
The Hands off IIMs Movement

Hands Off IIMs

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 63 OF 2004

IN THE MATTER OF:

Sandeep Parekh & Ors.Petitioners

Versus

Union of India & Ors.Respondents

ADDITIONAL AFFIDAVIT

I, Sandeep Parekh son of Sh. P.H. Parekh, 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 additional affidavit on my behalf and on behalf of the other Petitioners.

2. That on the 16th of February 2004 this Hon'ble Court was pleased to direct the Petitioners to furnish certain information, relating inter alia to the fees charged by the IIMs and their locus to maintain this petition. The Petitioners are therefore filing this additional affidavit with the additional information they could obtain along with their analysis of the same.

3. The petitioner submits that the important issue raised by the petitioners is the question of autonomy and the independence of the IIMs as granted to them several decades back. The issue of autonomy was so important to these institutions that

they were deliberately set up as registered societies and not by Act of parliament. The issue of fees is a derivative of the issue of autonomy and the fee cut is only a means to seize the autonomy of the IIMs from the registered societies and their Boards of governors. The petitioners respectfully submit that the manner in which the reduction of fees has been ordained by the Govt. raises concerns that impinge on the autonomy in two ways - firstly unilaterally deciding upon a drastic fee cut without taking the managements of the IIM's into confidence is in itself a gross encroachment on the autonomy, and secondly the fact that the deficit will be funded by the Govt. leads to a reasonable apprehension that the increased financial dependence of these institutions upon the Govt. would also serve the end of increasing the hold of the Govt. upon these institutions and would be used as a device to impair their autonomy. This is compounded by the fact that the fee cut is implemented in a manner contrary to the provisions of the charters of these institutions as set out in more detail in the Writ Petition.

4. At the outset, it is stated that the need for autonomy has been stressed by all the Commissions and committee's that have been constituted by the Govt. from time to time. The Kurien Committee specifically states "7.5 Functional autonomy is essential for the IIMs, if they are to retain and enhance their capacity for excellence. Such functional autonomy is not possible without financial independence." The University Education Commission in 1948 (Dr. S. Radhakrishnan was its Chairman) recognized the importance of autonomy when stating:

- i) "**University Autonomy.** -- Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of *totalitarian tyrannies*. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number

of their populations and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

- ii) Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: "More light," or that Ajax in the mist "Light, though I perish in the light.
- iii) xxxxxx xxx xxx
- iv) The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

5. The same principles were reiterated by the Kurien Committee report of 1992 and the Nanda Committee report of 1981 which are dealt with in the Writ petition and are not being cited for the sake of brevity.

6. I submit that it appears that the Govt. has now asked the IIMs to sign an MoU agreeing to the decision to slash fees. The MoU was signed by three of the newer IIMs. A persusal of the MoU signed by the IIM, Lucknow with the HRD Ministry is annexed hereto as **Annexure "Z"** shows that the endeavor is clearly to encroach upon the autonomy of these institutions. The MoU inter alia provides that

- a) IIM Lucknow shall not create a post, upgrade or re-designate a post, change the pay-scale or allowances of a post; announce any financial incentive, should invariably be a part of institutional commitment.
- b) IIM Lucknow agrees to abide by economy instructions issued from time to time by the Government of India.
- c) IIM Lucknow will not take any step, without prior consultation with MHRD, that may lead to enhanced financial burden on Government of India than agreed to by the latter.

7. On the 16th and 17th of February the advocate for the Petitioners wrote a letter to each of the IIMs requesting them to furnish several details. A copy of the letter dated 17.2.04 to IIM, Bangalore is attached hereto as **Annexure-“AA”**. Similar copies were sent to all the IIMs. Subsequently, they received responses from five of the six IIMs. The IIM at Lucknow has not responded to the letter. The IIM, Ahmedabad sought more time for replying. A copy of the letter received from IIM, Ahmedabad is annexed as **Annexure-“BB”**. The advocate for the Petitioners have also written to the advocate for Respondents 1 and 3 asking them to furnish the UR Rao Committee Report as was promised to be furnished by them in the court on the 16.2.04.

8. IIM, Calcutta replied to the letter of 17.2.04 by its letter dated 24th Feb 04. A copy of the letter dated 24.2.04 is annexed hereto as **Annexure-“CC”**. The summary of the response given by the IIM, Calcutta is inter alia as under:

- i) Based on the second internal annexure sent by IIM, Calcutta titled “Total establishment & Administrative Expenses for Post Graduate Programme” it can be seen

that per capita expenditure per PGP student is 2.96 lakhs per year for the year ended 2002-2003.

