

**BEFORE DR. K.K. KATOCH, CHAIRMAN, H.P. PRIVATE EDUCATIONAL
INSTITUTIONS REGULATORY COMMISSION SHIMLA-171009.**

**Case No.: 05/2017
Instituted on: 18.11.2017
Reserved on: 5.12.2017
Decided on: 03.01.2018**

Rajinder Kumar Bansal r/o Jeet Automobiles, Railway road, Tohana, District Fatehabad.

... Complainant

Versus

Maharishi Markandeshwar University, Kumarhatti, District Solan (HP)-173 229, through its Registrar.

... Respondent

Present: Shri Ajay Singal, Registrar of respondent University in person.
Complainant did not appear.

ORDER

1. The complainant sent a complaint on 17.08.2017 through email followed by written submissions, which were received in the Commission on 19.08.2017 in which he stated that his daughter Ms Yashika is a 1st year student of MBBS for the Session 2017-18 in respondent University on the basis of counselling conducted by H.P. University. As per the Fee Structure notified by the Government vide Notification No. HFW-B(E)3-50/2016 dated 08.03.2017 alongwith schedule of counselling, the Fee payable for admission of his daughter was Rs. 10,39,500/- per annum. The said Fee was required to be charged in two equal half yearly instalments but the said College forced them to pay Fee of full year in advance contrary to the said stipulation. Further in the said notification, it was mentioned that the parent/ guardian of the student had to furnish Bank Guarantee equal to the Fees upto 2nd year at the time of admission but the proforma supplied to the students is that of Bank Guarantee of four years for a period of four years which is

contrary to the above mentioned notification. As he has already paid full fee of 1st year, he is required to furnish Bank Guarantee of second year Fee and that also upto the date of payment of the fee of 2nd year i.e. for a period of one year. Even this condition of furnishing Bank Guarantee is contrary to law. He submitted that he was not a rich man and intended to get Medical Education for his daughter by raising loans. He has already submitted Personal Bond of the requisite amount and also ready to deposit post dated cheques for the fees payable to College. But furnishing Bank Guarantee for fee of four years duration is an unnecessary financial burden on parents and would be unnecessary drain on financial capacity of parents who are already stressed. He further stated that the condition of furnishing Bank Guarantee has been repeatedly termed illegal by the various High Courts and Supreme Court of India where the students were permitted admission in a Private Dental College on the basis of Personal Bonds of parent/ guardian instead of Bank Guarantee being demanded by the Private College concerned for BDS Course. He requested to direct the said Maharishi Markandeshwar Medical College and Hospital, Kumarhatti-Solan to waive off this condition of furnishing Bank Guarantee to refund the fee of 2nd Half Yearly instalments already charged illegally and to accept post dated cheques of the fee upto second year from students. Post dated cheques are equal security against the risk sought to be covered for payment of fee of second year. The College may further be directed not to harass his daughter in this matter.

2. Since copy of complaint was also forwarded through email by the complainant to respondent University, as such on receipt of the complaint, the Commission vide letter dated 18.10.2017 directed the respondent University to inform the Commission about the action taken in the matter. In response the respondent University vide its letter dated 30.10.2017 stated that the student Miss Yashika d/o Shri Rajinder Kumar Bansal was granted admission in MBBS 1st year of the Session 2017-18 in MM Medical College & Hospital, Kumarhatti-Solan through the Central Counselling conducted by the H.P. University under the

Chairmanship of the Director, Medical Education & Research, H.P. Government, Shimla for which a Fee of Rs. 10,39,500/- was payable by the student. He further stated that as the MBBS course is not semesteric but annual, hence course fee is payable yearly. The Hon'ble Supreme Court of India in the case titled as Islamic Academic & others Vs. State of Karnataka & others has decided that the institutions can charge fee only for one year at the time of admission and shall not charge fee for the entire course in advance. Moreover, provision 7(a) of Chapter VIII (page 30); and 1 and 3C of Chapter-XI-Fees and Subscription of the Counselling Prospectus (page 33 & 34) issued on behalf of the Govt. of Himachal Pradesh, Department of Medical Education & Research, itself allows the institutions to charge fee for one year.

