(2002) 08 AP CK 0103

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 7264 of 2000 and 639 of 2001 and Batch

C. Rajanidhar and Others — APPELLANT

Vs

Government of India and Others — RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 7, 7(2), 7(3)

Citation : (2002) 5 ALD 459 : (2003) 1 ALT 421

Hon'ble Judges : T. Meena Kumari, J

Bench : Single Bench

Advocate : K. Srinivas, L. Ravichandra, K. Sambasiva Rao, S. Sreenath, M. Venkatram Reddy, SC for the Central Government, Government Pleader, for Medical Health and Family Welfare M. Panduranga Rao, K.G.K. Prasad, Secretary for NTR University Health Sciences, S. Niranjan Raddy, Secretary for Medical Counsil of India, for the Appellant;

Final Decision : Dismissed

Judgement

T. Meena Kumari, J.—All these Writ Petitions have been filed by the students prosecuting M.B.B.S. course in Mamatha Medical College, Khammam. These writ Petitions have been filed to declare the action of the Government of Andhra Pradesh represented by its Secretary, Health, Medical and Family Welfare Department in not ensuring strict compliance of G.O. Ms. No. 320, Health, Medical and Family Welfare (El) Department dated 6-8-1998 and G.O. Ms. No. 611 dated 23-12-1998 insofar as the Mamatha Medical College, Khammam is concerned and permitting it to collect Rs.27,000/- per annum towards special fee as arbitrary, illegal, unjust and contrary to law and for consequential directions to the Government of Andhra Pradesh to ensure that the fourth respondent College should return the excess amount collected from the petitioners in the name of the special fee in terms of Circular dated 20-12-2000 and for such other orders.

2. This Court admitted all these writ petitions in 2000 and 2001. While admitting the same, this Court also granted interim directions not to collect any fee except

as per G.O. Ms. No. 320, Health, Medical and Family Welfare (El) department dated 6-8-1998 and G.O. Ms. No. 611, dated 23-12-1998. Aggrieved by the same, the respondent-Medical College filed the vacate stay petitions to vacate the above orders. As the issue involved in all these writ petitions is one and the same, they are clubbed together. When the matters have come up for hearing, all the Counsel have agreed that all these writ petitions can be disposed of finally. Hence, the matters were heard finally and are being disposed of by this common judgment.

3. The petitioners in all these writ petitioners are the students of the Mamatha Medical College, Khammam (hereinafter referred to as ''Medical College'') studying M.B.B.S. Course. They are all admitted into first year M.B.B.S. course in 1997-98 and 1998-99. It is also further stated in the affidavit that the Convener, EAMCET, is supervising the admissions it is also further stated in the affidavit that the NTR University of Health Sciences is issuing the notification relating to admission into various educational institutions for admission into first year M.B.B.S. course. It is also further stated in the affidavit that the NTR Health University of Sciences is the authority to deal with the admissions into various courses of Medical Education. It is also further stated that according to the notification , the Mamatha Medical College is permitted to admit 50 free seats and 35 payment seats. The petitioners have filed a notification of the NTR Health University for the academic year 1998-99. According to the petitioners, the fee has to be collected under Clause XII of the admission rules. The petitioners have relied upon G.O. Ms. No.297 Health, Medical and Family Welfare (E1) Department dated 1-8-1997 wherein the fee structure has been prescribed for admission of students into Government University/ Private Medical and Dental Colleges :in the State for the academic year 1997-98. According to the said GO, the fee structure has been prescribed for the Medical Colleges as follows:

1. MEDICAL COLLEGES:

a. For the students admitted in Govt./ University Medical Colleges in M.B.B.S. course Rs.6,000/- p.a.

b. For the students admitted against free seats in private unaided medical colleges Rs.20,000/- p.a.

c. For the student admitted against payment seats in private unaided medical colleges :

i. Colleges having their own Teaching hospital Rs. 75,000/- p.a.,

ii. Colleges depending partly on their own hospitals and partly on Govt. Hospitals Rs.70,000/- p.a.,

iii. Colleges depending entirely on Govt. Hospitals Rs.60,000/- p.a.