- ii) The collection per student is demonstrated by the next internal chart titled “Statement of Income and Expenses for the Post Graduate Programme” and the fees are charged under the following heads: Tuition fees, room rent, Books and course material, computer charge, library charge, alumni, medical insurance. The per student collection is only Rs. 1.19 lakhs for the year ended 2002-2003. Along with an income from the admission test and placement income of Rs. 56,000 per student leaves a deficit of Rs. 1.20 lakhs per student per year. Two charts prepared by the Petitioners and putting the most relevant figures based on the letter dated 24.2.04 are attached hereto as **Annexure-“DD” (Colly)**.

9. IIM, Bangalore by its letter dated 25.2.04 has indicated that the fees charged each student for the year ended 2002-03 was Rs. 1.25 lakhs. The expense per full time student (PGP and FPM) is Rs. 3.99 lakhs per student for the same year end. The deficit was met from the corpus and from non plan grants of the Central Govt. A copy of the letter dated 25.2.04 is annexed hereto as **Annexure-“EE”**.

- i) The total expenditure on full time students is Rs. 15.57 crores. The fees charged from students makes up Rs. 4.85 crores and the government grant comes to Rs. 4.57 crores. The balance amount of Rs. 6.15 crores is met by depleting the corpus. Thus not only is the corpus not being met from student fees or government grants, but the corpus is actually subsidizing the students. It is stated that for the year 2003-04 no government grants have been allotted. Copies of Balance sheets for the

institute are being filed in a separate volume because they are voluminous.

10. IIM, Indore has sent a brief letter dated 24.2.04 which is annexed hereto as **Annexure-“FF”**. Copies of Balance sheets for the institute are being filed in a separate volume because they are voluminous.

11. IIM, Kozhikode has also sent a brief letter dated 26.2.04 which is annexed hereto as **Annexure-“GG”**. Copies of Balance sheets for the institute are being filed in a separate volume because they are voluminous.

12. The corpus for each of the IIMs was nil in 1992. Subsequently, based on the recommendations and implementation of the Kurien committee report (Annexure D to the Writ Petition) set up by the HRD Ministry a corpus was created from the year 1993-94. To encourage the building of a corpus, the government promised a system of matching grants so that the central government would contribute the amount raised each year by way of its contribution to the corpus. This matching grant was made from the years 1995 to 1997.

13. The four sources of accumulating the corpus are as follows:

- i) executive education
- ii) consultancy by faculty in which the institutes have a share
- iii) interest on corpus
- iv) matching grants for the years 1995 to 1997.
- v) The corpus has not been accumulated out of surpluses arising from the difference between the fees charged to the students and the per capita expense per student. In fact the corpus has been subsidizing students because the Government grants have been irregular and decreasing over the years.

14. Furthermore the corpus is not lying idle. It is being utilized by the institutes for the benefit of the students themselves. For example, the building of the new campus at the IIM, Ahmedabad at a cost of Rs. 40 crores which will nearly double the capacity of the student intake is being done out of the corpus.

15. There is no doubt that fixation of an affordable fee *per se* is something that would be desirable – fixing the optimum fees involves balancing sources of revenue with the expenditure per student. In this context it is submitted that the per capita expenditure itself is a trade off between the standards of education to be provided and the resources available, which is a matter that impinges on the academic standards. No decision on fees can be divorced from the academic standards also, unless the Govt. or some other agency unconditionally agrees to fund the difference.

16. In this context, it is submitted that increased reliance on the Govt. also is a matter that does at times raise apprehensions as to its impact on autonomy. This is for the reason that the professed reason underlying the directive, viz. making the institutions accessible to the vulnerable sections of society, is sought to be attained by supplemental funding from the Govt. to the extent necessary – which itself is an acknowledgment of the fact that on their own these institutions would not be able to sustain the cut in fees. The suggestion that the Govt. is unconditionally or without their being any other unstated reason, seeking to increase its outlay on these institutions of higher learning is itself a matter that cannot be accepted on its face when the impugned directive is examined in the backdrop interalia of the following facts:

- a) It is an admitted position that sufficient funds are not available to provide quality primary education to the vulnerable sections of society – where primary education is a fundamental right, and the low outlay of

funds on education in India is always a matter of lament by the experts

- b) Students can obtain loans on the production of their admission tickets without any collateral, which loans they repay out of the high salaries that graduates of IIM command in the corporate world. Govt. funding to subsidise these students when education budgets all over the country are being cut – including the grants to colleges etc – does not stand to reason.

