IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

W.P. NO. OF 2016

Between

1) Chaitanya Bharathi Institute of Technology Society
Registered under A.P. Societies Registration Act.No. 35 of 2001,
represented by its President, Dr. V. Malakonda Reddy,
S/o. V. Obul Reddy, Aged about : 87 years,
CBIT Campus, Kokapet Village,
Rajendra Nagar Mandal, R.R. District, Hyderabad – 500 075.

2) Chaitanya Bharathi Institute of Technology ,
represented by its Principal, Dr. B. Chennakesva Rao,
S/o. B. Guru Swamy, Aged about : 51 years,
CBIT Campus, Kokapet Village,
Rajendra Nagar Mandal,
R.R. District, Hyderabad – 500 075.

….Petitioner

And

1) The State of Telangana
Higher Education (TE/A2) Department
represented by its Special Chief Secretary to Government
Secretariat, Hyderabad.

2) The Telangana Admission and Fee Regulatory Committee
2nd Floor, J.N.A & F.A.U Campus,
Opp. Mahaveer Hospital, Mahaveer Marg,
MasabTank, Hyderabad 500 028,
represented by its Member Secretary.

3) Telangana State Council of High Education rep.
By its Secretary, 1st Floor, JNTU Masab Tank Campus,
Mahaveer Mar, Opp. Mahaveer Hospital, Hyderabad-
500 028

4) Osmania University rep. by its Registrar
Osmania University, Hyderabad-500 007

….Respondents

A F F I D A V I T

I, Dr. V. Malakonda Reddy, S/o. V. Obul Reddy, aged about 87 years, President of the first Petitioner Society herein, R/o. H.No. 8-2-

693/2/26 & 27, Mithila Nagar, Road no. 12, Banjara Hills, Hyderabad – 500 034, do hereby solemnly affirm and sincerely state on oath as follows:-

1) I am the President of the first petitioner society herein and as such I am well acquainted with the facts of this case. I am also authorized to swear to this affidavit on behalf of the second petitioner institution.

2) I, respectfully submit that the present Writ Petition is filed challenging G.O. Ms No. 21 dated 4/7/2016, issued by the 1st respondent, whereby the 1st Respondent notified the fee structure in respect of the under-graduate engineering courses (B.E./B.Tech) imparted by the petitioner institution at Rs. 1,13,500/- per student per annum for the Block period of 2016-17 to 2018-19 as opposed to the proposal submitted by the Petitioners seeking the notification of the said fee for the under-graduate Engineering courses at Rs.2,59,867/-, purportedly on the recommendations of the 2nd respondent, as arbitrary and illegal, ultra vires the power of the 2nd respondent in terms of G.O. Ms. No. 6, dated 8/1/2007 and for consequential direction to the Respondents to fix and notify the fee in respect of second Petitioner Institution as sought for in its proposal dated 29/1/2016. The challenge in the present Writ Petition is limited to the fixation of fee by the Respondents in respect of B.E./ B.Tech Courses.

3) It is submitted that the second Petitioner institution is an un-aided technical Institution in the Private sector imparting education in B.E. / B.Tech. Under Graduate Engineering Courses, MBA, MCA and M.E. / M.Tech Programmes in the State of Telangana having been granted approval therefor by the Third Respondent. The Second Petitioner

institution is affiliated to the Fourth Respondent. The second Petitioner is an institution established in the year 1979, and is one of the premier institutions in the state of Telangana having been ranked by National Institutional Ranking Framework, Ministry of Human Resource Development, Govt. of India to be 71st among the top 100 Engineering Colleges in India (including those in the Government sector) and ranking as No.1 among all the Professional Colleges in the Private Sector in the State of Telangana. The second Petitioner institution has secured renewals of approvals ever since and for the academic year 2016-17, the second petitioner institution has been granted approval by the All India Council for Technical Education (AICTE), New Delhi, vide its proceeding dated 25th April, 2016 with an intake as under:

Under Graduate Engineering Courses :-

1) Bio-Technology	-	60
2) Chemical Engineering	-	60
3) Civil Engineering	-	120
4) Computer Science & Engineering	-	180
5) Electrical and Electronics Engineering,	-	120
6) Electronics and Communication Engineering	–	180
7) Information Technology	-	120
8) Mechanical Engineering	-	120
9) Production Engineering	-	60

Post Graduate Engineering Courses:-

1) CAD – CAM	-	25
2) Communication Engineering	-	18
3) Computer Networks & Information security	-	18
4) Computer Science Engineering	-	36
5) Earthquake Engineering	-	18
6) Embedded Systems & VLSI Design	-	18
7) Power Systems and Power Electronics	-	18
8) Structural Engineering	-	25
9) Thermal Engineering	-	18
10) Master of Business Administration	-	120
11) Master of Computer Applications	-	60

The second Petitioner institution has since been granted affiliation by Fourth Respondent as well as Third Respondent for the current academic year 2016-17 for all the above courses approved by AICTE, New Delhi.

