

THE KERALA SELF FINANCING PROFESSIONAL COLLEGES (PROHIBITION
OF CAPITATION FEES AND PROCEDURE FOR ADMISSION AND
FIXATION OF FEES) BILL, 2004

(As passed by the Assembly)

A

BILL

to prohibit capitation fee and to lay down the procedure for admission of students and fixation of fee structure in the self financing professional colleges in the State of Kerala and for matters incidental thereto.

Preamble.—WHEREAS, it is necessary and expedient to prohibit capitation fee and to lay down the procedure for admission of students and fixation of fee structure in the self financing professional colleges in the State of Kerala and for matters incidental thereto ;

BE it enacted in the Fifty-fifth year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Kerala Self financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004.

(2) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “capitation fees” means any amount, by whatever name called, whether in cash or in kind paid or collected or received directly or indirectly in addition to the fees determined under section 4 ;

(b) “committee” means the committee constituted under section 7;

(c) “consortium” means an association of self financing professional colleges consisting of more than fifty per cent of the total number of institutions of that particular type such as engineering/technology, medical/dental/pharmacy/ayurveda/homoeopathy/siddha and nursing ;

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(d) "Government " means the Government of Kerala ;

(e) "Government Quota" means those seats in a self financing professional college against which the Commissioner for Entrance Examinations makes allotment for admission ;

(f) "lapsed seats" means those seats in the Government Quota that may be filled up by the management if and when the Commissioner for Entrance Examinations informs the management that he would not be advising any more candidates against such quota ;

(g) "Management" means any person or trustees or the governing body by whatever name called, under whose administration any self financing professional college is functioning ;

(h) "Management Quota" means those seats earmarked to be filled up by the management ;

(i) "prescribed" means prescribed by rules made under the Act ;

(j) "Self financing Professional College" means a college maintained by a person or body of persons and affiliated to or recognised by a university and not receiving any financial assistance from Government for running of the institution and conducting courses in any of the following disciplines, namely:—

(i) Engineering and technology;

(ii) Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha and Nursing ;

(iii) any other discipline as may be declared by the Government by notification in the Gazette ;

(k) "State" means the State of Kerala ; and

(l) "university" means the University of Kerala, the University of Calicut, the Mahatma Gandhi University, the Kannur University or the Cochin University of Science and Technology or any other university established under any law made by the legislature of the State.

3. *Procedure for admission into self financing professional colleges.*--(1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or any other authority or in any agreement, the admission of students into a self financing professional college shall be made on the basis of merit as provided in sub-sections (2) to (6).

(2) In every self financing Professional College fifty per cent of the total seats in each branch shall be Government Quota and the remaining fifty per cent shall be Management Quota.

(3) Seats in the Government Quota shall be filled up based on counselling by the Commissioner for Entrance Examinations on the basis of the ranks in the Common Entrance Examination conducted by him, following the principles of reservation as ordered by the Government from time to time.

(4) Seats in the Management Quota shall be filled up either from the list prepared on the basis of the Common Entrance Examination conducted by the Commissioner for Entrance Examinations or from the list prepared on the basis of the Common Entrance Test conducted by a consortium of a particular type in the State:

Provided that Managements shall have the option to earmark not more than 15% of the seats in the Management Quota to dependents of Non-Resident Indians and in that case the admission of the candidates shall be made on the basis of the Marks they have obtained in the qualifying examinations.

(5) Educational qualification for admission in the self financing professional college shall be the same as are applicable to the corresponding courses in the Government colleges as may be notified by the Government from time to time.

(6) Notwithstanding anything contained in sub-section (1), lapsed seats, if any, may be filled up by the management in accordance with sub-sections (4) and (5).

4. *Fee Structure.*—(1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court or other authority or in any agreement,—

(a) the fee to be collected from the candidates admitted in the Government Quota shall be the same as the fee prevailing for the corresponding course in the State Government Colleges ;

(b) the fee to be collected from the candidates admitted in the Management Quota shall be determined by the Management taking into consideration the inevitable expenses for running the institution.