17. It is submitted that the wisdom of the policy of the Govt. or its choice of priorities is not the subject matter of challenge – it is the contention of the petitioner that the strange choice of priorities gives rise to an apprehension that the impugned directive is not really to reallocate the priorities but directed towards ultimately increasing the role of the Govt. in the management of these institutions.

18. At the time of admission when the admission lists are put up, various banks put up their stalls in the IIM campuses. These bank offer loans without any collaterals at the existing interest rates. The loans provide for not only the fees of the IIMs but also other expenses like a computer etc. The fees of IIM-Ahmedabad is Rs. 1.5 lakhs per year. Even a loan of Rs. 3.5 lakhs taken for two years, can be repaid by the students, often in one or two years. The average starting salary of a graduate from IIM-Ahmedabad is about 6-7 lakh rupees per annum and (as was seen this year) every student obtains a job within three days as part of the campus recruitment day. The students who get jobs outside India often get annual salaries that are about 12 times the loan they may have taken.

19. As a matter of law, governmental interference in the workings of the IIMs runs contrary to the very structure selected at the time of their establishment, in that the IIMs were set up as

registered Societies. The Government has their representatives on the Board of Governors or as members of the respective Societies. The Government also has powers in case of mismanagement. However it is submitted that these institutions have been operational for a length of time, and there is no real basis or material to change the structure that is in place for their management. The IIM's are managed as per their charters, and in practice, all matters relating to academics, as well as selection of students for admission etc as well as courses in which instruction is imparted are left to the Board of Governors/executive committees etc. The role of the Govt. can legitimately extend to ensuring that the funds made available are not misutilised – however the functioning of the IIM's including their activities as well as their priorities are matters that have always been within the domain of their autonomy. The Petitioner contends that the Govt. must demonstrate compelling necessity to interfere – and that too not with Parliamentary approval given by way of legislation but by executive fiat - with any of the matters that hithertofore have been within the province of these institutions.

20. As far as their locus is concerned, it is submitted that the three Petitioners cannot be described as meddlesome interlopers. The first Petitioner has been a visiting faculty at IIM, Ahmedabad since the year 2002 till the year 2004 where he has taught a course on law. The second Petitioner is a current student of IIM, Ahmedabad and hails from a lower income family. His interest in the welfare of the Institute cannot be termed as distant or unconnected. The third Petitioner is a former student of IIM, Bangalore and is also intrinsically connected to the interest of past, present and future students of IIMs. The petitioners are vitally interested as citizens and as persons associated with these organizations in the quality of education in IIMs being maintained and to prevent the respondents from acting in a manner prejudicial to these fine institutions they are associated with.

21. Besides, it is submitted that any lowering of the reputation of the institutions would ultimately also impinge on the reputation of the quality of its former students. It is undeniable that there has been a furore in the media over this decision of the Govt. and the IIM's that were institutions beyond controversy have already been dragged into unseemly debate. The petitioners crave leave to refer to and rely upon the press reports – not as evidence of the facts stated therein but as evidence of the debate that has ensued.

22. The Petitioners submit that the IIMs are run as Societies registered under the Societies Registration Act 1860 and the management of the same is in the hands of Board of Governors. It is submitted that in most IIMs the Central Government appoints a number of the Members of the Board – the non-recourse of these institutions to legal remedies has to be viewed in this backdrop.

23. It has been reported in the media that at a Society meeting of the IIM, Ahmedabad Society, Respondent No. 3 in an intemperate rage threatened to fire the Chairman of the Board of Governors and the Director of the Institute, and liquidate the society if any legal recourse was taken by them. A copy of the newspaper reports based on the press statement of a member of the Society is marked hereto as **Annexure-“HH” (Colly)**. It is submitted that many of the members of the Boards have vociferously opposed the actions of the Respondents on several occasions. Notably, Mr. Narayan Murthy a Central Government appointee as Chairman of the Board of Governors of the Board of Governors of IIM, Ahmedabad and one of the most respected business leaders has clearly spoken out against the interference as 'retrograde', 'ill advised' and 'not based on data and facts. It's not based on reason and logic'. A copy of the interview of Mr. Narayan Murthy has been attached to the Writ as Annexure H (Colly) page 68. Similarly, Mr. MS Banga chairman of Hindustan Lever Limited also a central government appointee on the Board of IIM, Ahmedabad has publicly chided the Respondents for their actions. In any case the Petitioners are moving an application to implead the IIMs as parties.

DEPONENT

VERIFICATION:

I, the deponent abovenamed, do hereby verify that the contents of paras 1 to _ of my above affidavit and the Annexures attached thereto 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 ____day of April 2004.

DEPONENT

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