4) On legal advice, it is submitted that the Hon'ble Supreme Court in the TMA Pai Foundation case, reported in 2002 (8) SCC 481 entitled a Private Unaided Professional Institution to have autonomy in respect of its own management and administration, and more particularly described as an essential ingredient of such autonomy, the right to charge a quantum of fee—which right was vested in the unaided self-financing institution, which does not depend upon any aid from the State. In the case of Islamic Academy of Education reported in 2003 (6) SCC 697, a case which sought to harmonise the diverse interpretations emanating from the judgment in TMA Pai Foundation, the Hon'ble Supreme Court categorically held that while each educational institution could have its own free structure, such institution's fee structure must be fixed bearing in mind the factors which are relevant and specific to a particular institution, such as

a) Location,

b) Year of establishment,

c) Credentials established in respect of the said institution,

d) the experience of the faculty engaged by the said institution

e) the nature and quality of the infrastructure made available by the said Institution

Further, the Hon'ble Court directed that a neutral body in the form a Committee, whose composition had been enumerated in the said judgment, is to be created and the procedures to be followed by the educational institutions to have their proposed fee structure approved. Accordingly, statutory recognition was granted to the 2nd respondent vide G.O. Ms. No. 6 HE (EC-2) Department dated 8/1/2007. A copy of the pertinent Rules made under Act 5 of 1983 comprehensively providing for the procedure to fix fee is filed herewith as material documents.

5) It is respectfully submitted that having regard to the vagaries involved in the functioning of the said Committees which came into being and the erroneous decision-making-processes of the said Committee, the entire issue of the working of the said Committees came up for consideration before the Hon'ble Supreme Court in the case of P.A. Inamdar vs State of Karnataka. In the judgement reported in 2005 (6) SCC 537, the Supreme Court further elaborated on the contours of jurisdiction of the 2nd respondent and the limitation on such power in the matter of fixation of fee.

6) It is submitted that the predecessor State of A.P. respondent provided the above statutory basis to the mechanism provided to be dealt with by the two committees designating the same as Admission and Fee Regulatory Committee under Rules framed in G.O. Ms. No. 6 dated 8/1/2007. The successor State of Telangana, adapted the said statutory rules and reconstituted the Fee Regulatory Committee vide G.O. Rt. No. 160 dt. 22.7.2015, the 2nd respondent herein. The statutory rules delineating the substantive rigour of the procedure to be followed by the said Committee in the course of the process of fixation of fee has since been adapted by the 1st and 2nd respondents without any modification. The said statutory Rules, enumerated the procedural mechanism informing the

decision making process of the said committee in regard to the matters concerning admission and fee to be charged by the Unaided Professional Institutions. Rule 4 of the said Rules delineates the process and procedure by and under which the 2nd respondent shall perform the duties assigned to it under the statutory rules. It is relevant to mention herein that the role and the function assigned to AFRC is only limited to the extent of approving, modifying or rejecting the fee proposals submitted by the professional institution, with the sole objective of ensuring that there is no profiteering and charging of capitation fee and does not extend to empowering the AFRC to fix the fee by itself as held by this Honourable Court in the judgement in the case of Consortium of Engineering Colleges Managements Association Hyderabad and others vs Government of Andhra Pradesh and others reported in 2013(3) ALD 572(DB) . This Honourable Court elaborately dealt on the limitations and the functional processes to be adopted by the 2nd respondent before adjudging on the proposal submitted by an institution. Vide the impugned exercise undertaken by the 2nd respondent, culminating in the issuance of the impugned G.O. by the 1st respondent, the law declared by this Honourable Court and the directions contained therein, have been disobeyed and defied to justify the perverse and unilateral recommendations of the 2nd respondent.

7) It is respectfully submitted that the notification of the fee structure for each of the courses of study imparted by various institutions in the State, is a duty cast on the 1st respondent under the provisions of A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act 1983 in Act 15/1983. By virtue of the above judgments and the statutory G.O. Ms. No. 6, dated 8/1/2007, the 2nd respondent is

consecrated with the power of recommending appropriate fee structure to the 1st respondent on the basis of the material furnished by each of the college in justification of their proposals and on the basis of the recommendations of the 2nd respondent, the 1st respondent exercises its power under Section 7 of Act 15 of 1983.

