
(2007) 08 AHC CK 0147
In the Allahabad High Court

Abhishek Kandia and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Constitution of India, 1950 — Article 19, 30

Citation : AIR 2007 All 204 : (2007) 4 AWC 3607 : (2007) 3 UPLBEC 2187

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri S.N. Shukla assisted by Shri Awanish Misra for petitioners and Shri Navin Sinha, learned Senior Advocate assisted by Shri Anurag Khanna for Subharti Medical College, Meerut. Learned Standing Counsel appears for the State respondents.

2. In the Writ Petition No. 12333 of 2004, Abhishek Kodian and 63 others, are students of Subharti Medical College, Subharti Puram, 1 Delhi-Haridwar-Meerut By Pass Road, Meerut, admitted to MBBS Course through Combined Pre-Medical Test-2002. They have prayed for directions to the Subharti Medical College, Meerut-respondent No. 3 and Subharti K.K.B. Charitable Trust, Meerut-respondent No. 4, running the college not to charge fees over and above the fees mentioned in the "Information Brochure" with an undertaking that petitioners shall pay the fees within the time as per information brochure or mentioned in the Government Order dated 8.1.2003. The brochure provides for fees of Rs. 1, 10, 000/ per annum for "payment seat", and Rs. 13,000/- per annum for "free/ merit seat" for MBBS Course.

3. The writ petition was filed with the allegations that inspite of clear directions of the State Government and representation made in the brochure, the College authorities of Subharti Medical College have asked the petitioners to pay Rs. 3, 17,000/-, per annum, which includes Rs. 1, 75,000/- as college fees; Rs.

75,000/- as college security; Rs. 42,000/- as hostel fees, Rs. 25,000/- as hostel security for payment seat for MBBS Course.

4. By interim order dated 25.3.2004, the Court, while issuing notice and calling for reply from the respondents, directed that "in the meantime. the fee in question which is being realised, the same shall be treated as provisional and same shall abide by final judgment of the Court".

5. In writ petition No. 68368 of 2006, Arshad Jamal and 16 others, all the students of Subharti Medical College admitted through CPMT 2002, in 2002-03 session, have prayed for quashing the notices dated 1.12.2006 and 22.3.2007 and the order of Justice Sarin Committee dated 5.9.2006. The notices dated 1.12.2006 and 22.3.2007 were issued by the College to students of MBBS-2002 batch to deposit fees, otherwise they will not be allowed to appear in the professional examinations scheduled to be commenced from 15.12.2006. By the notice dated 22.3.2007, the last date of payment was extended to 15.4.2007. Justice Sarin Committee in its order dated 5.9.2006, had passed an interim order in pursuance of directions issued by this Court on 21.8.2006 in writ petition No. 42148 of 2006, Subharti K.K.B. Charitable Trust and Anr. v. State of UP and Ors. directing that until the final decision is taken by the Committee, the petitioner-Medical College shall be permitted to charge same fee, which it was charging till that date.

6. Shri S.N. Shukla, learned Counsel for petitioners inform that the medical college has charged Rs. 1, 75, 000/- towards college fees for first three years. This exorbitant and illegal demand was paid by the petitioners under protest. The petitioners have not paid the fees for the 4th year and that petitioners in writ petition No. 68368 of 2006 have not been permitted to appear in the final professional examination. The amendment application incorporating subsequent developments was allowed on 8.5.2007.

7. The basic issue involved in these two writ petitions is the competence of the Subharti Medical College run by K.K.B. Charitable Trust to charge from the petitioners any amount higher than the college fees fixed by the State Government or represented in the information brochure for "payment seats", for private medical colleges. It is alleged that the Union of India issued an order dated 27.9.1997 fixing fees to be charged in respect of payment seat and free/merit seat. In pursuance thereof a Committee, consisting of the Vice Chancellor, Lucknow University. Lucknow as its Chairman, fixed the fee structure vide order dated 8.1.2003 by which Rs. 1, 26, 500/- was to be charged for MBBS Course per annum for "payment seat", and Rs. 14,950/- per annum for "free/merit seat" for MBBS Course. The college however is charging Rs. 1, 75,000/- as college fees for payment seat and Rs. 75,000/- as college security, There is no dispute about the college security, hostel fees and hostel security which is almost the same as given in the brochure. The Court is as such called upon to decide as to whether petitioners are liable to pay Rs. 1, 26, 500/- per annum as college fees for payment seat from the date of their admission, or Rs. 1,

75,000/- as claimed by the college. The difference works out to Rs 48,500/- per annum.

