profiteering or charging of exorbitant fees. It was therefore, submitted that the petitioner schools are required to justify



the provision of facilities and/or methodology sought to be adapted and claimed for achieving excellence and whether approval of the board which recognizes the institution is taken or not with regard to such methodology. It was also incumbent upon the school to point out that such facilities are compulsory or optional. It was therefore, submitted that merely a claim made under the guise of providing better educational facilities and/or methodology may not be sufficient for the purpose of justifying expenditure and more particularly, to entitle the school to claim such expenditure so as to increase the fees in order to justify charging such fees for determination thereof by the FRC.

**III)** With regard to the contention of the petitioner that FRC is not entitled to disallow the expenditures incurred by the school which are already subject matter of audit, it was submitted that the role and function of an auditor is limited to verify the veracity and accuracy of the accounts of the petitioners on the touchstone of principles of accounting whereas the functions of FRC and/or Fee Revision Committee is in accordance with the object

and Scheme of the Act, 2017 where it has to determine the relevance of expenses incurred by the school under the head of cost of education and to verify whether such burden of incurring expenditure can be passed on to concerned students or not. It was therefore, submitted that merely because expenses are not found to be objectionable under audit and therefore ipso facto, the petitioners are entitled to consider such expenditures for determining of fees towards cost of education cannot be accepted blindly by FRC and therefore, FRC while discharging functions as prescribed under the provisions of the Act whose validity is upheld by this Court cannot be questioned in an indirect manner.

**IV)** With regard to insufficiency of Quorum of FRC raised by the petitioner so as to invalidate the orders passed by FRC, it was submitted that in case of the FRC, the original orders bear the signatures of all the members of the FRC which can be verified by the Court by calling the original files. It was submitted that such practice is founded upon the mandate of Section 6(3) of the Act, 2017 which requires decisions to be authenticated by the Chief Coordinator/Chairperson of the FRC. It was

submitted that the petitioner cannot make any grievance with regard to the copy of the orders served upon the petitioners authenticated by the Chairperson or Chief Coordinator. It was submitted that the petitioners have raised the issue of Quorum only on basis of presumption and assumption that the signatures of all the members of the FRC are not found on the copy of order provided to the petitioners. It was therefore, submitted that such issue of quorum is not sustainable and the same is not in accordance with law.

**v)** With regard to issue of Quorum of Fee Revision Committee, it was submitted that Fee Revision Committee has passed a resolution to the effect that the orders communicated to the parties shall only consist of the signatures of the Chairperson which is in accordance with the Rules framed under the Act, 2017. Reliance was placed on Rule 5 in case of FRC and Rule 15 in case of Fee Revision Committee of the Rules, 2017 which inter-alia prescribes that the quorum in the business of meetings shall be 2/3rd of the total strength of the committees, and particularly that all official correspondences shall be made by Coordinator

in case of FRC and Member Secretary in case of Fee Revision Committee. It was therefore, submitted that issue of quorum raised by the petitioners is without any basis inasmuch as all the decisions are taken by the FRC as well as Fee Revision Committee by all the members together. Learned Senior Advocate Ms. Shah without prejudice to the aforesaid contentions further submitted that Section 5(2) of the Act, 2017 mandates that no act or proceedings including passing of orders by the FRC shall be questioned or to be held invalid on the ground of existence of a vacancy and therefore, it was submitted that sufficiency of quorum of either FRC or Fee Revision Committee cannot be held as a ground for invalidating its acts as per Section 5(2) of the Act, 2017.

**VI)** With regard to the common issue as to whether expenditures incurred by schools can be disallowed on the ground that they have no nexus with imparting education, it was submitted that merely because the expenses are incurred and they form part of the accounts submitted by the respective schools along with proposals for determination of fees, FRC is not bound to allow incurring of such expenditure forming

part of the accounts for determination of fees because the implication of such expenses on the cost of education and the feasibility of them to be passed on the students is required to be considered by the FRC while verifying as to justify the fees charged by the school which should not result in profiteering or exorbitant fees. It was therefore submitted that expenses disallowed cannot be deemed to be unrelatable to the cost of imparting education since such an exercise would be in furtherance to the object of the Act.

**VII)** With regard to the common issue as to whether the recovery of the cost of education incurred in furtherance of complying with the mandate of Right to Education Act to be interfered with by the Committees, it was submitted that the cost of imparting education under the RTE Act, is a statutory duty cast upon an institution and such costs is to be borne by the respective schools and recovering the cost thereof through claiming it as an expense particularly while determining the fees of all students would require interference at the hand of the FRC and Fee Revision Committee. It was submitted that cost of

dispensing a statutory mandate and/or duty cannot be saddled and/or passed on to all other students by the schools.

**VIII)** With regard to the common issue of disallowance of rent paid by the school for the ground as well as building contrary to the terms of lease and/or to determine the rent in relation to "Jantri" prices or to verify whether such transaction of lease was at arm's length or not, it was submitted that various schools claim rent as expenses in the proposals submitted to determine the fees and therefore, it is incumbent upon the FRC to verify the justifiability and reasonableness of rent expenditure so as to justify the fees to be charged by the schools which would not result in profiteering or exorbitant fees and therefore, the terms of the rent agreement, the nature of the transaction whether it is at arm's-length or not and justifiability of the rent notwithstanding the terms of the lease deed is as per the duty cast upon FRC keeping in mind the object and scheme of the Act, 2017 while considering it as allowable expenses and therefore, such exercise is within the jurisdiction of FRC and Fee Revision Committee.

**IX)** With regard to the issue of not considering depreciation as the cost of imparting education for determination of fees, it was submitted that depreciation is a decrease in the value of asset and it is a non cash expense which may be allowed as an allowance statutory in nature, but the same would not result in reduction of cash/bank balance as such expenditure is a notional expenditure to be charged to the Profit and Loss Account and therefore, the same would not affect cash/surplus. It was therefore, submitted that as depreciation is a notional deduction from the value of asset, relevancy of considering depreciation at the time of determination of fees has been rightly disregarded since it neither affects the surplus of the school nor it is an actual expense incurred. It was therefore, submitted by the learned Senior Advocate Ms. Shah that the judgments relied upon by the petitioners to claim depreciation as an allowable expense would not take the case of the petitioners any further since such judgments relied are in the context of the Income Tax Act, 1961 where depreciation for accounting purpose though a notional expense can be claimed as an allowance to determine the real income for assessment of the tax liability. It was

therefore, submitted that concept of real income is not applicable while determining the fees to be charged by the Self Finance school as only criteria for determination of fees is whether such fees is justified in addition the same should not result in profiteering or charging exorbitant fees.

**x)** With regard to the interest paid for loan taken for school infrastructure can be claimed as an expense or not, it was submitted that interest paid for loan can be claimed as an expense however justifiability thereof and its amortization considering that such amortization would be relatable to the life of such infrastructure, are relevant factors to be taken into account by the FRC and Fee Revisions Committee. It was submitted that only because interest on such loan is paid for the term of the loan sanctioned by the financial institution, has rightly not been considered by the FRC or Fee Revision Committee and such interest is amortised over the life of such infrastructure so as not to burden the students with the fees during the term of the repayment of the loan. It was therefore, submitted that the cost of infrastructure relatable with its life is an essential aspect to be considered by the FRC



as well as Fee Revision Committee to distribute the burden of such interest cost over the period of life time of such infrastructure instead of passing the same on the students during the repayment period of the loan as the students are the end beneficiaries to such infrastructure.

**XI)** With regard to the expenditure of advertisement which is disallowed by FRC, it was submitted that such expenditure cannot be deemed to be an expense except in cases where there is relevance or nexus with imparting education like recruitment of staff etc. hence, same is rightly disallowed.

**XII)** With regard to expenditure incurred while giving incentives to the staff members, it was submitted that cost of incentives to staff members cannot be held to be relatable to imparting education. Hence the same is rightly disallowed while determining the fees.

**XII)** With regard to cost of maintenance of school towards infrastructure i.e. open area/play ground which is disallowed, it was submitted that justifiability of the expense claimed for maintaining infrastructure is

required to be considered in each case separately depending upon the facts of particular school and therefore, such issue cannot be considered as common issue to justify such expenditure.

**XIV)** With regard to disallowance of cost for preparation of curriculum and implementing new learning methods, it was submitted that such costs if incurred with respect to curriculum/learning method approved by the Board recognizing a school then the same can be allowed as such curriculum or method would be compulsory for students. However if such curriculum or method is optional then same as per the direction of the Apex Court would be charged by the school separately not being part of the fees as per the option given to the students to opt for such curriculum or such method of learning.

