

MAHARASHTRA ACT No. VI OF 1988¹[THE MAHARASHTRA EDUCATIONAL INSTITUTIONS
(PROHIBITION OF CAPITATION FEE) ACT, 1987]

[This Act received the assent of the Governor on the 13th April 1988; assent first published in the *Maharashtra Government Gazette*, Part IV, Extraordinary, on the 15th April 1988.]

An Act to prohibit collection of capitation fee for admission of students to, and their promotion to a higher standard or class in, the educational institutions in the State of Maharashtra and to provide for matters connected therewith.

WHEREAS the practice of collecting capitation fee for admitting students into educational institutions and at the time of promoting students to a higher standard or class at various stages of education is on the increase in the State;

AND WHEREAS this undesirable practice has been contributing to large scale commercialisation of education which is not conducive to the maintenance of educational standards;

AND WHEREAS the National Policy on Education 1986 envisages that the commercialisation of technical and professional education should be curbed and that steps should be taken to prevent the establishment of institutions set up to commercialise education;

AND WHEREAS with a view to effectively curb this evil practice, it is expedient in the public interest to prohibit collection of capitation fee for admission of students to, and their promotion to a higher standard or class in, the educational institutions in the State of Maharashtra and to provide for matters connected therewith; It is hereby enacted in the Thirty-eighth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987.

Short title
and extent.

(2) It extends to the whole of the State of Maharashtra.

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

Definitions.

(a) "capitation fee" means any amount, by whatever name called, whether in cash or kind, paid or collected, directly or indirectly, in excess of the prescribed or, as the case may be, approved, rates of fees regulated under section 4;

(b) "educational institution" or "institution" means a school (including Kindergarten, Pre-primary, *Balwadi* or Nursery School), a college or an institution, by whatever name called, or a part thereof, whether managed by Government, local authority, a University or a private management including educational institution established and administered by any minority, and imparting education and training, exclusively or as one of the various activities, whether technical, professional, vocational or otherwise, and includes any other institution, or a part thereof, as the State Government may, by notification in the *Official Gazette*, specify; but excludes coaching class, by whatever name called;

(c) "Local Authority", —

(i) in relation to an educational institution managed by a *Zilla Parishad*, means the *Zilla Parishad* constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;

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¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1987, Part V, Extraordinary, p. 166; for Joint Committee Report see *Maharashtra Government Gazette*, 1988, Part V, Extraordinary, pages 6-8.

(ii) in relation to an educational institution managed by a Municipal Corporation, Means the Municipal Corporation constituted under the Bombay Municipal Corporation Act, the City of Nagpur Corporation Act, 1948 or, as the case may be, the Bombay Provincial Municipal Corporations Act, 1949;

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(iii) in relation to an educational institution managed by a Municipal Council, means the Municipal Council constituted under the Maharashtra Municipalities Act, 1965;

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(d) "management", —

(i) in the case of an institution managed by the State Government, means the State Government;

(ii) in the case of an institution managed by a local authority, means that local authority;

(iii) in the case of an institution managed by a University, means that University; and

(iv) in any other case, means the managing committee or the governing body, by whatever name called, of an educational institution to which the affairs of that institution are entrusted and, where such affairs are entrusted to any person whether called as Secretary, Correspondent or by any other name or designation, includes such person;

(e) "minority educational institution" means an institution established and administered by a minority having a right to do so under clause (1) of article 30 of the Constitution of India;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "rules" means the rules made under this Act;

(h) "University" means a university constituted under any law for the time being in force.

3. (1) Notwithstanding anything contained in any law for the time being in force, no capitation fee shall be collected by or on behalf of any educational institution or by any person who is in charge of, or is responsible for, the management of such institution, from or in relation to, any student in consideration of his admission to, and prosecution of, any course of study, or of his promotion to a higher standard or class in, such institution.

Collection of
capitation
fee
prohibited.

(2) Notwithstanding anything contained in sub-section (1), the management may in good faith collect or accept donations in cash or kind, in the prescribed manner, from benevolent persons or organisations or public trusts or any other association of persons, for opening of new educational institution or for development or expansion of educational facilities in the existing educational institutions or for creation of endowment fund for award of scholarships, prizes or the like, but while collecting or accepting such donations the management shall not reserve any seats in any educational institution run by it in consideration of such donations. All money and articles received in donation shall be accounted for in the institution and

the money shall be deposited in the name of the institution in any scheduled or co-operative bank and shall be applied or expended for the purpose for which such donations are collected or accepted or shall be applied towards the objects of the institution :

Provided that, where in consideration of accepting such donations any seat is reserved for admission to any student in such institution such acceptance of donation shall be deemed to be collection of capitation fee :

Provided further that, nothing in this section shall apply to or affect any donation accepted by any institution before the commencement of this Act in consideration of which any seat is reserved for admission to student in such institution.

(3) Where the State Government, on receipt of any complaint or otherwise, is satisfied that the management of any institution or any person who is in charge of or is responsible for the management of such institution, has contravened the provisions of this Act or the rules made thereunder, the State Government may, in addition to any prosecution that may be instituted under this Act, after giving a reasonable opportunity of being heard, direct such institution or person responsible that the capitation fee collected in contravention of this Act shall be refunded to the person from whom it was collected and on its or his failure to do so, the amount together with interest thereon shall—

(a) in the case of an aided educational institution, be deducted from the grant-in-aid payable by the State Government to such institution; and then the same be paid to the person from whom such capitation fee was collected; and

(b) in the case of an un-aided educational institution, be recovered as arrear of land revenue: and when so recovered be paid to the person from whom such capitation fee was collected.