8. Shri S.N. Shukla, learned Counsel for petitioners submits that the judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, delivered on 31.10.2003, while replying to question No. 5 (c) held that regulatory measures of control on an "unaided minority educational institution" should be minimal. Whereas the conditions for recognition and affiliation to a University have to be complied with but in the matter of day-to day management like appointments of staff, teaching, and non-teaching and, administrative control over them, the management should have freedom and there should not be any external controlling agency. The Supreme Court further held that there should be appropriate mechanism to ensure that no capitation fee is charged. The same expression was used for answering question No. 9.

9. The fee payable by MBBS students to private colleges was regulated by the State Government in terms of the interim order dated 9.1.1996 of the Apex Court in which the Supreme Court observed:

we wish to make it clear that with effect from the academic session 1997-98 it shall be the responsibility of the authorities aforesaid to prescribe the fees payable to these colleges.

10. In T.M.A. Pai's Foundation case the Supreme Court overruled the separate fee structure for free and payment seats, in terms of Uni Krishnan's case but cautioned that there should be no capitation fee or profiteering mechanism.

11. The State Government issued a Government Order dated 27.9.1997 fixing fees to be charged for the merit and private seats by the medical and dental colleges. For the payment seats, the fee was fixed Rs. 1, 1,0,000/-and for free/merit seats Rs. 13,000/- for MBBS course. This fixation did not include hostel, mess, examination and other additional facilities like transport, health etc. In terms of the decision in T.M.A. Pai Foundation's case decided on 31. 10.2002, the Government of India issued guidelines on 14.3.2003 on which the State Government appointed a Committee, to examine the proposals received from the private medical/dental colleges and after considering their representations, the Government Order dated 15.7.2003 was issued provided for regulating admissions and fee structure. The Government Order abolished the arrangement of free and payment seats with effect from the academic session 2003-04, It provided for filling up 75% seats through CPMT and remaining 25% by management quota. The maximum yearly fees for MBBS was kept at Rs. 1, 55,000/- inclusive of all type of fees except hostel fees, examination fees and security. This Government Order dated 15.7.2003 provided that the recommended fee structure will be applicable to only those students, who are admitted to the academic session 2003-04. The students of the previous academic session before the academic session 2003-04 were to be regulated by old arrangement, which shall continue to be enforced for future. In para-6 this

Government Order reiterated that the entire arrangement made will be applicable for the academic session 2003-04.

12. The law, with regard to admissions and fee structure applicable to minority and non-minority unaided educational institutions, was reconsidered by Constitution Bench in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, decided on August 14, 2003. One of the questions framed for consideration was whether unaided professional institutions are entitled to provide their own fee structure. The Supreme Court held that the scheme of free or payment seat was evolved on the presumption that the financial capacity of the 50% of the admitted students would be better than the remaining 50% which was in fact otherwise and that in fact poor students were financing, the urban students who are financially better than the others. The decision in *Uni Krishnan's* case was overruled with a direction that a rationale fee structure should be adopted by the management and it could not be made entitled to charge capitation fees and for this purpose a proper machinery was devised by the State or University so that there should be no profiteering.