**55.** In support of above submissions learned Senior Advocate Ms. Shah relied upon the following decisions most of which are referred to and relied upon by the petitioners :

- 1) **T.M.A. Pai Foundation and others v. State of Karnataka and others** reported in (2002) 8 Supreme Court Cases 481.
- 2) **Islamic Academy of Education and another v. State of Karnataka and others** reported in (2003) 6 Supreme Court Cases 697
- 3) **Modern School v. Union of India and others** reported in (2004) 5 Supreme Court Cases 583.
- 4) **P.A. Inamdar and others v. State of Maharashtra and others** reported in (2005) 6 Supreme Court Cases 537.
- 5) **Action Committee, Unaided Private Schools of Delhi v. Director of Education** reported in 2009(10) SCC 1.
- 6) **Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others** reported in (2016) 7 Supreme Court Cases 353.
- 7) **Tamil Nadu Nursery Matriculation and Higher Secondary Schools Association v. State of Tamil Nadu** reported in 2010 SCC Online Mad. 3092.

8) **Vasavi Engineering College Association v. State of Telangana** reported in 2019 (7) SCC 172.

9) **Atulkumar Niranjanbhai Dave v. State of Gujarat** in Writ Petition No. 132 of 2017 of Gujarat High Court.

10) **Indian School, Jodhpur and anr. v. State of Rajasthan** reported in 2021 (10) SCC 517.

56. With regard to separate other issues in each of the matter raised by the petitioners, it was submitted by learned Senior Advocate Ms. Shah that such issues amount to disputed questions of fact and as such, once the FRC has exercised its power and jurisdiction in respect of such specific issues raised by the petitioners, no interference be made while exercising the writ jurisdiction.

57. Learned Senior Advocate Ms. Shah also relied upon the Action Taken Report filed before the Hon'ble Supreme Court pursuant to order dated 25.4.2018 by which the parties were directed to prepare scheme and exchange the same interse for consideration on the aspects which were enumerated in the order.

It was submitted that as per the said Action Taken Report, the State Government has been holding meetings with Federation of Self Financed Schools as well as the Association of Parents under the Chairmanship of Hon'ble Chief Minister of State of Gujarat.

- 58.** It was submitted that with regard to surplus as against the suggestion of the Federation of Self Financed School Management that provisions of more than 15% surplus should be subject to approval of the FRC, the State Government has suggested to determine the surplus between 5% to 15% being more flexible and reasonable.
- 59.** It was therefore, submitted that the issue with regard to the provision of surplus is at large before the Hon'ble Apex Court in the pending proceedings.
- 60.** Learned Senior Advocate Mr. Joshi in rejoinder submitted that the scope of determination of fees by FRC is to verify that whether there is profiteering or capitation fees and to justify that fees are not exorbitant as per the provisions and the Scheme of the Act, 2017. It was submitted that FRC cannot have jurisdiction or powers to

regulate the fees contrary to the provisions and the scheme of the Act keeping in mind the ratio of various Supreme Court judgments and therefore, FRCs cannot have powers under the guise of equity to disallow the expenses as per its own whims and caprices though such expenses are actually incurred by the school to impart education without verification of the genesis or nexus by the FRC for incurring such expenditure for education purpose. It was submitted that the exorbitant fees as per section 8(2)(b) of the Act, 2017 means exorbitant surplus arising out of the fees to be collected by the school. It was therefore, submitted that the contention raised on behalf of the respondent authorities are contrary to the provisions and the Scheme of the Act, 2017 as well as ratio of decisions with regard to the profiteering and capitation fees laid down by the Supreme Court in catena of decisions starting from **T.M.A. Pai Foundation and others** (supra) onwards.

#### **VI- ANALYSIS:**

61. This group of petitions are arising out of order passed by the FRC and/or Fee Revision Committee determining the fees of

Self Finance Schools under the provisions of the Act, 2017 challenging the manner and method in which the fees are determined on various common issues as well as other issues on the ground that the FRC has exceeded the jurisdiction vested with it while determining the fees as per the provisions and the scheme of the Act, 2017 read with Rules framed thereunder. It was broadly submitted that FRCs without considering the ratio of the Supreme Court judgments in relation to fixation of reasonable fee structure as well as factors to be considered while determining the fees, passed the impugned orders.

62. There was no law prescribing the fixation of the fees by the Self Finance Schools so as to prevent them from profiteering or charging exorbitant fees. Therefore, with an object to see that Self Finance Schools do not charge exorbitant fees or indulge in profiteering and the students studying in such schools, pay reasonable fees, the Gujarat Self Finance School (Regulation of Fees) Act, 2017 is enacted with formation of Fee Regulatory Committees (FRC) for different zones to fix the fee structure for the Self Finance Schools as per the prescribed procedure under the

chairmanship of a retired High Court Judge or retired District Judge. Provisions of the Act, 2017 provides for constitution, jurisdiction, procedure, powers and functions of the FRC along with the factors for determination of the fees. The Act, 2017 also provides for revision against the order passed by the FRC by formation of Fee Revision Committee under chairmanship of retired High Court Judge. Chapter-II of the Act, 2017 containing sections 3 to 11 provides for constitution of FRC, determination of fee and prohibition of collection of excess fee whereas section 12 provides for Fee Revision Committee. Chapter-III contains section 13 which provides for regulation of accounts and maintenance of records by the Self Financed Schools in such manner as may be prescribed and sub-section(3) of section 13 provides for maintenance of accounts for different kinds of transactions enumerated therein to be audited by a Chartered Accountant, whereas Chapter-IV contains sections 14 and 15 with regard to contraventions and penalties and bar of jurisdiction of Civil Court.

- 63.** As per section 20 of the Act,2017, the State Government has powers to make Rules for



carrying out the purpose of the Act and accordingly, Gujarat Self Financed Schools (Regulation of Fees) Rules, 2017 are framed wherein the procedure is prescribed for submission of proposal by the Self Financed Schools for determination of fees or fee structure and procedure to be adopted by FRC for determining of fee or fee structure is provided. Rules, 2017 also prescribe the procedure with regard to conduct of the business by FRC as well as Fee Revision Committee together with obligation of the Self Financed Schools.

64. Thus, the provisions of the Act, 2017 as well as the Rules, 2017 provides detail procedure for determination of the fees or fee structure by FRC which is also subject to revision. Therefore, FRC as well as Fee Revisions Committee is required to function within the parameters of the provisions of the Act, 2017 and Rules framed thereunder.

65. The Hon'ble Supreme Court in case of **T.M.A. Pai Foundation and others** (supra) held that right to establish educational institution can be regulated to ensure the maintenance of proper academic standards, atmosphere and infrastructure together with

qualified staff and prevention of mal administration by those in charge of management. However, the Hon'ble Supreme Court emphasised that occupation of education is, in a sense, regarded as charitable, and therefore, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by any institution. The Hon'ble Apex Court emphasised that though fixing of rigid fee structure or dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating the students for admissions, would be unacceptable, but at the same time the object of educational institutions should not be to make profit as education is essentially charitable in nature and there can only be reasonable revenue surplus which may be generated by educational institution for the purpose of development of education and expansion of institution. Therefore, the Apex Court has laid down that fees to be charged by educational institution should be so reasonable so as to generate reasonable surplus for the purpose of development of education and expansion only without there being any profiteering or

charging capitation fee or exorbitant fees resulting in accumulation of wealth with the management of such institution.

66. The Apex court in case of **Islamic Academy of Education and another** (supra) in relation to determination of fee structure of a college has laid down that fees should be determined keeping in view several factors including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of educational standards etc. and the appropriate Committee should consider the case of each institute considering the relevant factors as well as the books of accounts maintained by such institution.

67. It was further held by the Apex Court in the aforesaid judgment that while fixing the fee structure, the Committee shall also take into consideration inter-alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by such institution and infrastructure provided and plan for future development as also expansion of the educational institution.

68. In paragraph no. 156 of the decision of **Islamic Academy of Education and another** (supra), the Apex Court held that though fixed guidelines as regard fee structure is not laid down but reasonable surplus should ordinarily vary from 6% to 15% which would be utilized for expansion of the system and development of education.

69. In case of **P.A. Inamdar and others v. State of Maharashtra and others** (supra), the Hon'ble Supreme Court while considering the issue of fee regulation in paragraph no. 139 held that to set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution of India as per the law declared by the Apex Court in case of **T.M.A. Pai Foundation and others** (supra).