4. The main grievance of the petitioners in these writ petitions is that the Medical College is charging an amount of Rs. 27,000/- towards special fee in excess of

the fee prescribed and the said action of the Medical College in charging above amount in addition to the tuition fee is not in compliance with G.O. Ms. No. 320 Health, Medical and Family Welfare (El) Department dated 6-8-1998 and G.O. Ms. No. 611 dated 23-12-1998. The main grievance of the petitioners is that charging of the above amount over and above fee structure is contrary to G.O. Ms. No. 320 dated 6-8-1998 and G.O. Ms. No. 611 dated 23-12-1998. The main grievance of the petitioners is that charging of the above amount over and above fee structure is country to G.O. Ms. No.320 dated 6-8-1998 and G.O. Ms. No. 611 dated 23-12-1998. It is also stated that the first respondent also issued revised fee structure in G.O. Ms. No.297 dated 1-8-1997. The Counsel for the petitioners has argued that the collection of amount of Rs. 27,000/- over and above the tuition fee as prescribed under above GOs is in violation of Provisions of the Andhra Pradesh Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. (for short ''the Act'').

5. The Counsel for the petitioners has further argued that Capitation fee has been defined u/s 2 of the said Act, which means any amount collected in excess of the fee prescribed u/s 7 of the Act. The learned Counsel for the petitioners has relied upon the following decisions of the Supreme Court to substantiate his contention that the Medical College has no power to collect any fee other than the fee prescribed and if any amount so collected would amount to Capitation Fee.

1. Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,

2. T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc.,

3. Secretary to Government of Madras and another Vs. P.R. Sriramulu and another,

6. The learned Counsel for the petitioners has further argued that charging of Rs.27,000/- over and above the fee prescribed by the Government would amounts to capitation fee and is in violation of the law laid down by the Apex Court in the above referred cases.

7. A counter has been filed by the Medical College wherein it is contended that the Mamatha Medical College is not receiving any aid from the Government. It is totally an unaided institution. It is purely a private educational institution and it is recognised by the Medical Council of India for the purpose of awarding degree. It is also further stated in the counter that there is no control of the institution either by the Government or by any other authority and being a private educational institute, the petitioners cannot invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is also stated that the petitioners are estopped from filing a writ petition questioning the collection of fee as they have given a declaration stating that that they would pay tuitions fees and other fees at prescribed rates by the management as and when they are notified by the College from time to time using the course of study. It is also stated in the counter that the University of Health Sciences in its Admission

Notification itself notified the tuition fee of free seat and payment seat in respect of Government Medical Colleges and Private Medical Colleges. It was also specifically notified that the other fee payable would be as per the norms of the admitting college. The petitioners having joined in the Medical College by accepting the said conditions, now they cannot resile back or seek refund after paying for two years nor they cannot refuse to pay the same.

8. It is also stated in the counter that it has constructed huge hospital of 500 beds with 1.5 lakhs square feet with the latest medical equipment and that it has recruited faculty members of high repute and for the last three years they have been getting excellent results. It is stated that to run the institutions and to maintain high standards, money is necessary and it is now in serious financial crunch and they have to pay salaries to the Professors, Asst. Professors in various branches of Medicine, Para-Medical Staff and Specialists in various fields viz., pathology, Anatomy etc. apart from paying to other ministerial staff who will look after day to day administration. It is stated that they have to purchase latest machinery and equipment and the material which was purchased by them is becoming obsolete and outdated within a year or two and they have to buy the latest machinery every now and then. The learned Counsel also submits that the tuition fee collected is as per the fee structure by virtue of the different GOs issued by the Government from time to time. The learned Counsel also further argued that the fee of Rs.27,000/- is levied and collected by the educational institutions to provide better facilities like laboratory, chemicals, library, equipment , expenditure on procuring cadavers and other facilities like sports, health etc., as per the guidelines of the Medical Council of India and to maintain high standards. It is stated that the tuition fee is concerned; they are charging the same as fixed by the Government. It is stated that the fee which is being collected is purely to meet the expenses incurred on each of the students and that they are incurring an amount of Rs. 1.30 crores per year towards Library, Laboratory, Dissection Hall, Teaching slides, consumable items electricity, water, printing and stationery, postage and telephone and telegrams, maintenance of the vehicles of which are used to transport the students from the college to the hospital and for free service at the hospital and also for recreation of the students apart from other miscellaneous expenditure. It is also stated that an amount of Rs. 8,48,52,000/- is being spent per year towards the salaries of professors. Associate professors, Assistant Professors, Tutors/Demonstrators, Junior residents. Lab Technicians, Lab attendants and other staff. The Medical college is incurring a total expenditure of Rs. 9,78,52,000/- per year whereas the total collection of fee in terms of tuition fee from the Government candidates and management quota and fees from the NRI candidates for all the five batches would be around Rs.5 crore only. The learned Counsel for the respondent-Medical College has further argued that Medical College is entitled to collect development and other fee as per Section 7 of the Act.

