



FEES REGULATING AUTHORITY

Maharashtra Unaided Private Professional Educational Institutions
(Regulation of Admissions and Fees)

"शिक्षण-नव्वेव्यवसाय -ज्ञान यज्ञ"

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Minutes of Meeting of Authority

Dt. 12/04/2022

The Meeting of the Fees Regulating Authority (constituted under section 11(2)(3)(4) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015) held on **12th April, 2022** in the Conference Hall, Room No. 305, Government Polytechnic Building, 49 Kherwadi, Ali Yawar Jung Marg, Bandra (E), Mumbai - 400 051.

Following were present:

1.	Hon'ble Justice V.L. Achliya (Retd.)	:	Chairperson
2.	Shri. Manoj Damodar Chandak, Chartered Accountant	:	Member
3.	Shri. Ratnakar (Shirish) Phadtare, Cost Accountant	:	Member
4.	Shri. Dharmendra Dilip Mishra, Professional Educationist	:	Member
5.	Shri. L. S. Mali, IAS	:	Secretary
6.	Dr. Shrinivas P. Kotwal Under Secretary, Medical Education & Drug Department, Mumbai	:	Representatives of Principal Secretary, Medical Education & Drug Department, Govt. of Maharashtra
7.	Mr. Santosh V. Naiknaware Assistant Section Officer, Medical Education & Drug Department, Mumbai	:	Invitee
8.	Dr. Shriram V. Gosavi, O.S.D, Maharashtra State Board of Nursing and Paramedical Education, Mumbai.	:	Invitee
9.	Mrs. Chhaya P. Lad, Registrar, Maharashtra State Board of Nursing and Paramedical Education, Mumbai.	:	Invitee
10.	Mrs. Rachel George Registrar, Maharashtra Nursing Council, Mumbai.	:	Invitee

Dr. Vijay Vasant Khole, Ex-Vice Chancellor, Mumbai University, Hon'ble Member, Fees Regulating Authority, his presence is dispensed with.

Dr. K.D. Chavan, Registrar, Maharashtra University of Health Science, Nashik, & Shri. Vishwajit Mane IAS, Member Secretary of Maharashtra Council of Agricultural

Education of Research, Pune (MCAER) the ex-officio members of the Authority their presence is dispensed with for a day.

Dr. Abhay E. Wagh, The Director, Technical Education, Mumbai & Dr. Dhanraj Mane, The Director, Higher Education, Pune the ex-officio members of the Authority are absent.

Part-II

Item No.1 To discuss the issue of maintainability and jurisdiction to entertain the fees proposals of RANM & RGNM the Diploma courses affiliated to Maharashtra State Board of Nursing & Paramedical Education (MSBNPE).

"Discussed.

It was brought to the notice that the issue of maintainability and jurisdiction to entertain and decide the reasonableness of fees to be charged by the Unaided Private Professional Educational Institutions running the Revised Auxillary Nursing & Midwifery (RANM) and Revised General Nursing and Midwifery (RGNM), the Diploma Courses affiliated to Maharashtra State Board of Nursing and Paramedical Education, Mumbai, was considered by the erstwhile Fees Regulating Authority in its meeting held on 04/09/2019. After considering the legal position in the light of the provisions of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (hereinafter referred to as "the said Act of 2015") has reached to the conclusion that the said Diploma Courses does not fall within the jurisdiction of Fees Regulating Authority and the provisions of said Act of 2015 is not applicable to said Diploma Courses. It was decided that from the academic year 2020-2021 and onwards the Fees Regulating Authority shall not entertain & deal with the fees proposals relating to RANM/RGNM courses.

The decision taken in the Meeting dated 04/09/2019 read as under:

" Subject: In the matter of regarding jurisdiction of the Fees Regulating Authority over the Institute running RANM and RGNM courses.

1. *The Supreme Court in case of T.M.A Pai Foundation V/s. State of Karnataka (2002) Islamic Academic of Education V/s. State of Karnataka (2003) and P.A. Inamdar V/s. State of Maharashtra (2004) stressed the need of having regulatory mechanism in the matter of fee structure of "Professional Courses" conducted by various self-financed colleges/Institutes. In accordance with mandate of the Apex Court, States including the State of Maharashtra constituted Committees to oversee the*

fee structure of Private Unaided Professional Colleges . In the State of Maharashtra Shikshan Shulka Samiti was constituted Committees to oversee the fee structure of the Private Unaided Professional Colleges. In the State of Maharashtra Shikshan Shulka Samiti was constituted. After Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees), Act 2015, (in short Act, 2015) came into force, it was replaced by this Authority constituted under section 11 of the Act 2015.