70. The Apex Court further held that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering and no capitation fees can be charged by any institution. It was observed that Fee

Regulatory Committees are expected to be more sensitive and to act rationally and reasonably with due regard for realities, refraining from generalizing the fee structures and where needed to go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution. The Apex Court also in paragraph no. 150 of the said judgment has held that in case of any individual institution, if any, of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.

**71.** Thus from the ratio of above decisions, it is clear that as expounded by the Apex Court, it is the right of Self-Financed Schools to determine their own fees under Article 19(1)(g) of the Constitution of India, however, only restriction upon fixation of fees is that the same should not result in profiteering, commercialisation or collection of capitation fees or charging

exorbitant fees which would be the area of inquiry and verification by FRC.

**72.** FRC is headed by the retired High Court Judge or retired District Judge as per the direction of the Supreme Court who are assisted by the experts as appointed under section 3 of the Act, 2017 namely, Chartered Accountant, Civil Engineer, representative from the Self Financed School Management and Academician. FRC is also having the powers of hearing both the contesting parties i.e. the School Management as well as parents and therefore, FRCs are required to be more sensitive and act rationally and reasonably with regard to the realities without generalizing the fee structure after verification of the accounts etc. produced by the particular school as provided under the Rules, 2017 along with the fee proposal which is to be submitted in a prescribed format Form-II as per Rule 6(1) of the Rules, 2017. FRC is thereafter, required to evaluate on verification of the record while determining the fees as to whether the fee structure proposed by the school management does or does not result in profiteering, commercialisation or demanding capitation fee

and whether the same is justified so as not to charge exorbitant fees.

**73.** The definition of 'profiteering' is given in section 2(r) of the Act, 2017. As per section 2(r), 'profiteering' means any amount accepted in cash or kind, directly or indirectly which is in excess of the fee fixed or approved as per the provisions of the Act, 2017 and shall include profit earned from school by trust or company associated with the school in any manner whatsoever. FRC can certainly verify, inquire or investigate into the genuineness and purpose of the expenses for the education incurred by the school, however it has no jurisdiction to determine the reasonableness of the expenditure incurred and cannot say that such expenditure is not justified as per its own yardsticks in view of the provisions of section 8(2)(b) of the Act, 2017 which provides for powers to verify whether the fees proposed by the Self Financed school is justified and whether it amounts to profiteering or charging of exorbitant fees keeping in mind the factors provided in section 10 of the Act for determination of the fees.

**74.** Section 10 of the Act, 2017 provides for factors to be taken into account by the FRC to determine the fees leviable by the Self Financed Schools which includes location, investment, infrastructure, expenditure on administration, maintenance of services, utilities of the school, students strength, classes of study and courses of study offered by the school, excess fund generated from Non-Resident Indians, qualification of teaching and non-teaching staff, expenditure incurred on the students against total income of the school which shall include profit earned from school by the trust or company associated with such school, reasonable revenue surplus for the purpose of development, education and expansion of school and any other factors which may be prescribed by the Government from time to time. Thus as per section 10 of the Act, 2017, about 10 factors prescribed therein are required to be kept in mind by FRC while determining the fee or fee structure under the provisions of the Act, 2017.

**75.** In view of above scheme of the Act, 2017 and the Rules framed thereunder, jurisdiction of FRC is to determine the reasonable fee structure as provided under the provisions of



the Act, 2017 and the Rules framed thereunder as the right to fix the fees of an unaided private school which has fundamental right under Article 19(1)(g) of the Constitution of India to run such institution can be regulated in terms of Article 19(6) to the extent of authorising the State Government to check profiteering and capitation fee alone while ensuring reasonable profit/surplus for development and expansion of such institution.

**76.** On perusal of the orders passed by FRC and Fee Revision Committee, it appears that under the garb of fee fixation, the FRC has reduced the expenditure of the Self Financed Schools under various heads apparently with a view to regulate occupation and administration of the schools impeaching upon the financial autonomy of the institution.

**77.** The Division Bench of this Court in its judgment dated 27.12.2017 while upholding the constitutional validity of the Act, 2017 has taken into consideration the aspect of reasonable revenue surplus in view of the provisions of section 10(1)(x) of the Act, 2017 and held that the definition of 'profiteering' as per section 2(r) will not

preclude the management or trust to collect fees which include reasonable revenue surplus for the purpose of development, education and expansion of the school. Hence when the judgment of the Division Bench is under scrutiny of the Apex Court with regard to the constitutional validity of the Act, 2017, at this juncture, without going into further analysis, I have considered the exercise of jurisdiction and powers by the FRC and Fee Revision Committee within the parameters of the provisions of the Act, 2017 and the Rules framed thereunder.

**78.** Provisions of section 8 of the Act, 2017 stipulates powers and functions of the Fee Regulatory Committee. As per the provisions of section 8, FRC is required to determine the fees on the basis of proposed fee structure by the schools along with relevant documents and books of accounts to be scrutinised by verifying whether the fees proposed by the Self Financed Schools is justified and whether it amounts to profiteering or charging of exorbitant fees and thereafter to approve such fee structure or determine fees which can be charged from the students after verifying whether such school is recognised by the competent State

Educational authority or not and to verify whether such school imparts instructions prescribed by such authority or not. FRC has also powers of a Civil Court to summon and enforce the attendance of any witness and examine him on oath, require discovery and production of any document, receive any evidence on affidavit and issue commission for examination of witnesses for local inspection while holding inquiry in order to exercise powers to verify as provided in section 8(2)(b) of the Act, 2017.

**79.** Rule 7 of the Rules 2017 prescribes the procedure to be adopted by FRC for determining fee or fee structure after submission of proposal as per Rule 6 by the Self Financed School.

**80.** The petitioners are Self Financed Schools who charge fees which are not exempted as per section 9 of the Act, 2017 which provides for exemption of Self Financed School that charge amount of fee lower than the fee prescribed by the State Government by notification in the official gazette which at present is Rs.15,000/- p.a. . Similarly, Fee Revision Committee which is also headed by a retired Judge of the High Court assisted

by the Secretary to the Government of Gujarat - Education department, Secretary to the Government of Gujarat - Finance department, Secretary - Gujarat Secondary and Higher Secondary Education Board, one representative from the Self Financed Schools and a Chartered Accountant to be nominated by the Government is empowered to adjudicate the revision filed by any person aggrieved by the order of FRC made under section 10 of the Act, 2017.

**81.** Rule 16 of the Rules 2017 provides for the procedure for deciding revision application by the Fee Revision Committee. Rule 17 provides for the powers and functions of Revision Committee.

**82.** Thus the jurisdiction and powers of FRC as well as the Fee Revision Committee are well defined under the provisions of the Act, 2017 and the scheme and FRC and Fee Revision Committee is required to function within such parameters as prescribed by the Act and the Rules keeping in mind the parameters laid down by the Apex Court for determination of fees by the unaided Self Financed educational institution with regard to the aspect of profiteering, capitation fee

and/or charging of exorbitant fees to ensure that fee or fee structure of the Self Finance School provides only for reasonable surplus for development and expansion of such institution on the basis of data which is placed before it after verification thereof as prescribed in the procedure of Rule 7 by FRC and Rule 16 by the Fee Revision Committee of the Rules 2017. At the same time, it is required to be noted that the contention raised on behalf of the petitioners as to whether the FRC or Fee Revision Committee can look into the expenditure incurred by the Self Finance School in order to verify whether the fees to be charged by the school does not result in profiteering or exorbitant fees as per the factors stipulated under section 10 of the Act, 2017, I am of the opinion that FRC would be justified to verify the expenditure incurred by the school for the purpose of imparting education and if the FRC after verification and holding necessary inquiry including inspection comes to the conclusion that expenditure incurred by the school is not for the purpose of education then such expenditure cannot be considered to be eligible for the purpose of determination of the fees or fee structure, however, with a rider that FRC is required to give reasons

for not considering the expenditure as eligible for determination of fees and it cannot disallow expenditure as per its own estimate without any justification.