8) It is respectfully submitted that ever since the constitution of the committee, in 2003, a unilateral procedure was being followed whereby without reference to any of the uniqueness of the institutions, such as its location, amenities, pre-eminence, a common fee structure for all the institutions in the State was being fixed until the year 2010. Repeating the same illegality, for the block period of 2010-11 to 2012-13, on the basis of the recommendations of the AFRC, a uniform fee was being notified by the 1st Respondent in respect of all the institutions in the State, imparting a particular programme, duly factoring in cross-subsidy of the fee by one category of seats for another. The fee so fixed was different for "A" category seats in the colleges which comprised 70% of the intake and for "B" category seats which were styled as Management quota seats. The fee fixed for "B" Category seats was three times the fee fixed for "A" category seats as a measure of cross-subsidy of different categories of seats. This differential fee structure fixation among other aspects was the subject matter of challenge in the batch of WPs which resulted in this Hon'ble Court's Judgment reported in 2013 (3) ALD 572. The petitioners herein were then constrained to file W.P. No.20535 of 2010 challenging the fee structure for the said block period at Rs.1,05,000/- per student per annum which was disposed of by the said common judgment. This Hon'ble court directed the 2nd respondent herein to clearly and specifically

workout and specify the per capita cost of education for each course of study in respect of each institution, duly considering the infrastructure and facilities available; the investments made; the salaries paid/ payable to the teachers and staff; and factor a reasonable surplus towards future development / expansion, maintenance of pace of development and / or betterment of the institution. Further, the Hon'ble Court held that the 2nd respondent cannot transgress the laws laid down in TMA Pai Foundation 2002 (8) SCC 481, Islamic Academy of Education, 2003 (6) SCC 697 and PA Inamdar, 2005 (5) ALT 1 (SC) in so far as the Hon'ble Supreme court has granted operational autonomy to every institution to devise its own fee structure. Finally, this Hon'ble Court held the exercise of the respondents in fixing a differential fee within the same college and fixing a Universally common Fee for all colleges as illegal and not in accordance with the Hon'ble Supreme Court decisions.

9) It is submitted that the said judgment of the Division Bench of this Hon'ble Court was challenged in appeal before the Hon'ble Supreme Court by the respondents in SLP (C) Nos. 34050 to 34080 of 2011. The Hon'ble Supreme Court of India, by order dated 6/1/2012, had stayed the operation of the direction of this Hon'ble Court which mandated re-fixation of fee for the academic year 2010-11 also. It is submitted that during the course of hearing of the SLP, interim directions were issued for facilitating the notification of the process of fixation of fee for the academic year 2012-13. In a process notified for the above purpose, which decision making process was also vitiated by various errors in the matter of consideration of various proposals submitted by various institutions, interim reports were got prepared by the 2nd respondent in justification of its

acceptance of proposals in respect of a few institutions. The said SLPs are still pending.

10) It is submitted that for the Block Period of 2013-14 to 2015-16, the predecessor entity of the 2nd respondent has embarked upon a similar process of fixation of fee resulting in issuance of G.O. Ms. No. 57, dated 6/7/2013, wherein the annual tuition fee for B.E. / B.Tech. courses in the 2nd petitioner institution was fixed by the 2nd respondent at Rs.1,13,300/-, as against the proposed quantum of Rs.1,75,000/- proposed by the 2nd petitioner institution and the same is subject matter of challenge by the petitioners herein before the Supreme Court of India vide WP No.567 of 2013 which is still pending.

11) For the current Block period 2016-17 to 2018-19, the 2nd respondent embarked on a process similar to the process initiated in the academic year 2013-14 by issuance of notification and enclosing thereto an annexure prescribing the format in which the said information is required to be submitted by the individual colleges conforming to the formulae and the format prescribed therein. It is however necessary to mention herein that the said information and the formulae provided thereunder do not envisage factoring relevant parameters which will include the right of the management to seek proportionate recovery of capital expenditure, parameters and figures of expenditure already incurred for the further expansion of infrastructure of the college with incremental proposals forecast for enhancement of the said expenditure in the future academic years. The format and the schedule of information did not make any provision for factoring in the future obligation of the institution such as

on the heads of enhanced limits of gratuity payable by virtue of amendments to Payment of Gratuity Act, 1972, accommodate the expenditures to be incurred by the institution to pay-off the arrears in regard to statutory dues, obligation of the institution to make a higher outlay for accommodating the increase in the salaries imminently implementable on account of the 7th Central Pay Commission (Revision) Recommendations, pending with the Union of India.