2. This Authority resumed its function on 1/4/2016 and started entertaining proposals which were entertained by erstwhile Shikshan Shulka Samiti. When it was noticed that RANM/RGNM courses have not been notified as "Professional Courses", the Government in Medical Education and Drugs Department was informed about the same. This leads to the Government of Maharashtra issuing notification dated 30/10/2018 declaring RANM/RGNM course as 'Professional Courses'.
3. Merely, declaring a particular course as 'Professional Course' does not suffice the purpose. It is noticed that RANM/RGNM courses are not affiliated to any University but fall within definition of "Diploma Level Education" occurring under section 2(e) of Maharashtra State Board of Nursing and Paramedical Education Act, 2013. This Authority is constituted under section 11 of Act, 2015. Section 13 reads as under:-

"13.(1) The Fees Regulating Authority shall perform the following functions, namely:-

(i) To determine the reasonableness of fees levied by unaided institutions on the basis of the factors specified in section 15; and to verify whether the fees so levied does not amount to profiteering or charging of capitation fees within the meaning of clause (a) of section 2 of the Maharashtra Educational Institutions(Prohibition of Capitation Fees) Act, 1987."

4. Unaided Institution is defined under section 2(x) as under:

"means Private Professional Educational Institution, which is not receiving aid or grant-in-aid from the Central Government, the State Government or the local authority."


5. Under section 2(q) Private Professional Educational Institution means:

"any college, school, institute, institution or other body, by whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority and affiliated to any university, but shall not include."

6. *In view of the above the course which is not affiliated to any University will not come within ambit of section 2(q). In turn it will not come within definition of unaided institution as defined under section 2(x). As such it will not fall within ambit of section 13(i).*
7. *Put it differently basic condition is that the course should be affiliated to any University. Secondly it should be conducted by Private Educational Institution. Thirdly, it should be self-financed. If any of the conditions is not fulfilled, this Authority under section 13(i) will have no jurisdiction.*
8. *It is therefore, resolved that from the A.Y. 2020-2021 this Authority will not entertain/deal with fees proposals relating to RANM/RGNM courses, it is suggested that since the students choosing for these courses come from economically weaker section, it is not necessary that fee structure of these courses should be 'Cost Based'. It should be common for all with marginal variation location wise. Already there exist mechanisms to approve/determine fee structure of courses outside the jurisdiction of this Authority. Similar such mechanism, headed by Directorate Medical Education and Research, can be set up to determine fee structure of RANM and RGNM courses.*
9. *Office to communicate above resolution to the Directorate, Medical Education and Research, Mumbai and the Government of Maharashtra in Medical Education Department".*

The above-quoted decision of the Fees Regulating Authority was communicated to the Secretary of Medical Education and Drugs Department, Government of Maharashtra as well as the Director of Medical Education and Research, Government of Maharashtra vide letter bearing No. FRA/Res.(B)/672/2019 dated 06/09/2019. By the letter dated 06/09/2019 the Secretary of Medical Education, as well as the Director of Medical Education, was categorically informed that the Fees Regulating Authority will not entertain & deal with the fees proposals relating to said Diploma Courses from the academic year 2020-2021 and onwards and further informed to take necessary steps at their level to determine the fees of the said courses.

On 09/09/2019 the notice was also published on the web portal of the Fees Regulating Authority informing the Institutes running the RANM & RGNM courses that no fees proposals seeking approval of fees from the academic year 2020-2021 shall be entertained by the Fees Regulating Authority.



Accordingly, no proposals seeking approval of fees of Unaided Private Professional Educational Institutions running the said Diploma courses were entertained by the Authority for the academic year 2020-2021.

After the tenure of the erstwhile Authority has come to an end on 18/03/2021, the Under Secretary, Medical Education, and Drugs Department sent a letter dated 19/03/2021 in reply to the letter dated 06/09/2019. By said letter dated 19/03/2021 the Official requested the Authority to decide the reasonableness of fees of said courses as said courses were notified as professional courses.

The Authority is of the view that the decision taken at the level of In-charge Secretary of the Fees Regulating Authority contrary to the decision dated 04/09/2019 of the Fees Regulating Authority to open the link and to entertain the proposals seeking approval of fees for the academic year 2020-2021 & 2021-2022 was ab-initio void and without any Authority in law.