**83.** The contention raised on behalf of the respondent authorities that the constitutional validity of the Act, 2017 is pending before the Apex Court and therefore, the issues which are raised by the petitioners are similar and the petitioners cannot be permitted to raise the same issues while challenging the order passed by the FRC and Fee Revision Committee is concerned, it is true that the judgment of the Division Bench of this Court upholding the validity of the Act, 2017 is at large before the Apex Court but in the facts of each case challenge is not to the provisions of the Act but order passed by FRC and/or Fee Revision Committee determining the fee or fee structure as per the provisions of the Act, 2017 and the Rules, 2017 on the ground that FRC and Fee Revision Committee have exceeded its power by unduly interfering with the administrative and financial matters of the school and therefore, the impugned orders passed which are quasi-judicial in nature would be subject to judicial review as held by the Apex Court

in paragraph no. 150 of the decision in case of **P.A. Inamdar and others** (supra).

#### **VII-CONCLUSION:**

**84.** In light of the above analysis of the provisions of the Act and the scheme read together with the ratio laid down by the Apex Court in various decisions referred here-in-above, the impugned orders passed by FRC and/or Fee Revision Committee with respect to various issues which are either common and/or specific are dealt with as under:

#### **A) Lease Rent:**

1) On perusal of the impugned orders, in majority of the cases, FRC has not given any reason as to why the lease rent paid by the school is required to be disallowed and as to whether rent paid by the school for ground and building has in any manner resulted in profiteering by the trust or the company associated with running of the school.

2) FRC can analyse and verify the transaction of lease entered into by the school by conducting inquiry as provided

under section 8 of the Act, 2017 read with Rule 7 of the Rules, 2017. In order to verify whether the lease rent paid by the school is at arm's length or not or whether the school management has entered into lease transaction in a clandestine manner, there has to be specific finding to that effect to come to the conclusion that payment of lease rent would amount to 'profiteering' as per section 2(r) of the Act, 2017. However, no inquiry appears to have been made by the FRC to verify the genuineness of the transaction though the lease rent is paid through banking channel and same is duly recorded in the books of accounts audited by the Chartered Accountant.

3) In some cases, FRC has disallowed the lease rent by recalculating the lease rent on the basis of "Jantri" value of the property without coming to the conclusion that the transaction of lease was not at arm's length. The FRC can calculate the market value of the property in an attempt to ascertain as to what rent should ideally be payable by the school if it comes to the conclusion by cogent reasons in view of oral and documentary evidence on record that transaction of lease has resulted in



diversion of funds collected as fees by the school as "profiteering", but in complete disregard to the documents submitted by the school and without holding any inquiry that the documents submitted by the school are sham or bogus or in any manner executed with a view to "profiteering", lease rent paid by the school as per lease deed need not be disallowed or substituted. In absence of such supporting material, the provisions of the Act and the Rules, do not authorise or confer jurisdiction upon FRC or Fee Revision Committee to determine the rent as justified and payable by the school ignoring the documents in the nature of lease deed, payment of actual rent recorded in the books of accounts which is audited by the Chartered Accountant. FRC could not have reduced the rent on its own without giving any reason in support thereof ignoring the factors provided under section 10 of the Act, 2017 like location of the school, infrastructure of the school, etc.

4) FRC in many cases has based its finding for reduction of rent on applying "Jantri" value of the property or valuation report without giving any opportunity to school to examine such report or to cross

examine the valuer and in absence of any inspection of property by any valuer nor the schools were permitted to rely upon their own valuation report to justify the rent actually paid by the school and in absence of any findings contrary or the facts coming on record that transaction of lease rent is sham or bogus or entered into with a motive of profiteering, FRC could not have based its findings on Jantri rates and reduced the rent allowable. In some cases FRC has also not considered the valuation report submitted by the school. FRC also appears to have not taken into consideration order dated 25.4.2018 passed by the Apex Court in the pending proceedings challenging the vires of the Act, 2017 wherein it is observed that "the State of Gujarat shall not question the decision of any school to provide a particular facility or things in a particular quality or standard which it considers appropriate for imparting education in its school. The Schools shall have a right to offer such facilities as they consider appropriate for the standards of education which they profess to meet." (emphasis supplied)

5) The contentions raised on behalf of the petitioners that when either the trustee or the management of the school has given the property on rent to run the school and reasonable rent is required to be granted and in the alternative, reasonable Return on Investment (ROI) is to be calculated and to be considered as expenditure by the school to be part of the fee structure, is also not considered by FRC.

6) Thus, it appears that FRC and Fee Revision Committee without making any inquiry and/or giving an opportunity of hearing to the school management, on its own either reduced the rent paid by the school for the land and building and/or substituted such rent by recalculating the same on the basis of "Jantri" value without holding any inquiry as contemplated under the provisions of the Act and the Rules.

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7) FRC is required to consider whether expenses incurred towards lease rent by the School is as per the lease agreement or not and verify whether such lease rent is incurred for the purpose of imparting education without revising it suo motu and arbitrarily without assigning any reason or

without verifying the documents to support such reduction. Once lease rent expenses are incurred by the school paid through normal banking channel and, duly recorded in the books of accounts which are audited, FRC is required to accept such lease rent paid by the School subject to verification as to whether such lease rent would amount to any diversion of proposed fees to be received by the School to the trust or company associated with the School amounting to "profiteering" as per the definition of the section 2(r) of the Act, 2017.

8) FRC cannot substitute the lease rent paid by the School by adopting "Jantri" rate as market value of the land acquired by the school. FRC is therefore, supposed to verify by calling for information and/or summoning the witnesses in view of the powers conferred upon it by section 8(3) of the Act, 2017. FRC is required to exercise such powers and functions conferred upon it under section 8 keeping in mind the factors as per section 10 of the Act, 2017 which includes location of the Self Financed School so as to justify the rent paid by the school for acquiring the land or building and infrastructure of the school while considering the justification

for rent for building, if any. FRC is required to consider whether trustee or management of the running school has any interest while considering the issue of lease rent.

9) At the same time school management is also required to keep in mind that the lease rent cannot be granted by FRC, if it is found that payment of such lease rent would amount to profiteering in the hands of the trust or the company associated with such School and for that purpose, the School management is required to furnish all the requisite details as may be called for by the FRC, failing which, FRC would be justified to disallow such lease rent in absence of cooperation from the school as per Rule 7(1)(b) of the Rules, 2017 either adopting "Jantri" rate for the market value or substituting the same as per any comparable case as reasonable amount of rent.

10) The Self Financed schools are also required to justify the lease rent paid by them by providing information and justification for payment of such lease rent as may be required by FRC so as to enable the FRC to come to the conclusion that such lease rent would not amount to any "profiteering"

in any manner whatsoever by the trust or the company associated with the school.

11) Therefore, in view of the above, FRC is required to consider the aspect of lease rent afresh in all the petitions and in future also when the lease rent is claimed by the School as an expenditure for the purpose of imparting education, then FRC is required to verify such expenditure keeping in mind the aforesaid.

**B) Depreciation:**

1) As contended on behalf of the petitioners, depreciation claimed by the respective schools in their books of accounts is the cost for replacement of the assets over a period of time, whereas on the other hand, it was contended on behalf of the respondents that depreciation is a non cash expenditure and therefore, the same cannot be taken into consideration for determination of the fees or fee structure of the Self Financed Schools as it is provided on notional basis without there being any criteria, as some of the schools were charging depreciation as per the rates provided under the Income Tax Act, 1961, whereas some of the schools are providing for

depreciation as per the rates prescribed under the Companies Act, 2013, whereas some of the schools do not provide for depreciation at all. The depreciation was disallowed by the Fee Revision Committee on the ground that to determine the fees, depreciation is not a necessary expenditure as, there is no cash outflow while considering the depreciation as a cost of education, so as to determine the fees resulting into inflow of cash to meet with the expenditure for imparting education as per the provisions of the Act and the Rules.

2) It is true that depreciation is a notional charge to be provided to determine the real income of any institution. Even the State Government has issued instructions in respect of the fixation of fees for medical colleges under the Gujarat Professional Medical College Act to consider depreciation as one of the factors for determination of the fees.