12) In response to the notification issued by the 2nd respondent, the petitioners submitted its proposal on 29.01.2016 proposing a fee of Rs.2,59,867/- as far as the under-graduate engineering courses are concerned for the block period under consideration. The proposal submitted by the petitioners alongwith the enclosures justified each and every head of expenditure alongwith evidence of the said expenditure in accordance with the accounting norms prescribed by the respondents. The proposal inter alia, included accommodation of the higher expenditure liable to be incurred by the petitioner institution on account of the imminent increase in expenditure relatable to the teaching faculty consequent on acceptance of VII Pay Recommendations by the Central Government, among other things.

13) In pursuance of the proposal submitted by the institution, by letter dated 1/3/2016 the 2nd respondent called upon the petitioners for submission of audited accounts of the Society which established the Petitioner Institution. On behalf of the petitioner institution, the Principal of the College, met the administrative officer of the 2nd respondent indicating that the audited statements of the Society (1st petitioner herein) and the

2nd Petitioner College are one and the same, which was acknowledged by the 2nd Respondent. After preliminary exercise purportedly undertaken by the 2nd respondent another letter dated 24/3/2016 was addressed by the 2nd respondent calling upon the petitioner to clarify the following issues in respect of the proposal made by the petitioner for undergraduate engineering courses as under :

(a) An amount of Rs. 7,95,14,504/- is claimed as gratuity expenses for FY-2015-2016 in schedule 8 against Rs.97,86,684/- incurred in 2014-15. Please provide documentary evidence for this expenditure along with the calculations for gratuity provisions made, if any, in accordance with the Payment of Gratuity Act.

(b) The justification for the proposed increase in the expenditure in relation to administration expenses for B.E. / B.Tech Courses towards lab maintenance and repairs to building wherein there is a 39% increase in Lab Maintenance and 250% increase in Repairs to Buildings.

14) In response to the above letter received on 1/4/2016 by the petitioner, the petitioner submitted a detailed representation on 4/4/2016 explaining the circumstances in which the petitioner incurred the higher actual expenditure towards defraying the legitimate statutory dues and its arrears in respect of its teaching staff. The increase in the expenditure had occasioned on account of the increase in the maximum gratuity limit notified by the Government of India in the financial year 2010 which has not been factored in the previous academic year. Since the monies

including the part dues arising from the statutory amendments therefor, had to be complied with by the petitioner institutions all the accumulated amounts arising from such enhanced gratuity limit had been paid for in the financial year 2015-16 the evidence in regard to which had been made available to this 2nd respondent. It is relevant to submit herein that the petitioner has an alternative mode of payment of gratuity, as enabled under the Payment of Gratuity Act, 1972 whereunder, by virtue of the insurance policy with Life Insurance Corporation, the petitioner remits yearly premium in respect of all the staff, who are entitled to gratuity, on their retirement, which amounts would be disbursed by the LIC to such employee, on making of a claim. The list of the staff covered by the said policy is indicated in the said policy coverage. It is necessary to submit herein that the maximum gratuity limit for teaching staff is enhanced to Rs. 10,00,000/- and in respect of non-teaching staff the maximum gratuity limit has been enhanced from Rs. 8,00,000/- to Rs. 12,00,000/-, vide G.O. Ms. No. 99 dated 21/7/2015. The petitioner had accumulated arrears in respect thereof, in view of the fact that the enhanced limits were not factored in to be recovered from the fee structure of the students, in the earlier academic years and accordingly paid the premium to the Insurance company in the financial year 2015-2016, which is an actual expenditure incurred by the Institution. It is relevant to submit herein that in respect of the teaching staff, there is a proposal to enhance the gratuity limit to Rs. 20.00 lakh which is likely to be introduced by way of a legislative amendment, consequent on the recommendations of the VII Pay Commission.

15) As regards the administrative expenses, the petitioner indicated the justification in respect of the higher expenditure incurred in

2015-16 as regards repairs to building and lab maintenance . The petitioner in its letter dt. 4.4.2016 provided the factual evidence and justification of the higher expenditure incurred towards the said heads. The basic necessity in lab maintenance and repairs had to be secured on the efficient running of the institution and the wear and tear in regard to the building had to be addressed inevitably.