The decision dated 04/09/2019 taken by the Fees Regulating Authority was based upon due analysis of the legal position spelled out from the provisions of Act of 2015. The Act of 2015 exhaustively provides for the constitution, object, function, and jurisdiction of the Authority. The constitution of the Fees Regulating Authority confines to the determination of fees of Unaided Institutions. The term Unaided Institutions referred in the said Act of 2015 has been defined u/s. 2(x) of the said Act of 2015. The word 'Private Professional Educational Institutions' referred in section 2(x) has been defined under section 2(q), which reads as under;

*"Private Professional Educational Institutions" means any college, school, institute, institution or other body, whatever name called, conducting any professional course or courses approved or recognized by the appropriate authority **and affiliated to any university**, but shall not include,*

- i) Any such institute established, maintained or administered by the Central Government any State Government or any local authority;*
- ii) Institution declared to be a deemed university under section 3 of the University Grants Commissions Act, 1956; or*
- iii) A university to which the provisions of the University Grants Commission (Establishment and Maintenance of Private Universities) Regulations, 2003 are applicable";*

Thus, what emerged from the provisions quoted above the Fees Regulating Authority acquires the jurisdiction to entertain and decide the



reasonableness of fees levied by any Unaided Institutions if the following conditions are satisfied:-

- I. The Institution should be Unaided Institution (as provided u/s. 2(x) of the said Act 2015); and
- II. the Institution should be Private Professional Educational Institution (as provided u/s. 2(q) of the said Act 2015); and
- III. The course/courses run by such Unaided Institution must be declared as a 'Professional Education' by the State Government (as provided u/s. 2(r) of the said Act 2015); and
- IV. Such, course/courses to be conducted by an Institution duly approved or recognized by the appropriate Authority (as provided u/s. 2(q) of the said Act 2015); and
- V. Such, course/courses to be **Affiliated to any University** (as provided u/s. 2(q) of the said Act 2015); and
- VI. The admission of such courses is conducted through the Admission Regulatory Authority.

The Authority is of the firm view that mere declaration of ANM and GNM courses as 'Professional Courses' vide notification dated 30/10/2018 by the Department of Medical Education & Drugs not sufficient to confer the jurisdiction with the Fees Regulating Authority to entertain and decide the reasonableness of fees of said Courses run by Unaided Private Professional Educational Institutions. The course or courses to be run by such Unaided Institutions not only to be Professional Courses but same must be affiliated to University.

The RANM and RGNM courses run by Unaided Institutions are the Diploma level Courses covered u/s. 2(e) of the Maharashtra State Board of Nursing and Paramedical Education Act 2013. The said courses are not affiliated to the Maharashtra University of Health Sciences or any other University. So also the admissions of said courses are not regulated by the Admissions Regulating Authority constituted under the Act of 2015. The recognition, continuation and inspection of the Institutions running said courses vest with the Nursing Board. So also, the examinations of such courses as well as the declaration of results of such examinations are made by Nursing Board constituted under the Maharashtra State Board of Nursing and Paramedical Education Act 2013.

Mr. Kotwal, the Under Secretary representing the Medical Education & Drugs Department reiterated the stand of the Department that the said Diploma courses are declared and notified as 'Professional Courses' vide the notification dated 30/10/2018 issued by the Medical Education & Drug Department & therefore the reasonableness of said courses can be decided by the Fees Regulating Authority. He submitted that the Department has secured the opinion of a Law and Judiciary Department, which has

concurred with the view of the Department that the Fees Regulating Authority can entertain and decide the fees proposals in the exercise of its jurisdiction conferred u/s. 13(1) of the said Act 2015.

It was pointed out to the Official that mere declaration of any course as a 'Professional Course' is not sufficient to confer jurisdiction to entertain and decide the fees proposals by the Fees Regulating Authority. It was pointed out that the requirement of such course to be affiliated to any University was not examined and considered in the opinion given by Law & Judiciary Department. The Authority while taking decision on 04/09/2019, categorically dealt with the aspect of the mandatory requirement of law that such course must be affiliated to the University to vest jurisdiction with Fees Regulating Authority to entertain and decide the fees of such courses run by Unaided Institutions. In para 3 to 7 of said decisions of the Fees Regulating Authority was recorded as under;

"3. What emerge from above is FRA gets jurisdiction to determine the reasonableness of fees levied by unaided institutions relating to a particular course if the following conditions are satisfied.

I) The Institution should be unaided/self-financed.(2(x)).

II) The Institution should be private.(2(q)).

*III) The course/courses conducted by such an institution should be approved or recognized by the appropriate authority **and** affiliated to any university. (2(q))*

IV) Such a course should be declared as professional education.(2(r)).