(2) The fees to be determined under clause (b) of sub-section (1) may include all or any of the following items, namely :—

- (a) tuition fees on yearly basis ;
- (b) library fee ;
- (c) laboratory fee ;
- (d) caution deposit ;
- (e) development fee ; and
- (f) refundable deposit, if any.

(3) The management shall not indulge in profiteering while determining the fees structure.

5. *Consortium.*—(1) The consortium shall be a body corporate having perpetual succession and common seal and shall sue and be sued in the name of the executive head.

(2) The consortium shall adopt such procedure as may be laid down by regulations to be framed by the consortium.

(3) All the self financing professional colleges of a particular type shall be eligible for admission as members of the consortium.

6. *Collection of capitation fee prohibited.*—(1) No capitation fee shall be collected by or on behalf of any self financing professional college or by any person who is in charge of or is responsible for the management of such college, from or in relation to any candidate/student in consideration of his admission to, or prosecution of, any course of study, or his promotion to a higher class in such college or an institution under such management.

(2) Where the Committee on receipt of any complaint or otherwise is satisfied that the management of any self financing college or any person who is in charge of or is responsible for the management of such self financing college has contravened the provisions of sub-section (1), the committee may, after giving a reasonable opportunity of being heard, forward its report with recommendations to the Government.

(3) The Government, on receipt of the report under sub-section (2), may, in addition to any prosecution that may be instituted under this Act, after giving a reasonable opportunity of being heard to the management and to the person

from whom the capitation fee was collected or received, direct the person who collected or received the capitation fee to remit the same to the Government and on his failure to do so, the amount together with interest thereon shall be recovered as if it were an arrear of public revenue due on land, and the same when so remitted or recovered, as the case may be, shall be forfeited to the Government.

7. *Constitution of the Committee.*—(1) In order to conduct any enquiry into complaints regarding capitation fee the Government shall constitute a committee with the following members, namely :—

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| (a) A retired Judge of the Supreme Court or a High Court | .. Chairman |
| (b) Secretary to Government—Higher Education Department | .. Member Secretary |
| (c) Secretary to Government—Health and Family Welfare Department | .. Member |
| (d) Secretary to Government—Law Department | .. Member |
| (e) The Commissioner for Entrance Examinations, Kerala | .. Member |
| (f) An educational expert who belongs to the Scheduled Caste or Scheduled Tribe Community | .. Member |

(2) The Committee may adopt its own procedure for the conduct of its business.

(3) The terms and conditions of service of the Chairman and other members of the Committee and the powers and functions thereof shall be as may be prescribed.

8. *Withdrawal of affiliation, etc.*—If the committee is satisfied that any self financing professional college has contravened or failed to comply with any provision contained in this Act, it may, without prejudice to any other penalty under this Act recommend to the Government the disaffiliation of the self financing professional college from the University and the Government may after giving the management an opportunity of being heard, direct the University to disaffiliate the self financing professional college from the University and notwithstanding anything contained in any other law for the time being in force the University shall disaffiliate the self financing professional college concerned forthwith:

Provided that before directing the University to disaffiliate any self financing professional college the Government may, if it thinks so, give an opportunity to the management to rectify the irregularity other than the receipt of capitation fee.

9. *Penalties.*—Whoever contravenes any of the provisions of this Act shall, on conviction, be punished with fine which may extend to five lakhs rupees.

10. *Cognizance of offence.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by an officer authorized by the Government in this behalf by notification published in the Gazette.

11. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any member of the Committee or any officer of the Government for anything which is in good faith done or intended to be done under this Act.

12. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, as occasion requires, but not later than two years from the date of commencement of this Act, do anything not inconsistent with the provisions of this Act which appears to them necessary for removing the difficulty.

(2) Every order issued under sub-section (1) shall be laid, as soon as may be it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session which is immediately following the Legislative Assembly makes any modifications in the order or decided that the order should not be made, the order shall thereafter have effect only in such modified form or of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

13. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules not inconsistent with the provisions of this Act for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may comprise in one session or two successive

sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decided that the rule should not be made, the rule shall thereafter have effect only in such a modified form or of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