9. The learned Counsel for the respondent-Medical College submits that even though the capitation fee has been defined u/s 2 of the Act, Section 7 of the Act

regulates the tuition fee by the Government. However, the students are bound to pay the other fee that may be levied in respect of each class. The learned Counsel has further argued that the colleges are entitled to collect such fee which the respondent-Medical College is collecting to provide facilities to the students which has nexus u/s 7 of the Act. It is also further argued that as per Subsection (3) of Section 7 of the Act, the respondent-Medical college is issuing an official receipt for the amount so collected and it is accounted for. It is also further argued that the college is spending money so collected for providing facilities and also other special conveyance like transport etc.

10. The learned Counsel for the respondent-medical college has further argued that it is not the case of the petitioners that the Management is commercialising the education by charging Rs. 27,000/-. The learned Counsel has further argued that the respondent-Medical College is charging the fee as mentioned in the broacher/prospectus. The petitioners are made aware of the fact that the other fee charged would be as per the norms of admitting college in the admission notification.

11. The learned Counsel for the respondent-Medical College submits that the broacher/prospectus of their college has clearly mentioned that the students have to pay such other charge or charges as per the norms prescribed by the College. It is also stated that as per the admission Notification for 1997-98 issued by the NTR University of Health Sciences, A.P. Vijayawada, it has been clearly mentioned that the students have to pay other fee as per the norms of the admitting college. Thus, it is stated that the petitioners joined in the said college by accepting the said condition and having joined in the college, now the petitioners cannot say that the respondent-Medical college has no right to collect any other fee. The leaned Counsel for the respondent-Medical College has submitted that in addition to notifying the tuition fee it is also stated that the other lee prescribed by the admitting college has to be paid by the students. The learned Counsel for the respondent-Medical College has also further submitted that the petitioners have also given declarations that they agreed to pay the tuition fee as per the Government orders and other fees at the prescribed rates of the Management as and when it is notified by the principal from time to time during the course of their study. It is also further argued that the students were admitted into course against the free seat and payment seat as allotted by the Convener in pursuance of the entrance examination and the tuition fee is charged as prescribed by the Government and also as notified in the Broacher/ Prospectus (admission notification).

12. The learned Counsel for the respondent-Medical College further argued that even though the Capitation Fee has been defined u/s 2 of the Act, as per Section 7 of the said Act, the respondent-Medical College is entitled to levy and collect other fee in addition to the tuition fee. In compliance of Section 7(3) of the Act, the amount so collected is under an official receipt and the same is accounted for and moreover the NTR Health University in the admission notification it has been

mentioned that the other fees payable will be as per the norms of the admitting college.

13. The learned Counsel for the respondent-Medical College also submits that the petitioners have failed to show that the respondent-College, which is an unaided college, by collecting the additional fee other than the tuition fee, is commercializing the education and that it is not the case of the petitioners that the respondent-Medical college is not providing infrastructural facilities and the college is maintaining substandard, it is also contended that in the absence of such plea, the petitioners cannot say that the college is entitled to collect only the fee prescribed, and not any other fee under the norms of the college as notified. It is stated that the petitioners having accepted the admission in pursuant to the notification which stipulates a condition that the students have to pay such other fee as per the norms of the admitting college, now they cannot resile back by saying that the respondent-Medical College has no power whatsoever to collect other fee. The learned Counsel has further argued that it is an admitted fact that the second respondent college has to collect the tuition fee prescribed by the Government from time to time.

14. The learned Counsel for the respondent-Medical College submits that charging of Rs 27,000/- is within the observation made by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., in the Scheme.