13. In pursuance of the judgment in *Islamic Academy's* case the State Government, vide Government Order dated 20.2.2004, has appointed a Committee headed by Mr. Justice Sarin (Retd) to examine the proposal of private colleges regarding fee structure. The validity of the Government Order dated 15.7.2003 relating to the fee structure in 2003-04 was challenged by Rama Dental College Kanpur in writ petition No. 37525 of 2003 which was dismissed by a judgment dated 27.5.2005. No. special appeal or SLP was filed and the judgment has become final. The stipulation in the Government Order dated 15.7.2003 that for the students of earlier batches the old fee structure will continue to remain in force, has attained finality. By a Government Order dated 13.10.2005 the State Government directed that the fee realised in excess of the maximum prescribed by Government Order dated 15.7.2003 to be refunded. Rama Dental College has filed writ petition No. 3432 of 2006 against the Government Order dated 13.2.2005 but there is no stay order in the petition.

14. The Subharti Medical College made a representation to Justice Sarin Committee for fixing fee structure in 2003-04 batch which was rejected by the Committee on 14.2.2006. The college has challenged this decision in writ petition No, 42148 of 2006 for quashing the Government Order dated 13.10.2005 in respect of 2003-04 batches. The writ petition was finally disposed of by ex parte order dated 21.8.2006 with a direction that Justice Sarin Committee may decide the representation dated 20.2.2006 regarding the fee structure of 2002-03. Learned Counsel for petitioners contends that this direction was superfluous as the writ petitioners challenged Government Order dated 13.10.2005 in respect of 2003-04 batches. Justice Sarin Committee however passed an order dated 5.9.2006, whereby the college authorities were permitted to charge the fees which they had been charging. The College authorities are however misinterpreting the committee's interim order dated 5.9.2006 and are

demanding fees in excess of the fees prescribed by the Government Order dated 8.1.2003 giving rise to this writ petition.

15. Shri S.N. Shukla states that there are no direction in the judgements of Supreme Court in TMA Foundation's case and Islamic Academy's case for the manner in which the fees shall be charged in the intervening period. Justice Sarin Committee was constituted in February 2004 and has no jurisdiction to decide the fee structure in 2002-03 and for which Subharti Medical College has not placed any material for fixing fee structure for the year 2002-03. The Fee Fixation Committee in the Government Order dated 20.2.2004 is required to function in accordance with the directions given in the Islamic Academy's case decided on 14.8.2003 and which does not relate to 2002-03. There was no occasion nor there was any demand or material before the Committee for considering the fee structure or for giving interim directions in respect of 2002-03 batches.

16. Shri S.N. Shukla further submits that the interim order of Justice Sarin Committee dated 5.9.2006 under challenge were superceded by the final decision dated 19.12.2006 of the Committee rejecting the contention of the college management that the fees fixed for 2004-05 should be made applicable to 2002-03 batches and in view of this final decision, the interim order cannot be enforced. The committee consisting of Justice P.K. Sarin (Retd), Smt. Anita Singh, Member and Rajeev Agarwal Charter Accountant Member, has clearly stated at page 3 of their order dated 19.12.2006 that the Committee has not taken into consideration the fee structure for 2002-03 and 2003-04 as details of this fixation for these years was not under consideration of the Committee. The contention of the Subharti Medical College, and K.K.B. Charitable Trust-the petitioners in writ petition No. 42148 of 2006 in which the order was passed for fixing the fee structure to be made applicable from 2002-03 is thus baseless. In the year 2002-03 an arrangement was made for free and payment seats which is no longer applicable and thus the fee structure to be decided by the Committee cannot be made applicable to that year. On these facts Shri S.N. Shukla submits that the fee structure for the batch of 2002-03 and for subsequent years for the same batch is to be regulated by the Government Order dated 27.9.1997 and the Government Order dated 8.1.2003 issued in pursuance of interim orders in TMA Pai Foundation's case.