3. As regards the point of Bank Guarantee, there is stipulation in the Counselling Prospectus that the parent/ students shall have to furnish Bank Guarantee equal to the fees upto 2nd year at the time of admission in the College. It may be mentioned here that the Hon'ble Supreme Court in the *ibid* case has allowed Institutes to obtain Fee of the course yearly and Bank Guarantee for fee amount equal to the fee of the remaining period of the course instead of asking the students to pay fee for the entire course at the time of admission. The furnishing of Bank Guarantee is concerned with the payment of fee and admission of a student who fails to furnish Bank Guarantee equal to the fees upto 2nd year within fifteen days of the admission, is liable to be cancelled as per the admission rules mentioned in the prospectus. It is submitted that as per the law laid down by the Hon'ble Supreme Court, in case of *Amardeep Singh Sohata Vs. State of Punjab, 1993 (4) S.C.T. 328*, the Prospectus has the force of law and has to be strictly followed. Miss Yashika's father Shri Rajinder Kumar Bansal had requested the University on 29-07-2017 for time to furnish Bank Guarantee which depicts that they were alive to the fact that Bank Guarantee equal to the fee upto the second year was payable for valid admission. The complaint is thus an afterthought. He further stated that MM Medical College & Hospital, Kumarhatti-Solan is a

constituent Institute of the Maharishi Markandeshwar University and has adhered to all the instructions/ directions issued by the State Government from time to time and looking from any angle, the Institute has not committed any wrong. He requested that the complaint be allowed to be filed.

4. Feeling dissatisfied with the reply submitted by the respondent, the Commission vide its Notice dated 18.11.2017 called the respondent University through its Registrar to appear before the Commission on 5.12.2017 on which date Shri Ajay Singal, Registrar MMU appeared in person. Complainant did not appear, despite notice. Shri Singal stated that State Government finalises the Prospectus for both State and Private Medical Colleges which is issued by the HPU. He further stated that the Fee and Bank Guarantee have been demanded as per provisions of the Prospectus. He submitted Prospectus applicable for 2017-18, copy of letter No. HFW-B(E)3-50/2016 dated nil issued by Principal Secretary (Health) to the Government of HP to ACS (Education) to the Government of HP; Copy of letter dated 13.06.2017 issued by MMU to ACS (Education) to the Government of Himachal Pradesh; copy of down loaded excerpts of judgment in various SLPs, excerpts of judgment in the case of Islamic Academy of Education Vs. State of Karnataka, down loaded judgment of Punjab-Haryana High Court in CWP No.6420. He insisted upon clause III. 1(e) of the HPU Prospectus which is described as under:

(ii) The fee shall be charged in two equal half yearly instalments by the college concerned. However, the parent/students shall have to furnish bank guarantee equal to the fees upto 2nd year at the time of admission in the college.”

5. The documents submitted were taken on record and Orders in the matter were reserved. I have gone through the documents submitted and before arriving at a logical conclusion, the status of the University and fee structure finalized by the competent authority is to be gone through.

Status of Maharishi Markandeshwar Medical College & Hospital:

6. Maharishi Markandeshwar University has been established under Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 enacted by H.P. State Legislative Assembly. After its establishment, the University approached Medical Council of India seeking approval for opening new Medical College at Kumarhatti-Solan Himachal Pradesh in the name and style of “Maharishi Markandeshwar Medical College & Hospital, Kumarhatti, Solan, Himachal Pradesh” which permission was accorded by the MCI vide its letter of permission No. MCI-34(41)(E-46)/2013-Med./21215 dated 14.07.2013 and started medical (MBBS) courses. Thereafter the matter cropped up whether Maharishi Markandeshwar Medical College and Hospital is a separate Institution under Maharishi Markandeshwar University or its integral part. Section 7 of MMU (E&R) Act, 2010 clearly mentions, *“the University shall have no power to affiliate or otherwise admit to its privileges and other institution.”* Therefore, Maharishi Markandeshwar Medical College & Hospital (hereinafter referred to as MMMC&H) was directed by the State Government to get itself affiliated to H.P. University. However, MMMC&H preferred CWP No.4773 of 2015 before Hon’ble High Court of Himachal Pradesh which was dismissed on 20.12.2016. It is relevant to mention here that the aforesaid Writ Petition was filed by the MMMC&H and MMU by challenging the validity of Sections 3(6), 3(6a) and 3(6b) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 as amended vide amendment Act No.24 of 2015. The Hon’ble High Court also rejected the prayer of the petitioners to issue directions to the concerned authorities that the MMMC&H or any other Institution of medical stream to be started by the petitioners be governed only by the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010. The judgment of the Hon’ble High Court was assailed by MMMC&H & others before Hon’ble Supreme Court of India in SLP (Civil) No. 9837 of 2017 which was later on registered as Civil Appeal No.5198 of 2017 titled

Maharishi Markandeshwar Medical College and Hospital & others versus State of Himachal Pradesh and others. The appeal was accepted by the Hon'ble Supreme Court thereby setting aside the impugned judgment dated 20.12.2016 passed by Hon'ble High Court. Section 3(6a) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 has been struck down being irrational, unreasonable, *ultra vires* and unconstitutional. Further it has been directed that the Regulatory Authorities shall forthwith proceed in the matter without insisting for an affiliation of the Appellant No.1-College (a constituent college of appellant No.2- University) from the Himachal Pradesh University.