16) It is submitted that On 4/4/2016 a preliminary hearing in regard to the proposal submitted by the Institution was undertaken in the presence of the Consultant of the AFRC, Sri. V. Rama Rao in ascertaining the various inputs of the proposal of the petitioner. In another meeting held on 6.5.2016, during the course of interaction, it was intimated to the petitioner by the Chairman Retd. Justice P. Swaroop Reddy, consultant Sri. V. Rama Rao who after conferring with their Auditors M/s. G.V. Laxman Rao, Chartered Accountants, that the expenditure in regard to the following would be disallowed. Notwithstanding the repeated justifications offered by the petitioners in relation to the expenditure which is actually incurred and the limited powers of the AFRC in relation to evaluation of the proposal submitted by the petitioners, the 2nd respondent persisted with its conclusion to disallow without any rationale the following expenditures tabulated in the tabular column below which were actually incurred by the petitioners and evidenced by their Accounts and those expenditures which the petitioners will entail in the block period 2016-17 to 2018-19.

Amounts disallowed by TAFRC during the hearing on 06.05.2016 while fixing fee for the block period 2016-17 to 2018-19:

Sl. No.	Particulars	Total amount expended in 2015-16 or total amount	Disallowed Amount per Annum	Disallowed Amount for three years in	Reduction in annual tuition fee per student for the block

		proposed per annum in the block period 2016 to 2019	(Rs. In lakhs) as per actuals	the block period 2016 to 2019 (Rs. In lakhs)	period 2016 to 2019 over 6120 students due to disallowance (Rs.)
1.	The Non-teaching staff salaries actually expended in the year 2015-16 was disallowed by TAFRC to the extent of the amount over and above 1/3rd of the total of teaching staff salaries in 2015-16	1147.91	466.52	1399.56	22,868
2.	The proposed increase in Teaching Staff Salaries in the block period 2016 to 2019 due to the 7th Central Pay Commission recommendations with effect from 01.01.2016 was totally disallowed.	**337.29**	407.03 (Fresh claim @23.55 %)	1221.09	19,952
3.	Even though the expenditure incurred during the block period 2013-14 to 2015-16 shows an inflation / escalation of 15.74% over the block period 2013-14 to 2015-16 but the TAFRC during hearing allowed only 10% escalation and disallowed 5.74% escalation in the recurring expenditures for the block period 2016 to 2019.	770.91	363.30	1089.90	17,808
4.	Even though the petitioners provided an additional Commitment for the block period 2016 to 2019 on account of enhancement of Gratuity limit for Teaching Staff from	Proposed as part of 30% increase in teaching staff salaries as per 7th CPC	251.02	753.06	12,305

	Rs.10 lakhs to Rs.20 lakhs based on 7th CPC recommendations, but the TAFRC during hearing disallowed it totally.				
5.	Even though the petitioners claimed 25% on the recurring expenditure per annum towards infrastructure expenditure for the block period 2016 to 2019, the same was disallowed by TAFRC during hearing.	1284.86	1284.86	3854.58	62,983
6.	Fee reduced on account of disallowance of Legal expenses ((7.22x3)/6120) by TAFRC during hearing.	7.22	7.22	21.66	354
7.	Fee reduction due to furtherance of education component of 15% on the disallowed expenditures in rows 1 to 4 and 6 above.	-	-	-	5,932
8.	Fee reduced on account of other miscellaneous expenditures in the block period 2013 to 2015 which were disallowed by TAFRC during hearing	-			4,165
	Total				**1,46,367=00**

It is pertinent to submit herein that rows 1 to 4 in the tabular column herein above are expenditures which are accepted by the Second Respondent that they have been expended by the petitioners during the year 2015-16 or are those expenditures which will have to be expended by the petitioner during the block period 2016-17 to 2018-19, but which the Second Respondent has disallowed based on purported guidelines which are not applicable to the facts of the present case of the petitioners in the light of the catena of decisions of the Hon'ble Supreme Court in this regard. The amounts mentioned in rows 1 to 4 would have to be collected from the students, by the petitioners in addition to the annual tuition fee of Rs.1,13,500/- fixed by the Second Respondent.

17. It is necessary to submit herein that the reasons or the rationale behind the said conclusion of the Consultant and adopted by the Second Respondent was not furnished to the petitioner at any time prior to the said interaction nor were the recommendations of the Consultant furnished to the petitioner, as mandated in para 150 of the judgement rendered by this Honourable court in the case of CECMA reported in 2013(3)ALD 572. On 28/6/2016 the consultant to the 2nd respondent