17. Shri Navin Sinha, learned Senior Advocate appearing for Subharti Medical College on the other hand states that the counselling for 2002-03 academic session began from April 2003 and course commenced in the same month. There was a delay of about eight months in beginning of the session. The college had clearly informed that in 50% free seats Rs. 1 75,000/- will be charged as fees and for the remaining 50% paid seats Rs. 3 05,000/- will be charged as fees. The petitioners have paid their fees for the academic sessions 2002-03 to 2004-05 without any protest. Shri Sinha submits that the Government Order dated 27.9.1997 was issued in pursuance of T.M.A. Pai Foundation and others Vs. State

of Karnataka and others, by which the Supreme Court directives were made applicable to all the colleges, BY this Government Order the fees for payment seats was fixed at Rs. 1, 10,000/- and for free/merit seat at Rs, 13,000/- and this arrangement was made only for a period of three years. By Government Order dated 8.1.2003 the fees for payment seat was fixed at Rs. 1. 25,000/- and for free seat at Rs. 14,950/- for MBBS course: It is submitted that on 8.1.2003 the State Government had no authority to fix the fees as by that date the 11 Judge's decision in TMA Pai-II decided on 31.10.2002 and reported in 2002 (8) SCC 481 had come into force. The Supreme Court had left it to the institution to fix their own fees with no motive of profiteering and with observations that there should be reasonable revenue surplus for development of the institutions. In para 69 it was observed that the proper machinery may be devised for a rational fee structure. All the students including the petitioners paid their fees for three years. They had filed affidavits/undertakings that they will pay in accordance with the fee fixed by the College. There is no pleading in the writ petition nor there is any allegation that the college has charged any capitation fees or is taking any undue profit out of fees charged and for which the notice has been given to the students.

18. Shri Navin Sinha submits that only 17 students of the batch have decided to challenge the notice and an interim order was passed on 21.12.2006 directing the petitioners to deposit Rs. 2 lacs as interim basis. The petitioners however have not complied with this order and as such they are not entitled to any relief from this Court.

19. In *Abhishek v. State of Uttaranchal and Ors.* writ petition No. 641 of 2550 (M/B) a Division Bench of Uttaranchal High Court considered the question of charge of additional fees of a student admitted B.V.Sc. and A.H. degree courses against the payment seat in the year 2003-04. In pursuance of T.M.A. Pai's case decided by Hon'ble Supreme Court, and Government Order dated 28.2.2004 the G.B. Pant University of Agriculture and Technology, Pant Nagar. Udham Singh Nagar decided to revise the fee structure from academic year 2004-05. While approving the abolition of payment seats it imposed two conditions that no additional fees would be given to the University on account of abolition of payment seats. The bench consisting of Hon'ble Cyriac Joseph, Chief Justice and Hon'ble B.C. Kandpal, J considered the question as to whether the respondent University is entitled to charge additional fee over and above the fee on which they were admitted against payment seat even after the abolition of the system of payment seats on the ground that petitioner was admitted to the course on payment seat before the abolition of the system of payment seats. The bench held that the Government Order dated 28.2.2004 issued by the State of Uttaranchal did not provide for any such condition, that the students admitted to payment seats during the previous years will have to continue to pay additional amount as fees against payment Seats and that the academic council in its 327th meeting dated 21.1.2007, did not provide for any additional fees. The Uttaranchal High Court then held:

In view of the above declaration by the Hon''ble Supreme Court, the system of payment seats is illegal and unreasonable and a student cannot be compelled to pay any additional amount as fee against payment seat. Even if the student had been admitted prior to the abolition of the system of payment seats by the University on the basis of the judgment of the Hon''ble Supreme Court he cannot be compelled to make any payment which has been held to be illegal and unreasonable. The date of admission of the student cannot change the illegal and unreasonable character of the demand for such additional amount as fee against payment seat.

20. The SLP No. 3345 of 2006 filed by V.C.G.B.P. University of Agriculture & Technology and another against the judgment was dismissed by Hon''ble Supreme Court on 5.4.2007 with the order:

Heard learned Counsel for the parties.

In the facts and circumstances of the case, we are not inclined to interfere with the impugned orders.

The Special Leave Petitions are, accordingly dismissed.