7. It has clearly been laid down by Apex Court that MMMC&H is an integral part/ constituent of MMU. In view of this the provisions of MMU (E&R) Act shall apply in toto, which includes Fee Structure. Section 32 of MMU Act reads as under:

“32. Fee structure.-(1) the University may, from time to time, prepare and revise its fee structure and send it to the Government for its approval and the Government shall convey the approval within three months from the receipt of the proposal:

Provided that if the approval of the government is not conveyed within three months, it shall be deemed to have been approved by the Government:

Provided further that the fee structure for each course shall be decided before the issue of prospectus and shall be reflected in the prospectus:

Provided further that the fee structure shall not be revised or modified during the academic year.

(2). The fee structure prepared by the University shall be considered by a committee to be constituted by the State Government, in the manner as may be prescribed, which shall submit its recommendations to the Government after taking into consideration whether the proposed fee is,-

(a) sufficient for generating—

(i) resources for meeting the recurring expenditure of the University; and

(ii) the savings required for the further development of the University, and

(b) not unreasonably excessive.

(3) After receipt of the recommendations under sub-section (2), if the Government is satisfied, it may approve the fee structure.

(4) The fee structure approved by the Government under sub-section (3) shall remain valid until next revision.”

8. The Government of Himachal Pradesh vide its notification dated 28th August, 2017 fixed fee for MBBS students of respondent University for the Session 2017-18 to 2021-22 as under:

	Fees for the session 2017-18 in two equal instalments.
IRDP/BPL candidates	44,000/-
State Quota	Rs. 7,00,000/-
Management Quota	Rs. 12,00,000/-
NRI quota	USD 28,980/-

9. Further in supersession of above notification the State Government vide notification dated 5.9.2017 revised the fee structure and subsequently issued letter to Registrar MMU in September, 2017 conveying the decision of Hon'ble High Court of Himachal Pradesh in CWP No.1502 of 2017 titled Maharishi Markandeshwar University and another Vs. State of Himachal Pradesh and others dated 31.8.2017 wherein the petition was disposed of as withdrawn. In view of the above, the relevant portion of the decision of the Committee was reproduced and was reiterated as under:

“The fee for MBBS course State Quota will be Rs. 7,00,000 and Rs. 12,00,000/- for management quota for the session 2017-18 thereafter there shall be a hike @ 10% per year as per table Annexed.”

10. On the representation of the complainant, the Directorate of Medical Education & Research Himachal Pradesh Shimla-9 has affirmed the Fee Structure

fixed by the State Government vide notification dated 5.9.2017. The Fee Schedule is as under:

	Fee for session 2017-18 annually in two equal instalments.
IRDP/BPL candidates	Rs. 44,000/-
State Quota	Rs. 7,00,000/-
Management Quota	Rs. 12,00,000/-
NRI Quota	USD 28,980/-

It has further been clarified that in the said notification there is no provisions for taking Bank Guarantee from student.

11. From the facts discussed above, the following issues emerged for consideration and my findings against each are as under:

1. When Maharishi Markandeshwar Medical College & Hospital has been held constituent of Maharishi Markandeshwar University well before commencement of Academic Session 2017-18 and there is no necessity to affiliate MMMC&H with H.P. University, has the MMU rightly adopted Prospectus of HPU for admission in MBBS course in MMMC&H?

The Hon'ble Supreme Court vide its judgment dated 28th April, 2017 rendered in Civil Appeal No.5198 of 2017 (arisen out of SLP (Civil) No.9837 of 2017) titled Maharishi Markandeshwar Medical College and Hospital & Others Versus State of Himachal Pradesh & Others has already held that MMMC&H is constituent of MMU. The version of Registrar of respondent University that State Government finalises the Prospectus for both State and Private Medical Colleges which is issued by the HPU can be considered correct in so far as issuance of Prospectus is related to Private Medical Colleges affiliated to the HPU and not as a whole including MMMC&H. MMMC&H has been established as a constituent of MMU meaning thereby that there is no requirement of affiliation with HPU, as such, respondent cannot take any benefit of the terms and conditions prescribed in Prospectus issued by HPU. Moreover after pronouncement of the judgment dated 28.4.2017, there was ample time for the MMU to finalize its own Prospectus and get the same approved from State Government but the respondent did not care to take any step in this direction which clearly smacks malafide on the part of MMU as it had been intending

to take benefit of such terms and conditions which were not applicable to it at all. In these circumstances, the Prospectus of HPU has no force of law in so far as MMMC&H is concerned, therefore, my finding is that MMMC&H has not correctly adopted Prospectus issued by HPU for admission in MBBS Course, as the terms and conditions contained in the Prospectus of HPU are not applicable to the students for the session 2017-18 or even earlier.