4. The GNM and ANM course fall within the definition of diploma level education under section 2(e) of the Maharashtra State Board of Nursing and Paramedical Education Act, 2013. They are not affiliated to the Maharashtra University of Health Sciences or any other University. Factual aspects not disputed.

5. While defining Private Professional Educational Institution, the condition that the course/courses should be affiliated to any university has been purposely added. The scheme of the Act is based on the decisions of the Apex Court to check profiteering by the professional educational institutions. That means to cover such courses for which a very hefty fee is charged, and there is a wide scope for exploitation of the stakeholder. The predecessor of this authority-Shikshan Shulka

*Samiti constituted under GR was in place till Act 2015 was passed. It was determining the reasonableness of fees levied on GNM, ANM polytechnic diploma in pharmacy, diploma in hotel management as directed by the Government. All these courses are not affiliated to any university. By giving literal meaning (since there is no ambiguity) to the definition of a Private Professional Educational Institution, the meaning spelt out is, besides the course/courses being approved and recognized by the competent authority, it shall be affiliated to any university. The word as appearing in the statute can not be ignored or make it otiose. Put is differently, the word **affiliated to any university** should receive its due consideration. The word 'and' had to be read conjunctively and not disjunctively. Section 2(q) postulates two prerequisite conditions to attract FRA's jurisdiction i.e. the course should be reorganized/ approved and should be affiliated to any university, if either of them is not fulfilled, the FRA ceases to have jurisdiction.*

6. *The Act contemplates taking coercive action against the college for breach of the provisions. The Act, 2015 confers the power of the civil court upon FRA, in the matter of summoning witnesses, the discovery of documents, etc. Giving false information has been made punishable. The FRA is the quasi-judicial authority and is declared as corporate sole. Therefore, in the even, any action is taken against any erring college, and if it is challenged in a court of law on the ground of jurisdiction, there is a likelihood of such action being declared ab-initio void or nullity. For this reasons, the issue of jurisdiction is important.*

7. *The terms approval/ recognition and affiliation are required to understood. Approval, recognition is granted by the competent authority. In the case of Polytechnic, B.E., M.E, M.B.A/MMS Hotel Management & Catering Technology, Architecture, M. Arch., Pharmacy (D. Pharmacy/B. Pharmacy, M. Pharmacy/PharmD), AICTE is the approving authority. Besides, the permission of the State Government is necessary. After getting approval, the college has to approach concerned university for affiliation. All the courses are not university courses, For example, Polytechnic, D. Pharmacy, Hotel Management and Catering Technology. The*



university does not control / manage these courses and therefore, does not grant affiliation. Thus the college may have Polytechnic, B.E., M.E, M. Pharmacy, B. Pharmacy and D. Pharmacy recognized and approved by the competent authority. But only B.E., M.E, M. Pharmacy, B. Pharmacy can be affiliated but not Polytechnic, D. Pharmacy. In common parlance, we can say that Polytechnic and D. Pharmacy are not university courses".

Mr. Kotwal, the Under Secretary representing the Department of Medical Education and Drugs conceded that the aspect of the course to be affiliated to the University referred and discussed in the resolution dated 04/09/2019 was not considered and discussed in the opinion of the Law and Judiciary Department. He submitted that he will appraise the factual and legal position to concerned Officials of the Medical Education Department & Department will take the appropriate decision.

The Authority is of the firm view that the decision taken by the Fees Regulating Authority in its meeting held on 04/09/2019 is based upon due analysis of provisions of the Act of 2015. There is absolutely no error of law in taking said decision dated 04/09/2019. In absence of such courses being affiliated to the University, the Fees Regulating Authority acquires no jurisdiction to entertain and decide the proposal seeking approval of fees of such Diploma Courses. To entertain any such proposals on the request of the Medical Education Department would not only be illegal but ab-initio void and the same will not stand to the scrutiny of law if challenged in Court of law.

It was decided to confirm, ratify and stick up with the decision taken by the erstwhile Authority in its meeting held on 04/09/2019. It was further decided not to entertain any proposal seeking approval of fees in respect RANM & RGNM the Diploma courses run by Unaided Private Professional Institutions from the academic year 2022-2023 & onwards for want jurisdiction as per the decision taken by the Fees Regulating Authority in the meeting held on 04/09/2019.

Inform to all concerned".



Date : 13th April, 2022

Place : Mumbai

JUSTICE VIJAY L. ACHLIYA (RETD.)
CHAIRPERSON
FEES REGULATING AUTHORITY
STATE OF MAHARASHTRA