21. In the writ petition No. 12338 of 2004, 64 petitioners have prayed for a writ of mandamus directing the respondents not to charge the fees over and above mentioned in the information brochure, which provided for Rs. 1, 10, 000/- per annum for payment seat and Rs. 13,000/- for free/merit seat for MBBS Course or the fees mentioned in Government Order dated 8.1.2003 i.e. Rs. 1, 26,500/- for payment seat and Rs. 14,950/- for free merit seat. All the students except the 17, who have joined in writ petition No. 68368 of 2006 have paid Rs. 1, 75,000/- demanded by the College. There are no pleadings or materials to the effect that remaining 47 students paid the fees demanded by the college under protest. The interim order dated 25.3.2004 however in the writ petition No. 12333 of 2004 will come to their aid as this. Court had directed: "in the meanwhile, the fee in question which is being realised, the same shall be treated as provisional and same shall abide by final judgment of the Court." In the writ petition No. 68368 of 2006 the Court allowed the petitioners to appear in the fourth year MBBS course examinations provisionally, scheduled to commence from 23.12.2006 with a direction that each of the petitioners shall deposit a sum of Rs. 2 lacs with the opposite party No. 3 and 4 within 15 days. The 17 petitioners in writ petition No. 68368 of 2006 have not deposited this amount of Rs. 2 lacs and were not permitted to appear in the fourth year MBBS course examinations.

22. The fee deposited by the 47 students is to abide by the result of these two writ petitions and also the fate of the 17 petitioners in writ petition No. 68368 of 2006, who have neither deposited Rs. 2 lacs as directed by this Court for provisional appearing in the fourth year examination nor have appeared in the examination awaiting the decision of this Court.

23. There is no pleadings that the petitioners are unable to pay the fees for

payment seats. They took admission on payment seats with open eyes and full understanding the implications that they will have to pay higher fees than payable by the students admitted to free/merit seats, 24. All the petitioners were admitted to the MBBS course in the college through Combined Pre Medical Test 2002 in the academic session 2002-03 They were however admitted through counselling in April 2003 and the course commenced in the same month.

25. It is not denied that the information brochure for CPMT-2002 clearly held out to all the students that the payment seat in private colleges will be available at Rs. 1, 10,000/- per annum as against Rs. 13,000/- for free/merit seat and that the Government Order dated 8.1.2003 issued in pursuance of the office memorandum issued by Government of India on 27.9.1997 provided for Rs. 1, 26,500/- for payment seat and Rs. 14,950/ for free/merit seats for MBBS course for private colleges. The Subharti Medical College has not admitted the fee structure and has relied upon the judgment dated 31.10.2002 in T.M.A. Pai's case in which the Supreme Court allowed the private colleges and made them entitled to fix the own fee structure. They rely upon the observations in T.M.A. Pai's case that the Government cannot fix or regulate fee structure in the private unaided professional colleges. In para 15 of the counter affidavit in writ petition No. 12333 of 2004 Dr. Atul Krishna for Subharti Medical College states that: the information published by the U.P. Government in its brochure is not binding upon the private unaided colleges. The college has not charged from any students exorbitantly. The fee which has been fixed is only to ensure that the college is run smoothly and proper infrastructure, staff and other educational facilities are properly provided to the students. The fee structure decided by the answering respondents was also given in writing to the students and parents."

26. The law, as it prevailed prior to T.M.A. Pai-II decided by 11 Judges of Hon'ble Supreme Court on 31 10 2002, was to allow seat sharing between the State and the management of the private unaided professional colleges. They were not free to fix their own fees, Even after the 11 judges decision in T.M.A. Pai's case on 31.10.2002 in which the Supreme Court overruled its earlier decision of seat sharing, the private unaided professional colleges were not allowed to charge exorbitant fees and resort to profiteering. In Islamic Academy's case, which explained T.M.A. Pai's case, the Supreme Court directed the State Governments to constitute committees to supervise the fee structure. The Supreme Court was fully aware that given a free hand the private unaided professional colleges will fix the fees to be charged from all the students at a rate which may not be justifiable. Hon'ble Supreme Court created a mechanism through a committee to supervise fee structure. In P.A. Inamdar v. State of Maharashtra 2005 (6) SCC 537 the Constitution Bench of the Supreme Court explaining para 68 of the T.M.A. Pai's case did not agree to do away with committees formed pursuant to Islamic Academy's case and held in para 144 that the two Committees for monitoring admission procedure and determining fee structure are permissible as regulatory measures aimed at protecting the interest of the students community as a whole as well as the MINORITY institutions themselves in maintaining the required

standards of professional education and non-exploitative terms in these institutions. It was further held- legal provisions made by the State legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions on the institutions of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution of India."