15. The learned Counsel for the respondent-Medical College has argued that the amount of Rs.27,000/- collected by the Medical college is for providing better facilities and that the Medical college is not receiving any, aid from the Government and that it is totally an unaided institution. It is purely a private educational institution. It is also stated in the counter that the respondent-Medical College has appointed Faculty Members of high repute and in the last three years, they have been getting excellent results. They have to pay salaries to the Professors, Assistant Professors in various branches of medicine. Para-medical staff and specialists in various fields viz., Pathology, anatomy etc., and they have to pay salaries to the other ministerial staff. They have to purchase modern machinery and equipment every year as the equipment is becoming obsolete and outdated within a year or two and they have to buy latest machinery every now and then. It is also stated that Medical Council of India revised the fees structure for merit and payment seats in private medical colleges twice in the years 1997 and 2000 but the State Government has not chosen to increase the fees payable by the students as suggested by the Medical Council of India. It is also stated that the tuition fee paid by the merit and payment students is not even sufficient for payment of salaries to the faculty members. Thus, they are forced to collect Rs. 27,000/- for purchase of books in library, chemicals to the laboratories, equipment, expenditure on procuring cadavers and other facilities like sports, health, teaching slides, consumable items, electricity, water, printing and stationery, postage and telephone and

telegrams, maintenance of the vehicles which are used to transport the students from the college to the hospital and for free service at the hospital and also for recreation of the students apart from other miscellaneous expenditure. It is also argued that they are spending the money so collected for providing facilities and also for other special convenience which are not included in the ordinary curriculum. The learned Counsel for the respondent-Management college has submitted that the respondent-Management college is incurring loss of Rs.4 crores for each year. The respondent-Management has filed a statement of accounts wherein it is stated that he has been paying Rs. 8,48,52,000/- per annum towards salaries of the Staff and Rs. 13,00,00,000/-per annum for other expenses. It is also stated that it is earning income of Rs. 5,78,50,000/-pcr annum by way of fee. Thus, the respondent-Medical college is incurring loss of Rs.4 crores every year. It is also not the grievance of the petitioners that by collecting the said fee, the respondents-Medical College is commercializing the medical education. Moreover, the medical college is issuing a receipt for the said amount and thereby it is, in compliance with the statutory provision of Sub-section (3) of Section 7 of the Act.

16. The learned Counsel has also further argued that the respondent-college has to provide better facilities to the students like providing latest books in Library and also other journals not covered under the Text Books, latest equipment and other facilities and it is not denied by the petitioners anywhere that the respondent-Medical college is not providing the same.

17. As per the scheme framed by the Apex Court in the case of Unni Krishnan J.P. (supra), the unaided medical colleges can collect the fee other than the tuition fee. The learned Counsel has further submitted that as per 5 of the Scheme evolved by the Supreme Court in Unni Krishnan (supra), the competent authority shall issue a broacher, on payment of appropriate charges, along with the application form for admission, giving full particulars of the courses and the number of seats available, the names of the colleges, their location and also the fees chargeable by each professional college. The broacher will also specify the minimum eligibility condition, the method of admission (whether by entrance test or otherwise) and other relevant particulars.

18. It is also further argued by the learned Counsel for the respondent-medical college that as per Section 6(a) of the Scheme, every state Government shall forthwith constitute a committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges as the case may be. It is also further argued that the committee shall fix the fee once in every three years or such longer intervals as they may think fit. Section 6(b), if the UGC frames regulations u/s 12-A(3) of the UGC Act regulating the fees which the affiliated colleges, operating on no-grant-in-aid basis, are entitled to charge. The Council for Technical Education may also consider the advisability of issuing directions u/s 10 of the AICTE Act regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council

and the Central Government may also consider the advisability of such regulation as a condition for grant of permission to new medical colleges u/s 10-A and to impose such a condition on existing colleges u/s 10-C.

19. It is also further argued that as per Clause 6-C of the Scheme, the several authorities mentioned in sub-paras (a) and (b) shall decide whether a private educational institution is entitled to charge only that fee as is required to run the college or whether the capital cost involved in establishing a college can also be passed on to the students and if so, in what manner.

20. As per Clause 5 of the Scheme in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the broacher must contain the fee chargeable by each professional college and as the notification issued by the NTR Medical and Health University, contains the provision that the other fees payable will be as per the admitting college, which is in compliance of Clause 5 of the Scheme the petitioners have no right whatsoever to claim the refund of the money on the ground that the respondent-Medical College has charged in excess of the tuition fee and hence the writ petitions have to be dismissed.