2. If the answer to Issue No.1 is in negative, is it not imperative for the MMU to devise and float its own Prospectus for admission in MMMC&H besides other courses?

In view of my findings against Issue No.1 MMU should devise its own Prospectus for admission in MBBS course as well as other courses. The Prospectus be submitted to the State Government for its consideration so that the same is approved well before commencement of the Sessions.

3. If, as per provisions of Section 32 of the MMU Act, the fee has been approved/ decided by the State Government, is it not obligatory on the part of the MMU to comply with said Fee Structure and terms and conditions thereof in toto?

The State Government vide notification dated 5.9.2017 revised the fee structure and subsequently issued letter to Registrar MMU in September, 2017 conveying the decision of Hon'ble High Court of Himachal Pradesh in CWP No.1502 of 2017 titled Maharishi Markandeshwar University and another Vs. State of Himachal Pradesh and others dated 31.8.2017 wherein the petition was disposed-off as withdrawn. The State Government forwarded the relevant portion of the decision of the Committee to the respondent University which reads, ***"The fee for MBBS course State Quota will be Rs. 7,00,000 and Rs. 12,00,000/- for management quota for the session 2017-18 thereafter there shall be a hike @ 10% per year as per table Annexed."*** Moreover, Director Medical Education & Research Himachal Pradesh has not only affirmed the Fee Structure fixed by the State Government vide notification dated 5.9.2017 but also clarified that in the said notification there is no provision for taking Bank Guarantee from student. Therefore, my finding is that it is obligatory on the part of the MMU to comply with all terms and conditions of the Fee Structure approved by the State Government. The fee should be charged and collected strictly in terms with the stipulations contained in Fee Structure.

Any deviation is liable to be dealt with in accordance with the penal provisions of the H.P. Private Educational Institutions (Regulatory Commission) Act 2010 and Rules framed thereunder.

4. When there are no directions from the State Government with regard to obtaining Bank Guarantee, is it not imperative for the MMU to release Bank Guarantee of all the students of MBBS?

MMU/MMMC&H cannot adopt the Prospectus of HPU being not affiliated to HPU. The State Government has not issued any directions with regard to obtaining Bank Guarantee /Personal Bond of any amount to the respondent University. All the practices undertaken by respondent University with regard to obtaining Bank Guarantee equivalent to fee upto 2nd year are illegal, unconstitutional, arbitrary against law, hence the Bank Guarantee deserves to be released forthwith in all the cases.

12. In view of my findings against each issue, the following orders are passed:
 - (1) The MMU is directed to stick to the instructions contained in Fee Structure as submitted in letter No. EDN-A-Ka(5)-26/2016-L dated 05.09.2017. If the fee for 2nd year has been collected, the same should immediately be refunded to the complainant as well as all students/parents by 01.02.2018 under proper receipt and necessary statement accompanying affidavit in support thereof be furnished to the Commission, failing which provisions of Section 11 of the HPPER Act 2010 read with Rule 6(b) shall be invoked.
 - (2) MMU is directed to release Bank Guarantees of all the MBBS students under proper receipts, as the same has been obtained unauthorizedly. The statement of release of Bank Guarantee together with signatures of respective students/parents should be submitted to the HPPER within a period of one month i.e. by 02.02.2018 and necessary affidavit of compliance be furnished in support thereof on or before 02.02.2018. If respondent fails to release Bank Guarantees, the Guarantee amount in each case shall be treated as part of the fee collected by the respondent over and above the fee fixed by the State Government and penalty shall be imposed in terms of Sections 11 of the Act 2010 read with Rule 6(b).

- (3) MMU is directed to prepare its own Prospectus for future in consonance with the directions/ guidelines issued by the Regulatory Bodies and State Government from time to time clearly mentioning Session, details of faculties alongwith their qualifications, seats available (IRDP/State Quota/ Management Quota/NRI quota/Physically Handicapped Quota etc.), infrastructure, Fee Structure including Hostel Fee and other charges duly approved by the State Government, Refund of securities etc.

Copies of the Orders be supplied to both the parties.

Copies of the Orders be supplied to the following:

1. The Pr. Secretary (Health) to the Govt. of Himachal Pradesh, Shimla-2 for information and necessary action.
2. The Secretary (Hr. Education) to the Govt. of Himachal Pradesh, Shimla-2 for information and necessary action.
3. The Director, Medical Education & Research, SDA Complex Kasumpti, Shimla-9 for information and necessary action.
4. The Registrar, Himachal Pradesh University, Summer Hill, Shimla for information and necessary action.

Orders be uploaded on website of the Commission.

In default of the compliance of the orders, the case file be submitted on 03.02.2018 for imposing penalty on the respondent.

Announced.

Sd/-
(Dr. K.K. Katoch)
Chairman