3) In view of the contention raised on behalf of the petitioners on the aspect of allowing the depreciation for the purpose of determination of the fees, it would be germane to refer to Rule 12 of the Rules, 2017

which provides for maintenance of accounts and records under section 13 of the Act, 2017. Rule 12(1)(a) provides for different kinds of expenditure and transactions stated therein. It is true that depreciation is required to be provided as per the accounting standards issued by the Institute of Chartered Accountants and as per the prudent accounting practice so as to ascertain true and fair view of the profit earned by the institution as per the Companies Act, 2013 and to determine the real income chargeable to tax as per the provisions of the Income Tax Act, 1961, however, for the purpose of determination of the fees, depreciation which is a non-cash expense though allowed as an allowance statutory in nature, it does not result into reduction of cash/bank balance of the educational institute and to that effect the same does not affect the cash inflow to meet the expenses or to create reasonable surplus. The educational institution is required to charge fees from the students to meet with the expenditure to impart education. The reasonable surplus which may be augmented by such educational institution as per the provisions of section 10(1)(x) of the Act, 2017, for the purpose of development, education and expansion of the



school would also take care for replacement of the assets over a period of time. Therefore, the FRC and the Fee Revision Committee has rightly not considered the depreciation as allowable expenditure while determining the fees or fee structure as the same would be forming part of reasonable surplus to be considered as part of the fee or fee structure to be determined for the purpose of development and expansion of educational institution. Self Financed Schools cannot claim depreciation as part of its expenditure on one hand and on the other also insist to provide for reasonable surplus as per the provisions of section 10(1)(x) of the Act, 2017 for the purpose of development, education and expansion of the school. Reasonable revenue surplus would take into account the purpose for which depreciation is to be provided in the books of accounts of the institution either as per the provisions of the Income Tax Act, Companies Act or Bombay Public Trust Act or as per the accounting policies.

4) While determining the fees by FRC, books of accounts are to be considered as a base to verify whether the expenditure incurred by the school would result in

charging exorbitant fee by the school or not but the same cannot include non cash item when the fee is determined to be collected from the students which would augment cash or bank balance of the school to meet with expenditure to be incurred for imparting education and reasonable revenue surplus. In such circumstances, there is no error on part of the FRC or Fee Revision Committee to disallow the claim of depreciation by the respective school for the purpose of determination of fees or fee structure.

5) It is required to be considered that the calculation of the profit in a business enterprise or calculation of the income chargeable to tax are made as per the respective provisions either in the Companies Act, 2013 or the Income Tax Act, 1961 but for determination the fees to be collected from the students, non cash item like depreciation cannot be considered as an expenditure because the purpose for which depreciation is provided is taken care by the provision of reasonable revenue surplus for development, education and expansion of the school.

6) It is also pertinent to note that depreciation is not expenditure but is a

provision or adjustment from the profit to take care of future expansion and development which is equivalent to making provision in the fees to be determined by considering reasonable revenue surplus. Therefore, the provision of depreciation would amount to providing reasonable surplus once again which is not within the scope and scheme of the Act, 2017 and the Rules framed thereunder. Therefore, the separate claim of the depreciation is not tenable as the same would be embedded in consideration of reasonable revenue surplus.

7) In view of above analysis and conclusion, reliance placed on behalf of the petitioners on various case laws and material with regard to the provision of depreciation in the books of accounts is not relevant and therefore, same is not discussed and analysed in detail.

8) Thus, as observed here in above, depreciation would form part of the reasonable surplus to be provided in the proposed fee to be charged by the Schools from the students and therefore, such depreciation claimed by the Schools would not be allowed under separate head. FRC is

therefore, required to consider the aspect of depreciation while determining the reasonable surplus as held by the Supreme Court in various decisions narrated here in above so as to provide for expansion, development of the school so as to impart education to the students as may be decided by the School management. It is made clear that the provisions of the Act, 2017 do not confer any power upon the FRC to determine the fees in a standardised format but it only confers power as to verify whether the fees proposed by the School is justified and whether such fees would amount to profiteering or charging exorbitant fees or not. Therefore, in order to see that proposed fees charged by the school is justified, FRC cannot act as per its own whims and caprices for determination of fees resulting into violation of the fundamental right of the Self Financed Schools under Article 19(1)(g) of the Constitution of India to run the School as per their own choice within the prescribed parameters of instructions for imparting education by the respective Boards. Therefore, FRC has to consider the reasonable rate of depreciation on the assets of the School so as to see that same can be replaced at regular interval while considering the

percentage of reasonable surplus to be considered while determining the fees or fee structure.

**C) Quorum:**

1) With regard to the issue of quorum of the FRC, it was contended by the petitioners that the decision only bears the signature of the Chief Coordinator of the Committee and during the hearing, all the members of the Committee were not present and therefore, it cannot be said that hearing was not afforded by the Committee as per the provisions of section 3 of the Act, 2017 which provides for constitution of FRC and it is the FRC which hears the matter and therefore, all the members are required to be present at the time of hearing. Further contention was raised that one of the members of FRC, Ahmedabad was above 65 years of age and the impugned orders passed by the FRC do not contain the signatures of all the members.

2) On the other hand, contentions of the respondent authorities is to the effect that the original orders bear the signatures of all the members of the FRC and in view of

provisions of Section 6(3) of the Act, 2017 which requires decisions to be authenticated by the Chief Coordinator/Chairperson of the FRC and therefore, orders which are communicated, are signed either by Chief Coordinator or Chairperson *in case of FRC* and Member Secretary in case of Fee Revision Committee. In view of the explanation coming forward from the respondent authorities that all the original orders are signed by all the members of the FRC and/or Fee Revision Committee, and therefore, the contention raised by the petitioners is required to be negated. Moreover, reliance placed on the Rule 5(5), 5(7), 9(1) in case of FRC and Rule 15(5) and 15(7) of the Rules, 2017 in case of Fee Revision Committee prescribes that the quorum in the business of the meetings shall be 2/3rd of the original strength of the Committee. However, the petitioner contended that the business of meetings do not include hearing for determination of fees by FRC and Fee Revision Committee and therefore, reliance placed on the aforesaid Rules cannot be considered to provide any relaxation in quorum of the FRC or Fee Revision Committee because as per the section 3 of the Act, 2017, constitution of FRC would be of five persons and hearing given by the FRC

consisting of less than the constituent members would result in lack of quorum and the orders passed by the FRC would not be valid.

3) The business meeting of the members of the FRC would not include hearing inasmuch as there is distinction between the business meeting or hearing provided by the FRC to determine the fees cannot be considered as one of the businesses of FRC and therefore, the rules providing for quorum would not apply to the hearing given by FRC to determine the fees of the schools. Reliance placed by the petitioners in case of **P.A. Inamdar and others** (supra) and in case of **Karnal Improvement Trust v. Smt. Parkash Wanti (Dead)** reported in 1995 (5) SCC 159 would be applicable as FRC is a quasi-judicial authority for determination of fees and therefore, FRC cannot resort to Rule 5(5) of the Rules, 2017 because such Rules for quorum would result in an anomalous situation as sub-rule(5) of Rule 5 provides that quorum at the meeting of the Committee shall be at least two-third members of the total strength of the Committee and if there is no quorum at the meeting, the same shall be adjourned for half an hour and thereafter the meeting shall

be held for the transaction of its business which means that if only one member of the FRC is present for the hearing of the fee determination case and for half an hour, no other member turns up, then one member would be authorised to proceed for hearing which would be contrary to the constitution of the FRC as per Section 3(4) of the Act, 2017, consisting of five persons headed by a retired High Court Judge or retired District Judge assisted by Chartered Accountant, Civil Engineer, representative from the School management and one academician of a repute and therefore, FRC is required to give an opportunity of hearing to the School management when all five members who constitute FRC are present to hear the fee proposal submitted by the School as per the procedure prescribed under Rule 7 of the Rules, 2017.

4) It is pertinent to note that the meeting as per Rule 5 and hearing to be provided by FRC under Rule 7 are two different aspects. FRC is a quasi-judicial authority which determines the fees and therefore, when the Act, 2017 provides that FRC would consist of five persons as its



constituents then any hearing/decision of FRC has to be undertaken jointly.

5) It is true that the order which is sent to the School management is signed by either the Chairman or the Secretary or Coordinator of FRC as per Rules 17 and the original order is signed by all the members and therefore, the contention of the petitioners is rejected that copy of the order is required to be signed by all the members of the FRC.

6) Therefore, FRC as well as Fee Revision Committee is required to provide hearing to the School management for determination of the fee proposal in presence of all the members constituting the FRC or Fee Revision Committee.

7) However, aforesaid requirement would be on prospective basis and therefore, orders which are already passed by the FRC or Fee Revision Committee would not be considered as without following procedure as aforesaid and such order would remain to operate. Similarly the issue raised with regard to the age limit of the chairman of one of the FRC is also of no consequence because orders passed by such

FRC are in operation and therefore, they would not become inoperative because of age bar of such FRC.