21. The Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., explained the object of the Scheme that has been framed by the Apex Court, which has been mentioned in para 169 and 170, which reads as follows:

"the idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. It is the discretion in the matter of admission that is at he root of the several ills complained of. It is the discretion that has mainly led to the commercialization of education. ''Capitation fee means charging or collecting amount beyond what is permitted by law; all the Acts have defined this expression in this sense. We must strive to bring about a situation where there is no room or occasion for the management or any one on its behalf to demand or collect any amount beyond what is permitted. We must clarify that charging the permitted fees by the private educational institutions - which is bound to be higher than the fees charged in similar governmental institutions by itself cannot be characterized as capitation fees. This is the policy underlying all the four States enactments prohibiting capitation fee. All of them recognize the necessity of charging higher fees by private educational institutions. They seek to regulate the fees that can be charged by them - which may be called permitted fees - and to bar them from collecting anything other than the permitted fees, which is what ''Capitation fees'' means. Our attempt in evolving the following scheme precisely is to give effect to the said legislative policy. It would be highly desirable if this scheme is given a statutory shape by incorporating it in the Rules that "may framed under these enactments"

22. The Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , has framed the following scheme at para 170, which reads as follows:

"170. The scheme evolved herewith is in the nature of guidelines which the appropriate Government and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant to recognition or grant of affiliation, as the case may he. We are confining the scheme - for the present only to ''professional colleges''

The expression ''professional colleges'' in this scheme includes;

(i) medical colleges, dental colleges and other institutions and colleges imparting Nursing, Pharmacy and other courses allied to Medicine, established and/or run by private educational institutions,

(ii) and (iii) xxx

The expression ''appropriate authority'' means the Government, University or other authority as is competent to grant permission to establish or to grant recognition to a professional college.

The expression ''competent authority'' in this scheme means the Government/ University or other authority, as may be designated by the Government/ University or by law, as is competent to allot students for admission to various professional colleges in the given Suite.

X x x (4) No professional college shall call for applications for admissions separately or individually. All the applications for admission to all the seats available in such colleges shall he called for by the competent authority alone, along with applications for admission to Government University Colleges of similar nature.

X x x (5) Each professional college shall intimate the competent authority, the Slate Government and the concerned University in advance the fees chargeable for the entire course commencing that academic year. The total fees shall be divided into number of years/semesters of study in that course. In the first instance, fees only for the first year /semester shall be collected. The payment students will be, however, required to furnish either cash security or bank guarantee for the lees payable for the remaining years/semesters. The fees chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent Court. The competent authority shall issue a brochure, on payment of appropriate charges, along with the application form for admission, giving full particulars of the courses and the number of seats available, the names of the colleges, their location and also the fees chargeable by each professional college. The brochure will also specify the minimum eligibility conditions, the method of admission (whether by entrance lest or otherwise) and other relevant particulars.

(6) (a) Every State government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case my be. The Committee shall consist of a Vice-chancellor,

Secretary for Education (or such Joint Secretary, as he may nominate) and Director, Medical Education/Director Technical Education, The committee shall make such enquiry as it thinks appropriate. It shall, however, give opportunity to the professional colleges (or their association (s), it" any) to place such material, as they think fit. It shall however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate.

(b) It would be appropriate if the UGC frames regulations u/s 12-A(3) of the U.G.C. Act, regulating the fees which the affiliated colleges, operating on no grant in-aid-basis, are entitled to charge. The Council for Technical Education may also consider the advisability of issuing directions u/s 10 of the AICTE Act regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council and the Central Government may also consider the advisability of such regulation as condition for grant of permission to new medical colleges u/s 10-A and to impose such a condition on existing colleges u/s 10-C.

(c) The several authorities mentioned in sub-paras (a) and (b) shall decide whether a private educational institution is entitled to charge only that fee as is required run the college or whether the capital cost involved in establishing a college can also be passed on to the students and if so, in that manner. Keeping in view the need, the interest of general public and of the national, a policy decision may be taken. xxxx"

23. The Apex Court in para 160 has clarified that charging the permitted fees by the private educational institutions, --which is bound to be higher than the fees charged in similar governmental institutions by itself cannot be characterized as capitation fee.

24. In the case of T.M.A. Pai Foundation v. State of Karnataka (supra) the Apex Court has tentatively categorised the medical colleges into three groups for the purpose of fixing of fee payable by the medical students for the academic year 1995-96.

"(A) The fee payable by the students allotted against free seats which may hereafter be designated as merit seats, shall be rupees twenty thousands per annum. The fee payable by the payment student is fixed at Rupees seventy five thousand. Rupees seventy thousand and rupees sixty five thousand per annum respectively. In other words, in respect of colleges having their own hospitals, the fee shall be rupees seventy five thousand per annum, in respect of colleges which partly depend upon Government hospital and partly upon their own facility shall be Rupees seventy thousand per annum and in respect of colleges which depend wholly upon Government hospitals, the fee shall be Rupees sixty five thousand per annum.