Sri. V. Rama Rao, telephonically contacted the president of the 1st petitioner Society, Dr. V. Malakonda Reddy, calling upon him to affix his signature at the Second Respondent that the Petitioner is accepting a tuition Fee of Rs. 1,13,500/- failing which a low tuition of Fee of Rs. 1,06,000/- will be fixed. The alleged said fixation and acceptance of the annual tuition fee of Rs.1,13,500/- was inscribed in the hand writing of the employees of 2nd Respondent TAFRC in a register maintained by 2nd Respondent and the same under duress was acknowledged by the President of the 1st petitioner society "under protest". On 29/6/2016, the President of the 1st Petitioner Society was again summoned to the office of the 2nd respondent to strike off the words "under protest" in the register of the 2nd respondent which was complied with . It is relevant to submit herein none of those endorsements estop the petitioner from challenging the process by which the 2nd respondent had recommended fixation of the fee at Rs. 1,13,500/- per student p.a. as opposed to proposed fee structure of Rs.2,59,867/- per student per annum. It is necessary to submit herein that the recommendation of the 2nd respondent furnished to the 1st respondent had not been made available to the petitioner institution, which is the basis for issuance of impugned GO by the 1st respondent. On the basis of interaction between the petitioners and the officials of the 2nd respondent, the petitioners seek to challenge the basis underlying the impugned notification with liberty to challenge the recommendations of the 2nd Respondent to the 1st Respondent, if furnished to the petitioners at any stage during the hearing of the present Writ petition.

18. It is submitted that the impugned decision making process of fixation of annual tuition fee undertaken by the 2nd respondent culminating in the issuance of the impugned GO Ms. No. 21 dt. 04.07.2016 by the 1st respondent, on the basis of the purported recommendations issued by the 2nd respondent, by disallowing the heads of expenditure actually incurred and evidenced by the petitioner and disallowing the estimated expenditure arising from the acceptance of the Recommendations of the VII Pay Commission by the UOI is clearly ultravires the power and jurisdiction of the 2nd respondent as judicially held by this Honourable Court in the decision reported in 2013(3) ALD 572, and constitutes an infringement on the autonomy of unaided self financing institution to fix their own fee, vitiated by perversity and non-application of mind of the 2nd respondent into various relevant factors proposed by the petitioner institution and is liable to be declared as such on the following among other

Grounds

a) The 2nd respondent being a creation of subordinate legislation, a statutory Rule in GO Ms. No. 6 dt. 8.1.2007, as judicially interpreted by this Honourable Court in the judgement in the case of CECMA reported in 2013(3)ALD 572, is obligated to confine itself to the limited area of evaluation of the proposal, verify the expenditures claimed to have been incurred on the touchstone of ensuring non-profiteering and capitation, and not sit in appeal over the proposal submitted by the petitioner institutions. The recommendation disallowing the above expenditure is on the basis of an assumed appellate jurisdiction, over the college's right to fix its fee, which the 2nd Respondent is not empowered under law.

b) The impugned exercise is contrary to the elaborate direction issued by this Hon'ble court in the case reported in 2013 (3) ALT 572 inasmuch as the petitioners were not furnished with the tentative recommendations of the consultant or of the 2nd respondent on the basis of which, the 2nd respondent proposed disallowing of the fee for undergraduate engineering courses as proposed by the petitioners. The said decision making process, is oblivious to the directions issued by this Honourable court in para 150(x) and (xi) of the CECMA ruling delivered by this Honourable court and the law laid down by the Hon'ble Supreme Court.

c) The notice issued on 23/3/2016 by the 2nd respondent which was responded to by the petitioner on 04/04/2016 did not indicate the tentative reasons of the 2nd respondent for disallowing any or the quantum of the expenditure evidenced to have been incurred by the petitioner on various heads. The limited area of clarification sought was in regard to higher expenditure incurred towards gratuity and administrative expenses for the financial year 2015-2016 which was explained. The petitioner was therefore disabled from responding to the tentative reasoning underlying the reasoning if any, for the proposed disallowance of the expenditure actually incurred and the legitimate estimate made in respect of factoring in 7th Central Pay Commission recommendations.

d) The powers consecrated in the 2nd respondent are only to ensuring that there is no capitation fee or profiteering indulged in by the petitioners in the matter of submission of a proposal proposing the annual tuition fee structure to be collected from a student. Such a fact situation would occur only when an expenditure which is not incurred is sought to be factored in the proposal of fixation fee. The 2nd respondent did not dispute the factum of the incurring of the said expenditure by the institution towards each of the heads on the basis of which the proposal was made. The basis on which an amount of Rs.466.52 lakhs incurred as expenditure towards payment of salaries to non-teaching staff is a cap on the expenditure towards that head, being in excess of one-third of the salaries paid to the teaching faculty was not specified. There is no factual or legal justification for the imposition of the said cap on the salaries paid by the petitioner towards its non-teaching staff, and at no point in time in the past, was such a cap ever enforced. The impugned disallowance of payment of salaries to the non-teaching staff, to the extent of Rs. 466.52 lakhs, is tantamount to sitting in judgement over the assessment of the petitioners as regards the number of non-teaching staff required to be employed, the salaries therefor paid in terms of the 10th Pay Revision Commission of the State Government. Such an area of review is unprovided for in the powers of the 2nd respondent.