**D) Future Development cost:**

1) Insofar as Future Development cost is concerned, the same is not decided in absence of any reason in support thereof. Not allowing future development cost is contrary to the powers and the jurisdiction to be exercised by FRC with respect to verifying the fees so as to justify the same so that it would not result in profiteering and/or charging of exorbitant fees.

2) Therefore, future development cost in form of reasonable surplus which is claimed by the schools cannot be restricted to 5% on subjective basis and more particularly, when different FRCs of different zones adopts different approach. Future Development cost is required to be granted as part of the reasonable revenue surplus as per the provisions of section 10(1)(x) of the Act, 2017 keeping in mind the rate of inflation in the economy while determining the fees. FRC has also not given

any reason to restrict the future development cost at 5%.

3) With regard to future development cost or reasonable surplus to be provided by the FRC, there cannot be any straight-jacket formula to be applied for any Self Financed School that either 5% to be considered as reasonable surplus or any other percentage which may be fixed by FRC. Reasonable surplus and/or Future Development cost has to be considered on the case to case basis as per the factors which are provided under section 10(x) of the Act, 2017 which provides for reasonable revenue surplus for the purpose of development, education and expansion of the School. FRC is therefore, required to consider the plan for development, education and expansion of each school separately considering the replacement cost of assets over a period of time which would take care of the issue of depreciation as well as rate of inflation prevailing in the economy so as to enable the school to meet with rising expenses for the coming years and to create reserve for development and expansion in future so that school is not required to suffer any financial crunch for development and expansion to be carried out in future. It

is observed from various orders passed by FRC that 5% of the fees is considered as reasonable surplus which is nothing but a subjective application of standard consideration towards future development cost or reasonable surplus and such ad-hoc approach of the FRC is without any basis.

4) It is therefore hoped that the State Government may frame the guiding policy for considering the reasonable surplus for the purpose of development or education as a guiding factor for FRC to be applied in facts of each school separately considering its future need as per the factors mentioned in section 10 of the Act, 2017. For example, the State Government by resolution dated 29.09.2011 allowed the school to increase the fees by 10% on year to year basis. However, the said Government Resolution is not applied by FRC without considering that the school has to give increment in salary in the range of 8% to 10% to staff on annual basis and there is increase in inflation over a period of time, and as such the school would incur heavy financial loss. FRC is therefore, required to consider the aspect of reasonable surplus or future development cost in an objective manner by inviting the schools to

submit their plan for future development with proper justification so as to determine the fees which is justified so as not to result into profiteering or charging exorbitant fees. At the same time, it is also true that under the head of reasonable surplus, the school cannot be permitted to indulge in profiteering and therefore, FRC is required to strike balance by verifying the facts of each school to come to a just conclusion for awarding reasonable surplus to be added in fees to be charged by the school instead of adopting straight-jacket formula or flat rate of reasonable surplus or future development cost.

5) The golden principle which is required to be applied while determining the fees is to verify whether the proposed fees would amount to profiteering or whether it would amount to exorbitant fees and therefore, would be justified or not and for that purpose the powers conferred upon FRC coupled with the factors and the procedure prescribed under the provisions of the Act, 2017 are to be implemented. It appears that FRC is led by the observations of the Supreme Court permitting the Self Financed institutions to create 5% to 15% surplus

without considering the activities undertaken by the Schools for imparting education to the students as per its own standards. FRC has also not taken into consideration the cost of inflation while applying the uniform percentage for considering reasonable surplus in all schools under its respective zone and different FRCs have taken different approach while providing for reasonable surplus.

6) It is pertinent to note that FRC Rajkot has allowed 10% towards future development cost or reasonable surplus whereas FRC at Surat has allowed 7% increase. Therefore, aspect of reasonable surplus and future development cost would depend upon the facts of each school to be verified by the FRC while determining the fee or fee structure.

**E) Term fee and Admission fee:**

1) With regard to the Term fee and Admission fee, it is contended by the petitioners that the FRC has restricted the School from charging such fees though such fee is part of the "fee or fee structure" as per section 2(g) of the Act, 2017. On perusal

of the provisions of section 2(g) of the Act, 2017, the term fees and admission fees are contemplated therein, therefore, the FRC has no jurisdiction or authority to prohibit collection of the same subject to the upper limit prescribed therein.

2) As against the above contentions, the respondent authorities submitted that the school cannot charge any fees over and above the fees determined under any head causing extra burden upon the students as per the provisions of section 11 of the Act, 2017.

3) On perusal of section 11, it is clear that the fees to be determined by the FRC would be cumulative fees however, as regards the term fees and admission fees which is one time levy by the school is provided as part of the fees as separate head under section 2(g) and therefore, FRC could not have prohibited the fees which are expressly provided for under the Act. It is required to be noted that some of the FRCs are permitting charging of admission fees and term fees. Thus there is inconsistency amongst the FRCs to permit charging of term fees and admission fees as per section 2(g)

of the Act, 2017 under the guise of section 11 of the Act, 2017.

4) Fees to be determined by FRC as per the prescribed procedure under Rule 7(4) would, therefore, not restrict the school from charging the term fees and admission fees which will not be more than tuition fees of one month. FRC is therefore, required to verify whether admission fee and term fee charged by the School is within prescribed time limit as per section 2(g) of the Act, 2017 or not. Self Financed Schools therefore, may charge admission fees and term fees in addition to the fees determined by the FRC subject to the limits prescribed in section 2(g) of the Act, 2017.

**F) Curriculum Expenses:**

1) Curriculum expenses incurred by the respective schools have been disallowed by FRC including the recurring staff expenditure etc. under the guise that such activity undertaken by the schools are for teachers but they have no nexus with imparting education. Reasoning given by FRC are contrary to the very basic object of the Act, 2017 and the Rules framed thereunder to



determine the fees taking into consideration the factors as per provisions of section 10 of the Act, 2017 which clearly provides in clause (iii) with regard to infrastructure made available to the students for qualitative education, facilities provided as mentioned in the prospectus or website of the school which also includes curriculum for the purpose of creating course contents for all the grades as well as clause (viii) thereof with regard to qualification of teaching and non-teaching staff, their salary components, and reasonable amount for yearly salary increments. FRC therefore, could not have assumed jurisdiction to disallow such expenditure by substituting its own logic or philosophy contrary to the provisions of the Act, 2017 and the Rules framed thereunder. Therefore, FRC is required to allow Curriculum expenses, if on verification it is found that the same are incurred by the school for imparting education without entering into the further investigation for reasonableness of the same.

**G) Interest on Loan:**

1) With regard to issue of interest on loan, in some of the cases, the FRC has

considered amortisation of interest over life of the asset instead of allowing the claim of the interest on the loan paid by the school during the year under consideration on the ground that the students cannot be burdened with the amount of interest on loan paid by the schools in a particular year only and such interest is required to be apportioned over a period of life of the asset for which the loan is taken. The provisions of the Act, 2017 and the Rules framed thereunder do not permit FRC to adopt such approach inasmuch as interest paid by the schools in a particular year has to be recovered from the fees to be charged from the students. FRC cannot sit in the seat of the management of the schools by substituting its own logic by prescribing standards of charging of fees inasmuch as it is the prerogative of the respective schools to take loan and pay interest and FRC is only concerned to verify as to whether such expenditure is incurred by the school which is duly recorded in the books of accounts which are audited and cannot substitute its own rationale for amortisation of the interest over the period of life of the concerned asset.

2) FRC therefore, could not have disallowed the interest on loan by amortising the same over the life of the concerned asset as stand taken by the FRC is not tenable because interest is to be paid by the School for the period of the loan repayment and as such, the same cannot be amortised over the life of assets acquired by the school with the help of such loan. The interest is nothing but the finance charge paid by the school for availing financial facilities from the financial institution for acquiring either land, building or infrastructure or working capital. Therefore amortisation of such interest over the life of the assets acquired by such loan, on the logic that the students who study during the period when such loan is availed cannot be burdened with more fees, is contrary to the very object of determination of the fees as per section 8(2) (b) of the Act, 2017. At the cost of repetition, it is reiterated that FRC is required to determine the fees so as to justify the same would not result in profiteering or exorbitant fees. The students who are studying in Self Financed School are aware about the facilities which they may get together with the fact that if any school which is started with the financial help is

required to pay the interest every year on the loan and if such interest is not recovered from the fees, it would be impossible to run the School, as the interest is a fixed cost incurred by such School which is to be paid periodically and invariably so as to see that the School continues to impart education and in absence of nonpayment of interest, financial institution would not permit the school to run and therefore, the stand taken by the FRC that the student cannot be burdened with cost of interest for a fixed term of repayment of loan and the same is required to be spread over the life of the asset acquired by the loan is highly socialistic approach contrary to the law laid down by the Supreme Court for determination of the fees of Self Financed institution for imparting education.