So far as dental colleges are concerned, the fees shall be Rupees fifteen thousand per annum for free/merit seat and Rupees fifty thousand per annum for payment seats respectively."

25. The Apex Court in the case of Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., , has observed that the scheme framed by it in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., is not in application to the colleges set up by the societies under the control of the State Government as self-financing institutes.

26. Moreover, the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., has emphasized the necessity of charging higher fees by private educational institutions and also observed that charging of the permitted fees by the private educational institutions is higher than the fees charged in similar governmental institutions and this itself cannot be characterized as capitation fee. It is to be noted that the Brochure i.e., admission notification issued by the NTR Health University for the year 1997-98 contains the specific fact that the students have to pay the other fee as per the norms of the admitting college. As per Clause 6(a) of the scheme, even though the brochure for 1998-99 did not contain that clause, it would be implied that the students have to pay the fee as per the norms of the admitting college. It is not the case of the petitioners that by charging Rs.27,000/- by the respondent-Medical College, it is commercializing the medical education.

27. In view of the statement of accounts furnished by the respondent-Medical College and in the absence of the specific contention of the petitioners that by collecting the said fee, the respondent-Medical college is commercializing the education or making profits, the contention of the respondent-Medical College Sri M. Panduranga Rao is that the respondent college is collecting the said fee and such collection is towards other charges and therefore it has a nexus with the object to be achieved i.e., for providing better facilities. It is not the case of the petitioners that the respondent-Medical College is ill-equipped and imparting substandard education and the collection of the amount of Rs. 27,000/-is not being utilized for providing facilities such as latest books in library, latest equipment, purchase of chemicals, maintenance of dissection hall, purchase of teaching slides, consumable items, electricity, water, printing and stationery, postage and telephone and telegrams maintenance of the vehicles which are used to transport the students from the college to the hospital etc.

28. In a decision of this Court in the case of SIMS College of Physiotherapy, Guntur Vs. University of Health Sciences, this Court has held that where an institute is conducting a professional courses for the candidates who have completed 10+2 study, the course falls under the provisions of Act. Hence, the Government instead of allowing the private management to admit the students in their own should think of conducting a common entrance test for allotment; of the students by them to respective colleges both for free seats and payment seats or if the Government thinks that admissions can be made on the basic of the marks obtained by the candidates in the qualifying examination, the entire process of selection of candidates and admission should be strictly under the

supervision and control of a Government agency without giving any scope for the private managements to devise ways and means which may ultimately lead to evil collection of capitation fee behind the scenes at the cost of merit.

29. At this juncture, it is to be noticed that the petitioners did not state in their affidavits that the respondent-Medical College is charging the fee behind the scene. In the absence of such plea and as the amount is accounted by issuance of receipt as provided for in Sub-section 7(3) of the Act, it cannot be termed as capitation fee.

30. The Supreme Court in the case of T.M.A. Pai Foundation and others Vs. State of Karnataka and others, , has observed at paragraph 5, which reads as follows:

"It is the function of the Government the affiliating Universities and the statutory professional bodies like, University Grants Commission, Indian Medical Council and All-India Council for Technical Education, At least now, we expect the concerned authorities to move in the matter with promptitude and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the orders made by this Court from time to time relating to fee structure. It shall be open to them to evolve such fee structure as they think appropriate, in such terms, and subject to such conditions as they feel are in the interests of the student community, the private professional colleges as also in public and national interest. We hope and trust the fee structure to be evolved by them would take into consideration the ground realities and would be realistic and practical from the point of view of all concerned."

31. Basing on the above observations, it has to be observed that the Apex Court has left open to the authorities concerned to evolve the fee structure as they think appropriate in the interest of students community and of the professional colleges.

32. The learned Government Pleader on the other hand submits that even the Government of India, Ministry of Health and Family Welfare. New Delhi in its letter No. U.12011/3/97-ME(P) dated 4-9-1997 has clarified that no private medical/dental college is entitled to charge more than the upper ceiling fixed by the Government except for hostel charges and therefore the respondent-Medical College cannot charge more than the upper ceiling fixed by the Government. It is also stated in the said letter that the ''fee'' in relation to free seats and payment seats in medical and dental colleges has also clearly been defined in the Regulations of the Medical Council of India and Dental Council of India.