27. The law, it has crystallised in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, and *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 357 does not allow the minority and non-minority unaided institutions a complete free hand in fixing their own fee structure. The doubts created by *TMA Pai Foundation's* case decided on 31.10.2002 were cleared in *Islamic Academy* and *P.A. Inamdar's* case. The State Government could impose regulatory measures and committees were provided to be constituted to fix the fee structure on the basis of material produced by the colleges before them, both for expenses incurred and for future development.

28. On the aforesaid discussions and the current decision in *P.A. Inamdar's* case the stand of the Subharti Medical College to allow itself to fix the fees for payment seats and to charge the fees at such rates as it thought fit for meeting its expenses and development activities cannot be sustained. The admission procedure for CPMT-2002 was delayed upto April 2003, and by that time *TMA Pai-II* judgment dated 31.10.2002 was available. The judgment however was later explained and the stand taken by the private unaided institutions to fix fee structure on their own was disapproved by the Apex Court. The Division Bench of Uttaranchal High Court, correctly appreciated the law in this regard and that its judgment has been approved by the Supreme Court.

29. The statutory provisions, as by law established, and public policy are well known exceptions to the plea of promissory estoppel. The affidavits and the undertakings given by the students who took admissions on payment seats for 2002-03 and the payment of the fee by them cannot estop them from challenging the fees fixed by the College on payment seats. The Subharti Medical College, Meerut was one of the private medical colleges for which CPMT-2002 was held. The information brochure clearly held out that students admitted to the College on payment seat will be charged only Rs. 1,10,000/- and that the Government Order dated 8.1.2003 issued after instructions given by the Government of India in pursuance of *TMA Pai's* case allowed the private and unaided colleges to charge only Rs. 1,26,500/- per annum for payment seats of MBBS Course. The Subharti Medical College did not challenge this Government Order dated 8.1.2003 and thus it cannot claim to be free from these regulatory measures only on the ground that in *TMA Pai-II* decided on 31.10.2002, the College was given free hand in fixing its own fees.

30. Further, I find that Justice Sarin Committee was formed in pursuance of Islamic Academy Foundation's case for deciding the fee structures of the academic session 2004-05 onwards. The college was not required and did not produce any material before Justice Sarin Committee for fixing fee structure for academic session 2002-03. Justice Sarin Committee as such could not have and has not decided the fee structure for academic session 2002-03 which must continue to be governed by the Government Order dated 8.1.2003 which regulated the fees for payment seats of MBBS course in private unaided medical colleges.

31. Both the writ petitions are consequently allowed. The Subharti K.K.B. Charitable Trust Meerut and Subharti Medical College. Meerut are held entitled to charge the college fees of payment seats of the student admitted in 2002-03 academic session and for all subsequent years of the same batch @ 1, 26, 500/- per month as fixed by the Government Order dated 8.1.2003. The Trust and the College will refund the entire excess amount collected from all the 64 students admitted on the payment seats of 2002-03 batch, and for subsequent years for the same batch, Within one month. The 17 petitioners in writ petition No. 38368 of 2006 will be allowed to appear in 4th professional examination in the next exam nations to be held by the University. They will be allowed to adjust the excess fees paid by them in the three years and will only pay the difference, (sic) any. @ Rs. 1, 26,500/- per annum. This judgment will be confined only to the students admitted on payment seats to the MBBS Course of the academic session 2002-03 and in subsequent years for the same batch. The College will pay Rs. 10,000/- as costs of these petitions to the students by depositing it in the students' welfare fund of the College.