**H) Salary:**

1) With regard to salary expenses which are incurred by the School for imparting education is required to be allowed and after verification and if FRC finds that salary expenses incurred by the School is with a view to divert the funds to the trust or company associated with the School which

would amount to profiteering then only such expenses are required to be disallowed. In absence of such verification and in absence of any inquiry, FRC is not required to disallow the salary paid by the school on the ground that the school do not require x number of teachers for x number of students. It is for the School to decide how many teachers are required for the students and more particularly, when the School is new, keeping in mind future expansion of educational facilities by School, teachers may be employed in advance. FRC is therefore, required to verify whether the teachers are in existence or not, whether they are imparting education and whether they are paid actual salary by the School by verification of the documents or by deputing proper officer for making spot inquiry as per the prescribed procedure under Rule 7(1)(c) of the Rules, 2017. Once, on verification it is found that the teachers are employed by the School for imparting education, then FRC cannot assume the management of the School and disallow salary expenditure by drawing adverse inference as is apparent from various orders passed by it to come to the conclusion that the teachers are not required considering the number of students or number

of classes run by the school without there being any verification as to whether such teachers are imparting education to the students studying in the school or not. It is astonishing that on perusal of the orders passed by FRC in general, no verification is done for disallowance of the salary expenditure incurred by the school which is reflected in the books of accounts duly audited by the Chartered Accountant. FRC therefore, cannot say for example that the school required only 9 teachers and 5 non teaching staff, whereas the school may have employed more teachers and staff considering its requirement. Therefore, such approach of the FRC is nothing but arbitrary in nature, disturbing the basic autonomy of the Self Financed School.

2) It is painful to note that FRC in general has passed the impugned orders as if the Self Financed Schools are to be run as Government school in a format bound by the Rules and Regulations. On bare perusal of the provisions of the Act, 2017, FRC has no power to suo motu disallow or reduce the actual salary expenses incurred by the school without verification or giving any reason in support of such reduction so as to come to

the conclusion that such expenditure is not required for imparting education to the students.

3) FRC has also ignored that various Self Financed Schools develop its own curriculum designed to foster holistic development of every student which is unique for each school which attracts the students and the parents to study in such Self Financed School who are ready to pay the fees accordingly for the facilities for developing the unique potential of the students and equipping them with 21<sup>st</sup> century mindset in life skill that enable them to successfully navigate the complexity and diversity of the rapidly changing world.

4) FRC therefore, is not justified in ignoring the ways and method of imparting education undertaken by the respective schools and adopt a uniform approach by disallowing the expenditure so as to reduce the fees drastically resulting into violation of fundamental right conferred upon the School so as to run the school as per its own methodology within the parameters prescribed under provisions of the Act, 2017.

5) The appointment of the teachers by the Self Financed School is requisite for the curriculum formulated by each school, in this respect the factors which are required to be considered by FRC as per section 10 of the Act, 2017, are important to be kept in mind. Sub-clause (viii) of section 10(1) provides for consideration for qualification of teaching and non-teaching staff as per the relevant norms, their salary components and reasonable amount of yearly salary increments. Therefore, the approach of the FRC to substitute the salary paid by the School without verification or without giving any reason for reducing such salary expense is not proper. FRC is therefore, required to verify the salary expenses incurred by the School considering that such School is entitled to employ the teachers as per its requirement for imparting education to the students as per curriculum developed by it and if on verification, FRC comes to the conclusion that salary expenditure incurred by the school is nothing but diversion of the fees for the benefit of the trust or the company associated with the school resulting into "profiteering" as per section 2(r) of the Act, 2017, then only, by assigning reasons, FRC would be justified to disallow



the salary expenditure. But in absence of any such aspects reflected in the impugned orders, the determination of fees by FRC by disallowing the salary expenditure is not tenable. FRC is therefore, required to reconsider the issue of salary expenses in view of above observations and guidelines.

**I) Non consideration of actual strength of students in a class:**

1) FRC in various cases has ignored the number of students of the school and has considered the standard strength of class for the purpose of allowance of expenditure incurred by the school. It is astonishing that it is for the respective School to take decision as to how many students would be studying in a class and FRC is not conferred with any power to determine the standardised strength of class of school and thereafter apply such strength to the expenditure incurred by the school and disallow the expenditure which is disproportionate to the number of students per class as may be decided by FRC. FRC is therefore, required to consider the actual number of students as per clause(vi) of section (10)(1) of the Act, 2017 which prescribes the students strength in Self Finance school and clause (vii) which

provides for classes of study and courses of study offered by the School. It appears that FRC has misunderstood the factors prescribed under section 10 of the Act, 2017 by substituting its own logic and reasoning ignoring the powers and functions conferred by section 8 of the Act, 2017 upon it. Therefore, FRC is required to take actual number of students studying in the School for the purpose of determination of the fees proposed by the School.

**J) Determination of provisional fees:**

1) On submission of the proposal by school for determination of the fees, FRC passes a provisional order determining the fees by disallowing proportionate expenditure from the proposal and determine the fees accordingly, without giving any reason for such proposed disallowance at the time of passing of the provisional order. FRC is required to consider the fee proposal as it is and without verification, it cannot reduce the fees proposed by the school on its own by disallowing certain expenditure without giving any reasons. FRC is required to come to the prima facie conclusion that as per the proposal, expenses which are proposed to be

disallowed as such expense has no nexus with running of school or it amounts to unreasonable surplus. However, on perusal of the orders determining provisional fees pending final determination which are placed on record, FRC has not given any reason for passing such provisional orders and it has arbitrarily reduced the fees proposed by the School without rhyme or reason in the provisional order. It is also observed that after passing of the provisional order, onus is shifted on the school to justify as to why such disallowance should not be sustained in the final order.

2) It is astonishing that without verification or any reason, FRC at first instance disallow the expenditure and reduce the fees proposed by the school at the time of passing provisional order and thereafter while passing the final order, the school is required to justify why such disallowance should be deleted and entire expenditure to be allowed by the FRC for determination of fees. In various orders passed by FRC even the final order has proceeded to make disallowance which were not even referred to in the provisional order and such final orders are passed without verification as to

whether such expenditure is exorbitant which would result into exorbitant fees. Therefore, FRC is required to exercise the powers and functions conferred upon it under the provisions of the Act, 2017 keeping in mind the law laid down by the Apex Court for determining the fees of the Self Financed institution imparting education so as to regulate the fees to prevent profiteering, capitation fees or charging of exorbitant fees.

3) Thus FRC is required to exercise the powers conferred upon it in a very balanced manner so as to see that on one hand the School management is also not deprived of the legitimate fees to be charged from the students and the students also should not suffer by paying exorbitant fees charged by the Self Financed School.

**K) Other expenses :**

1) Other expenditures incurred by the school under various heads, FRC has disallowed the expenditures without any verification or justification while recording that such expenditure is not required for imparting education. It is the duty of the

FRC to record reasons after giving an opportunity of hearing to the respective School management and after proper verification to come to the conclusion that expenditure incurred by the School is not for imparting education. Unless and until such verification resulting into reasons to be recorded in writing, FRC should not disallow the expenditure incurred by the School which is actually incurred and reflected in the books of account duly audited. Such disallowance of expenditure is nothing but an arbitrary act on part of the FRC resulting into misuse of the powers conferred upon it by the provisions of the Act, 2017 under the guise of justification for determination of the proposed fees by the School.

2) FRC is required to verify the expenditure by exercising its jurisdiction conferred upon it as per the prescribed procedure as per the Rules 2017 and, if the school is unable to justify the incurring of such expenditure, then FRC is required to come to the conclusion by recording reasons in writing for not allowing such expenditure on the basis of the evidence produced on record without arriving at conclusion on subjective basis.

3) FRC is therefore, required to reconsider the disallowance made by it on the various expenditures like maintenance and upkeep expenditure, shifting expenditure, miscellaneous expenses, legal expenses, professional charges, food expenses etc. and as such, each of the other issues referred to in Para No. 35(1) to 35(32) raised in the petitions are not dealt with separately.