(4) The management of any educational institution or any person who is in charge of or who is responsible for the management of such institution collecting or accepting donations under sub-section (2) in connection with or in relation to any student in consideration of his admission to, and prosecution of, any course of study or his promotion to a higher standard or class in institution, shall be deemed to have contravened the provisions of sub-section (1) and shall be liable to be proceeded against and punished accordingly.

4. (1) It shall be competent for the State Government to regulate the tuition fee or any other fee that may be received or collected by any educational institution for admission to, and prosecution of study in any class or standard or course of study of such institution in respect of any or all classes of students. Regulation of fees.

(2) The fees to be regulated under sub-section (1) shall—

(a) in the case of the aided institutions, be such as may be prescribed by a university under the relevant University Law for the time being in force in the State or, as the case may be, by the State Government; and

(b) in the case of the un-aided institutions, having regard to the usual expenditure excluding any expenditure on lands and buildings or on any such other item as the State Government may notify, be such as the State Government may approve :

Provided that, different fees may be approved under clause (b) in relation to different institutions or different classes or different standards or different courses of studies or different areas.

(3) The fees, to be prescribed or approved under sub-section (2) shall include the following items, namely :—

- (a) Tuition fee, whether on term basis or monthly or yearly basis;
- (b) Term fee per academic term;
- (c) Library fee and deposit as security per year or for the entire course;
- (d) Laboratory fee and deposit as security per year or for the entire course;
- (e) Gymkhana fee on yearly basis;
- (f) Caution money for the entire course;
- (g) Examination fee, if any, per year or for the entire course;
- (h) Hostel fee, Messing charges, if these facilities are provided, whether on term basis or on monthly or yearly basis;
- (i) Any such other fee or deposit as security or amount for any other item, as the State Government may approve

(4) The fees regulated under this section shall ordinarily remain in force for a period of three years and the State Government shall appoint a Committee of persons who, in the opinion of the State Government, are experts in educational field, for taking the review of the fee structure and may, after considering the report of the Committee, revise the fees if it considers it expedient to do so.

(5) Every educational institution or, as the case may be, management shall issue an official receipt for the fees or deposits or any other amounts collected for any purpose, which shall be specified in such receipt.

Inquiry and submission of report. 5. (1) If the State Government has reason to believe that there is or there has been any contravention of the provisions of this Act or the rules made thereunder by any educational institution or its management, it may direct any officer not below the rank of a Gazetted Officer to hold enquiry into the affairs of such educational institution or management thereof and to submit his report in that behalf.

(2) Any officer, servant or member (including the office bearers of the management) of any educational institution shall furnish such information in his possession in regard to the affairs or proceedings of the institution, management or any committee or sub-committee of such institution as the officer referred to in sub-section (1) may require him so to do.

(3) An officer referred to in sub-section (1) holding an enquiry shall have powers to summon and enforce the attendance of any officer, servant or member as aforesaid and to compel him to give evidence and to produce documents by the same means and as far as possible in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

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(4) On receipt of the report under sub-section (1), it shall be competent for the State Government to invoke the provisions of sub-section (3) of section 3.

Power to enter and inspect. 6. (1) Any Officer not below the rank of District Education Officer specially authorised by the State Government in this behalf, may at any time during the normal working hours of any educational institution enter such institution or any premises thereof or any premises belonging to the management of such institution in relation to such institution, if he has reason to believe that there is or

has been any contravention of the provisions of this Act or the rules made thereunder, and search and inspect any records, accounts, registers or other documents belonging to such institution or of the management in so far as such records, accounts, registers or other documents relate to such institution and seize any such records, accounts, registers or other documents for the purpose of ascertaining whether there is or has been any such contravention.

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(2) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to searches and seizures under sub-section (1).

7. Whoever contravenes any provision of this Act, or the rules made thereunder, shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to five thousand rupees.

Penalties.

8. (1) Where an offence under this Act, or the rules made thereunder, is committed by a company, every person, who at the time when the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Offences by
companies.

Provided that, nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, or the rules made thereunder, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer or servant of the company, such director, manager, secretary or other officer or servant concerned shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a trust, a firm, a society or other association of individuals; and

(b) "director" in relation to—

(i) a firm, means partner in the firm;

(ii) a society, a trust or other association of persons or body of individuals, means the person who is entrusted under the rules of the society, trust or other association or body with the management of the affairs of the society, trust or other association or body, as the case may be.

9. Where in a trial of an offence under this Act, the Magistrate is of opinion that there was no reasonable ground for making the accusation he may proceed to take action against the complainant or the informant under section 250 of the Code of Criminal Procedure, 1973.

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Compensation for
accusation
without
reasonable
cause.

10. The provisions of this Act or the rules and orders made or issued thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

Act to have
overriding
effect.

Protection
of action
taken under
this Act.

11. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Rules

12. (1) The State Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be, after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rules or both Houses agree that the rules shall not be made, and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be 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 or omitted to be done under that rule.

Savings.

13. Notwithstanding anything contained in this Act, all orders, circulars, resolutions, directions, rules, notifications, ordinances, statutes, schemes or appointments made or issued and all powers which were vested or exercisable by any person or authority in respect of the matters referred to in this Act, whether in accordance with any law for the time being in force or otherwise, and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, continue in force or continue to be so vested and be deemed to have been made or issued or vested under the provisions of this Act unless and until superseded by anything done or any action taken under this Act.