e) The disallowance of an amount of Rs. 407.03 lakhs per annum proposed by the petitioner institution, projected as an estimate of expenditure liable to be incurred by the petitioner henceforth, accommodating the obligation of compliance with the recommendations of the 7th Central Pay Commission for salaries towards teaching faculty, at 23.55% increase in such salaries, is perverse. Notwithstanding the imminence of the said acceptance and consequently the obligation of the petitioner to comply with the same, which was pleaded and specifically apprised to the 2nd respondent, the same was not taken into account. The UOI announced its acceptance of the 7th Central Pay Commission recommendations retrospectively effective from 1.1.2016 which obligates the petitioner to remit the arrears in respect thereof, which is an added obligation to be met from out of the fee structure to be fixed. Disallowance of the said expenditure, cumulatively amounting to Rs. 1221.09 lakhs for the block period, renders the petitioner college unviable to be run at the fee structure now notified for the under-graduate engineering courses. The obligation of the petitioner to implement the above recommendation was made known to the 2nd respondent in the representation dated 4/4/2016 and notwithstanding the same the said amount has been disallowed.

f) The 2nd respondent erred in not allowing an estimate of the expenditure liable to be incurred, by virtue of the imminent raise in the maximum amount of gratuity payable to teaching faculty from Rs.10.00 lakhs to Rs.20.00 lakhs proposed under the 7th Central Pay Commission, and which is likely to be introduced w.e.f. 1.1.2016 by a statutory amendment. The said estimate is a legitimate projection of an expenditure liable to be incurred by the petitioner as a mandate of law, with no exception, and forcing the petitioner college to defray such liability without factoring in the same, in the fixation of fee, is most untenable exercise in the eye of law. The 2nd respondent was under an obligation to make a provision for estimated expenditure on account of imminent supervening legislative interventions, as was proven in the case of rise in salaries now effective from 1.1.2016 and discarding the same, as an impermissible projection, would be contrary to the law laid down by this Honourable Court in the case of Nalanda Educational Society vs Government of AP reported in 2011(2) ALD 163.

g) The disallowance of an expenditure actually incurred by the petitioner on the escalation in expenditure, year on year, block over block, of an extent of Rs. 363.30 lakhs, which would be recurrent over the next block period commencing from 2016-2017, on the ground that the permissible percentage of escalation is only 10% towards such head, is clearly irrational and perverse in law. The expenditure claimed by the petitioner is the actual expenditure incurred and evidenced before the 2nd respondent and the cap on such expenditure being at 10% and consequent disallowance of the actual expenditure (which is 15.74% escalation in the previous Block period) on an assumed power of imposing a higher-ceiling on the said head, is impermissible in law. The area of evaluation statutorily made available to the 2nd respondent does not comprehend imposing ceiling-limit on any head of expenditure incurred by the institution relevant to the institution's objective of securing excellence. The said disallowance, impacts an expenditure of Rs. 1089.90 lakhs for the block period and impacts the viability of the institution in maintaining its administrative infrastructure and other core areas of excellence, which are the areas of distinction of the petitioner institution qua other institutions. The impugned action is tantamount to condemning the petitioner institution to lower levels of administrative and infrastructural compliances, contrary to the mandate of the law.

h) The 2nd respondent disallowed the accretion of 25% of the recurring expenditure towards infrastructure expenditure in the past academic years and also for the block period 2016 to 2019. Such a projection was made having regard to the needs of the College which are increasing having regard to the higher norms of infrastructure and faculty imposed by the regulatory bodies and also consistent with the needs of the institution to ensure optimal infrastructural amenities for the institution. Disallowing such estimated expenditure without any legal or factual justification therefor is wholly irrational and arbitrary. Consequently, the disallowance of 25% of the recurring expenditure towards infrastructure expenditure in addition to the other expenditure will curtail the growth of the institution and has led to a situation whereby the institution would not be able to plan and devise schemes for its constant upgradation and improvement consistent with the contemporary needs and requirements.