**L) Procedure adopted by the Fee Revision Committee for remanding the matter back to FRC:**

1) With regard to the procedure adopted by the Fee Revision Committee to remand the matters back to FRC, it is observed that in many cases there are two rounds of hearing by FRCs as well as Fee Revision Committee resulting into enormous delay for determination of the fees. As per the provisions of the Act, 2017 fee is to be determined for the block of three years and in many cases for three years fee is not determined for want of going forth and back from FRC to Fee Revision Committee by virtue of remand resulting into non determination of fees and ultimate sufferers are the students

who would be paying fees in absence of any final determination of fees.

2) FRC as well as Fee Revision Committee therefore, is required to adhere to time limit prescribed under the provisions of the Act, 2017 and the Rules framed thereunder to complete the final determination of fees.

3) Fee Revision Committee is also conferred with powers under Rule 16 of the Rules, 2017 to call for information and evidence as may be necessary for deciding the application from the Self Financed school to be submitted within specific time limit and to consider such other matters as may be deemed necessary to take a decision on the revision application within a period of 90 days from the date of receipt of such revision application. Therefore, instead of remanding the matter, Fee Revision Committee can call for further information from the concerned school and call for record and proceedings of the FRC also and decide the original application of the proposal of the fees submitted by the schools instead of remanding the matter back to the FRC, taking into consideration the factors on which FRC has determined the fee structure.

4) It is pertinent to note that Fee Revision Committee is not only an appellate authority but it is the Committee constituted for the purpose of revision of fees determined by the FRC with regard to the grievances of the schools against the order passed by FRC under the Act, 2017.

5) The Fee Revision Committee can call for "remand report" from FRC for justification of the grounds raised in the revision application on any factual aspect raised by the school.

6) However, it appears that in many cases, as FRC has not given any reason for disallowance of expenditure while determining the fees, the Fee Revision Committee was required to remand the matter to the FRC. But instead of remanding the matter to FRC, Fee Revision Committee could have decided the revision by obtaining 'remand report' on specific issues. It is hoped that in future exercise of remand by the Fee Revision Committee would be minimal and or the power of remand may not be exercised at all by devising a proper method of calling for record and proceedings as well as comments of



FRC in form of "remand report" and the revision application can be decided finally without remanding the matter to the FRC.

**85.** Considering the above, it would be in the interest of all concerned to dispose of this group of petitions with the following directions in the nature of guidelines/suggestions for the FRC to consider the proposal for determination of fees to be submitted by the Self Financed Schools as per the scheme of the Act, 2017 and the Rules, 2017 considering observations made in Para 84 herein above with regard to the common issues which are raised in this group of petitions as under:

1) FRC is constituted under section 3 of the Act, 2017 comprising of (i) a retired High Court Judge or retired District Judge (ii) Chartered Accountant (iii) Civil Engineer (iv) representative from Self Finance School management and (v) one academicians. FRC is therefore, required to exercise the powers and functions as per section 8 of the Act, 2017 as a quasi judicial authority and therefore, all the members of the FRC are supposed to remain present at the time of hearing given to the

School management for verifying and approving/determining the fees or fee structure as per the fee proposal submitted by the Self Financed School in Form-III as per Rule 6(1) of the Rules, 2017.

2) FRC is required to determine the fees under the Act, 2017 as per the powers conferred upon it under section 8 thereof by keeping in mind the factors for determination of the fees as enumerated in section 10 of the Act, 2017 and pass an order in Form-III as per Rule 7(4) of the Rules, 2017 however, before passing such order, compliance of Rule 7(1) to Rule 7(3) of the Rules, 2017 are required to be adhered to by calling for information, statement and in case of any further verification, to authorise any member or any officer for spot verification of documents and School buildings etc. to verify the details and information submitted by the School management along with proposal or pursuant to the requirement to Rule 7(1)(b) of the Rules, 2017.

3) The School management as well as FRC is also required to adhere to the time limit prescribed under Sub-rule(2) and Sub-rule(3) of Rule 7 of the Rules, 2017.

4) Sub-rule(4) of Rule 7 provides that FRC shall determine the total fees under a single head which may be levied or collected and pass an order in Form-III determining the total fees, which would be operative for a period of three years, but the same would not however include term fees and admission fees as per section 2(g) which defines "fee or fee structure" as such fees would be onetime fee subject to maximum of one month tuition fee.

5) Similarly as directed by the Supreme Court, the School management is required to charge the fees on optional activity separately and, therefore, such fees and expenses related thereto would not become part of the fee determination process to be undertaken by the FRC.

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6) The provisions of the Act, 2017 are required to be followed without formulating any subjective view for determination of fees as it appears from various orders passed by the FRC. FRC is required to consider the proposals submitted by the Self Financed School so as to verify the fees proposed by

the Self Financed School is justified or not and whether such fees would amount to "profiteering" or "charging of exorbitant fees". Such power is conferred upon FRC as per section 8(2)(b) of the Act, 2017. Therefore, in order to determine the fees, it would be incumbent upon the FRC to verify the fee proposal on the basis of the documentary evidence produced before it together with verification process to be undertaken, including spot verification of documents and School buildings etc. as per the prescribed procedure under Rule 7(1)(c) of the Rules 2017.

7) On perusal of the impugned orders passed by the different FRCs, it is noticed that ad-hoc disallowance is made from the expenditure without assigning any reason or there being any verification or justification for such disallowance. FRC is required to justify the disallowance of expenditure incurred by the school which according to the FRC is not for the purpose of imparting education by giving cogent reasons based on inquiry conducted and evidence laid before it by each school separately without uniform adhoc disallowance as per subjective belief

of FRC and there has to be consistency amongst all FRCs of different zones.

8) FRC should keep in mind the fundamental rights of the Self Financed school under Article 19(1)(g) to run the schools and to charge the fees as held by the Apex Court while deciding the determination of the fees by the Medical colleges and other institutions in various judgments referred to here-in-above and therefore, FRC need not sit in the chair of the Management to determine the fees by prescribing standardised fee structure for Self Financed schools because each school has its own unique method of imparting education as per the instructions prescribed by the Gujarat Secondary and Higher Secondary Education Board or any other Board as per clause(d) of section 8(2) of the Act, 2017. Therefore, according to the FRC, if the expenditure is not for the purpose of imparting education, then necessary verification be undertaken and then to arrive at the conclusion by assigning reasons for the same that such expenditures would not be necessary for education to justify the fees proposed by the Self Financed School would not result into the "profiteering" and "capitation fee" or "charging exorbitant

fees" and the FRC is supposed to apply the principles which are laid down by the Apex Court vis-a-vis "profiteering" as per the definition of "profiteering" prescribed under section 2(r) of the Act, 2017.

9) Therefore, FRC is required to verify whether any cash or kind is received by the School in excess of the Fee which is determined as per the provisions of the Act, 2017 and further verify whether the trust or the company which is associated with the School is earning any profit from any activity of such School in any manner whatsoever, then such type of collection of fees is not required to be approved while determining the fees proposed by the Self Finance School. Similarly it would be the function of the FRC to verify whether the school is charging exorbitant fees which would mean that whether the fees proposed by the School includes more than reasonable surplus or not so as to justify that the fee proposed includes reasonable surplus for development, future expansion and other activities of the School for the purpose of imparting education depending upon the facts of each case.

10) Hence, FRC is are required to exercise the powers and functions as conferred by section 8 of the Act, 2017 in its true perspective for determination of the fees by the Self Financed institution imparting education so as to see that such fees do not result into profiteering or capitation fees and such fees would include only reasonable surplus taking into consideration replacement of the asset for future development, expansion of the educational institution, rate of inflation etc.

86. FRC is therefore, required to adhere to the aforesaid observations/guidelines/suggestions while determining the fees so as to verify whether the same would amount to profiteering or charging exorbitant fees or not and accordingly, such fees would be justified or not. The State Government may also frame a policy providing such guidelines to achieve the objects of the Act,2017 which would require all the different FRCs to adopt a uniform approach for determination of the fees to be charged by the Self Financed School.

87. In view of above foregoing reasons, impugned orders passed by the FRC as well as the Fee Revision Committee are hereby quashed and set aside and the matters are remanded back to FRC to decide the fee proposals afresh. FRC is directed to reconsider each case by permitting the school to present their case and decide the fee proposal submitted by each school de novo and in the meanwhile schools are permitted to charge the fees as they are charging at present till such exercise is over by the FRC. FRC shall complete the determination of the fees of the schools in this group of petitions within a period of 12 weeks from the date of receipt of this order. The petitions are accordingly disposed of.

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THE HIGH COURT  
OF GUJARAT

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR

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