

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

**I.A. OF 2004
IN**

WRIT PETITION (CIVIL) NO. 63 OF 2004.

IN THE MATTER OF:

Sandeep Parekh and ors. ...
Petitioners ...
Applicants ...

VERSUS

Union of India and ors. ...
Respondents

**APPLICATION FOR MODIFICATION OF THE ORDER
DATED 27.02.2004 PASSED BY THIS HON'BLE
COURT**

To

Hon'ble the Chief Justice and his
Hon'ble Companion Justices of the
Hon'ble Supreme Court of India

The humble Application
of the Applicants
abovenamed : -

MOST RESPECTFULLY SHEWETH :

1. The above Writ Petition has been filed as a Public Interest Writ Petition. The Petitioners for the sake of brevity are not repeating the contents of the Petition and seek to rely on the same as if the same were a part of this application.

2. The directive by the government that was sought to be assailed in the writ petition, on its face, purported to proceed on the basis that in order to

provide access to a larger number of students including those hailing from economically disadvantaged families and who would not be able to afford the present level of fees of the institution, it was necessary to direct a reduction in the fee so that meritorious students who could compete with their more affluent counterparts but were unable to afford the fee of the institution would henceforth not be denied the advantage of studying in these institution merely on account of their economic handicap.

3. It is submitted that the primary concern, which was the basis of this public interest litigation, was that even though institutes such as the I. I. M's (hereinafter referred to as "the Institutes") were established with the participation of the Central and State governments, they had risen to high academic standards and were regarded as institutes of excellence, and any steps that may even appear to impair their autonomy would be inconsistent with and detract from the high stature enjoyed by these institutions.

4. It is submitted that if the objective of the Government was merely to secure a reduction in the fee, without in any manner impairing the autonomy and independence of the institution, the order of the government would be unexceptionable. However there was an apprehension expressed that any increased economic participation of the government would inevitably result in interference in various matters of policy – the autonomy of the institution that was articulated in the petition related to matters such as a student-faculty ratio, matters of selection of faculty, determination of the class size of student, having an admission test administered by the IIMs etc.

5. After the initial hearing of the petition, an adjournment was sought by the petitioners to produce material to demonstrate that the fee of Rs 30,000, per student was far below an economic fee, unless there was a significant subsidy made available per student. In the absence of any material on record, the petitioners had to seek an adjournment to place the balance sheets and other materials to demonstrate the correctness of their assertion.

6. Although the Petitioners were able to obtain some of the balance sheets of the institutions that show that the cost of educating a student is in the vicinity of Rs 3 lakhs (whereas the fees charged is only Rs 1.5-1.75 lakhs, the balance being met from the corpus) if an assurance was given that the only intention underlying the significant reduction in fee was to make available the advantage of education in these institutions to the economically disadvantaged students without in any manner, intending to impinge upon the autonomy of these institutions, then by itself a reduction of a fee with a corresponding subsidy from the government to the extent necessary would be unexceptionable.

7. In the course of the hearing on February 27, 2004, counsel for the petitioner stated before this Hon'ble Court that if the government was to assure this Hon'ble Court that the apprehensions of the Petitioners were unfounded and that the government had no intention to intervene in matters which hitherto were within the province of the institution, and that the autonomy of the institution would remain unimpaired, then the decision to merely reduce fee with an assurance to give a corresponding subsidy wherever necessary was by itself unexceptionable.

8. It was the clear impression of the Petitioners that, on behalf of the Government, an assurance by way of an undertaking was given that the government does not intend to interfere with the autonomy of the institutions and further that the Government would give such funding as was necessary to cope with the deficiencies arising out of reduction in fee. It was under an impression that this was the stance of the Government, that the petitioners suggested that this writ petition be disposed of.

9. The order as typed out and issued on 27.02.2004 reads as under:

“When this matter was taken up for hearing, learned Additional Solicitor General appearing for the Union of India stated that the directions issued by the Central Government for reduction of fee shall not be construed as interference in the autonomy of the institutions and appropriate funds would also be provided to those Institutions. In that view of the matter, this Writ Petition stands disposed of in terms of the statement of learned Additional Solicitor General.”

10. It is respectfully submitted that after the order passed by this Hon'ble Court, the statements that have emanated from high functionaries of the Government seem to suggest that they have not give any undertaking to the Court and all that, they said was that this direction to reduce fees should not be construed as an interference with the autonomy of the institution.

11. The petitioner submits that in the circumstances, it has become necessary to clarify expressly that this Hon'ble Court was pleased to

dispose of the petition filed by the Petitioners on the following to clear undertakings/assurances by the government namely.

- i) That the government had no intention to interfere with the autonomy of these institutions -- notwithstanding the fact that the institutions would now become even more dependent upon the government for their finances, and
- ii) The government would as and when necessary, and to the extent necessary, make available funds to these institutions to cope with the shortfall arising out of reduction in fee.

12. The petitioners respectfully submitted that it was on their understanding that the government is willing to give the aforesaid undertaking that the Petitioner suggested to this Hon'ble Court that its petition be disposed of. If however the Government refuses to give an undertaking in the aforesaid terms, then it is respectfully submitted that the order dated February 27, 2004 may be recalled and the writ petition be heard on merits.

P R A Y E R

13. The petitioners therefore pray that this Hon'ble Court may be pleased to:

(a) Clarify/modify its order dated February 27, 2004 inter alia by recording expressly therein that the Government had assured and undertaken before this Hon'ble Court that it had no intention to - and would not - interfere with the autonomy of these institutions, and further that it would make available funds as and when necessary, and to the extent necessary to cope with the shortfall arising out of reduction in the fees,

Or

(b) In the alternative, recall the order dated February 27, 2004, and hear the Writ Petition including the application for interim reliefs on merits.

(c) pass such other and further order/orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.

Filed by :

(P.H. PAREKH &
CO.)

Advocates for the
Petitioners/Applicants

New Delhi:
Dated: March 10, 2004

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A F F I D A V I T

I, Sandeep Parekh son of Sh. P.H. Parekh, aged about 32 years, resident of B-99 Neeti Bagh New Delhi 110049, do hereby solemnly affirm and state as under :-

1. That I am the first Petitioner in the above Writ Petition and am conversant with the facts and circumstances of the case. As such, I am competent to swear this affidavit. I am filing this affidavit on my behalf and on behalf of the other Petitioners.

2. I state that I have read contents of the Application for Modification of the Order dated 27.02.2004 and have understood the same. I state that what is stated therein is true to my knowledge.

DEPONENT

VERIFICATION:

I, the deponent abovenamed, do hereby verify that the contents of my above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the 10th day of
March, 2004.

DEPONENT