i) The action of the 2nd respondent in disallowing the expenditure actually incurred and evidenced by the petitioners towards legal expenses is most arbitrary and illegal. The legal expenses to contest those cases filed by students and staff, including the litigation to secure timely regulatory clearances and redressal, including the present W.P., is against an arbitrary State action in compromising institutional autonomy and the same cannot be construed as an expenditure irrelevant for the sustenance and growth of the said institution. An expenditure, incurred and evidenced, cannot be disallowed by the 2nd respondent on its value-judgement over the relevance of a certain expenditure qua the institution and in the instant case, the conduct of the 2nd respondent is in defiance of the settled legal position declared by this honourable court.

j) The decision-making-process of the 2nd respondent is orienting its functioning and processes so as to conform with the policy of the State in reducing the liability of the State towards the policy of fee reimbursement, militates against the very justification offered by the law Courts for the constitution of neutral bodies for the impugned exercise. The petitioner being a premier institution, slotted as 71st ranked institution, amongst the national institutes, secures admissions of students within the 10,000 rank amongst EAMCET rankers, all of whom are entitled to full fee reimbursement. Since the fee as claimed by the petitioner, if agreed to, would represent a proportional increase in the State's liability towards fee reimbursement, the legitimate expenditure incurred by the petitioners is disallowed, the estimates of expenditure towards future statutory liabilities is overlooked and a fee is fixed by the 2nd respondent, contrary to the limited power exercisable by it, as delineated by the law courts. The impugned action of the 2nd respondent in fixing the fee of the undergraduate courses of the petitioner college at Rs. 1,13,500/- per student per annum as opposed to 2,59,867/-, per student per annum is an exercise vitiated in law, and on facts by perversity.

Rest of the grounds as would be urged at the time of hearing.

19. I respectfully submit that the counseling and allotment of students for the current academic session has commenced from 5.7.2016 and the students would insist on paying the fee as notified by the impugned notification and therefore the petitioners would be put to severe and irreparable injury in that regard. It is therefore just and necessary to permit the 2nd petitioner institution to collect the fee of Rs. 2,59,867/- per student per annum pending disposal of the W.P.

20. I have not filed any other suit, application or proceeding before any Court of Law, Tribunal or other authority in respect of the same cause of action.

21. I have no other effective alternative remedy except to approach this Hon'ble Court under Article 226 of Constitution of India.

Therefore, it is prayed that this Honourable court may be pleased to issue a writ, order or direction, one more particularly in the nature of Writ of Mandamus declaring GO Ms. No. 21 dt. 4.7.2016 issued by the 1st respondent notifying a fee of Rs. 1,13,500/- per student per annum in respect of the under-graduate engineering courses imparted by the petitioner for the block period 2016-2017 to 2018-2019 purportedly on the recommendations of the 2nd respondent as ultra vires, arbitrary and illegal, vitiated by perversity and irrational conclusions of the 2nd respondent, being in violation of the law declared by this Honourable Court in 2013(3) ALD 572 and issue consequential directions to the respondents to notify the fee at Rs. 2,59,867/-, per student per annum as proposed by the petitioner in its proposal dt. 29.1.2016 for the undergraduate engineering courses for the block period 2016-2017 to 2018-2019 and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.

Pending disposal of the WP, it is prayed that this Honourable Court may be pleased to permit the petitioners to collect the fee of Rs. 2,59,867/- per student per annum for the undergraduate engineering courses, as otherwise the Petitioners would suffer grave and irreparable loss.

Pending disposal of the case, it is just and necessary to direct the 2nd respondent to reconsider the proposal of the petitioner with reference to disallowed heads of expenditure in relation to the salary paid to the non-teaching faculty as well as the estimate of salary payable in accordance with the 7th Central Pay Revision Commission w.e.f. 1.1.2016 and additional expenditure on enhanced gratuity limit with a further direction to the 1st respondent to re-notify the said fee after such process, as otherwise the Petitioners will suffer grave and irreparable loss.

Sworn and signed On this 10th Day
of July 2016 at Hyderabad

DEPONENT

BEFORE ME
ADVOCATE / HYDERABAD

VERIFICATION STATEMENT

I, Dr. V. Malakonda Reddy, S/o. V. Obul Reddy, aged about 87 years, President of the first Petitioner Society herein, R/o. H.No.

8-2-693/2/26 & 27, Mithila Nagar, Road no. 12, Banjara Hills, Hyderabad – 500 034, the Petitioner herein/person acquainted with the facts do hereby verify and state that the contents of paras 1 to 19 of the Affidavit filed in support of the writ petition are true to my personal knowledge, based on information and records and believed to be correct and those in para 20 to 21 is based on legal advice and believed to be correct.

Hence verified on this the 10th Day of July 2016 at Hyderabad.

ADVOCATE DEPONENT