33. In this connection, it is to be noted the observations of the Supreme Court of India in the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , wherein it was held that regulations made by the Medical Council of India are not mandatory in nature but are merely recommendatory.

34. The High Court of Bombay in the case of Dr. Aditya Shrikant Kelkar and others Vs. State of Maharashtra and others, , it has been held that the state has

ample power and authority to prescribe the conditions; for admissions into under graduate and post-graduate for professional colleges.

35. The High Court of Madras in the case of R. Indra v. State of Tamil Nadu 1998 (2) LW 35 (SN), has held that the State Government can prescribe the qualifications other than those prescribed by the Medical Council of India.

36. With reference to the arguments advanced by, the Government Pleader, it has to be observed that no material is placed before this Court that the Medical Council of India as directed by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., has framed any regulations with regard to the fixation of fee. In the absence of such material, the role played by the Medical Council of India for fixation of fee cannot be assessed. Further, in view of the above observations of the Supreme Court in the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , the fee in relation to free seats and payment seats in medical and dental colleges as defined in the Regulations of the Medical Council of India and Dental Council of India are not mandatory but only recommendatory.

37. Section 2(b) of the Act defines the meaning of Capitation fee. Section 7 of the Act deals with the fee regulation, which reads as follows:

"Section 7 : Regulation of Fees :-(1) It shall be competent for the Government by notification, to regulate the tuition fee or any other fee that may be levied and collected by any educational institution in respect of each class of students.

(2) No educational institution shall collect any fees in excess of the fee notified under Sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee collected by it."

38. The learned Counsel for the respondent-Medical College submits that the word ''or'' should be read as ''and'' in Clause (1) of Section 7 and if the same is read as ''and'', the respondent-Medical College can collect other fee over and above the tuition fee.

39. Even if it is assumed that the I respondent College has no power to collect the tuition fee over and above the fee prescribed by the Government, as per Section 7 of the Act, 1983, the respondent-college has power to collect any other fee as the word ''or'' contained u/s 7 has to be interpreted as ''and''. It is to be seen that Section 7 of the Act itself has given power to collect any other fee that may be levied and collected by the educational institutions subject to the condition of the issuance of the receipt. As the amount was collected by the admitting college in pursuance of Section 7 of the Act and also the respondent-medical college has issued receipts in token of collecting the said fee in compliance of Sub-section (3) of Section 7 of the Act, the contention of the learned Counsel for the petitioner that the respondent-College has no power to collect fee of Rs. 27,000/- towards other fee in addition to the tuition fee has no

basis.

40. The Apex Court in the case of Nedurimilli Janardhana Reddy Vs. Progressive Democratic Students'' Union and Others, , has interpreted the word "or" as "and" made the following observations:

"The scheme of the Act cannot he carried out without the constitution of the competent authority and in particular, no educational institution can be established without its formation. In considering the applications made for establishing educational institutions, the prescribed authority has to have due regard that there is adequate financial provision for continued and efficient maintenance of the educational institutions as prescribed; by the competent authority u/s 20(3)(b). It is further the competent authority alone which can grant recognition to the educational institutions u/s 21 of the Act. Even if u/s 20(1) a private educational institution is established in accordance with the rules made under the Act, the said rules cannot displace the competent authority or entrust the powers and functions of the competent authority to any other authority. It is true that Section 20(1) of the Act states that no private educational institution shall be established except in accordance with the provisions of the Act or the rules made thereunder. However the rules made the Act can only appoint an authority to accept the application for establishment of an educational institution and to grant permission therefor. But the word ''or'' in Section 20(1) has to be read as ''and''. Unless so read, the provisions will be invalid on account of excessive delegation enabling the Government to make the rules which supplant or substitute the provisions of the Act. Even if the word ''or'' is read as it is in the said provision, the expression ''or the rule made thereunder'' cannot be understood to mean that the Rules so made can be inconsistent, much less contrary, to the provisions of the Act itself.

41. In view of the above observation, if the word ''or'' in Sub-section (1) of Section 7 of the Act is interpreted as ''and'', charging of the amount of Rs. 27,000/- is held to be fee levied and collected by the educational institutions in respect of class of students. If the above interpretation is examined with reference (o the observations made by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., that charging the permitted fees by the private educational institutions which is bond to be higher than the fee charged in similar governmental institutions by itself cannot be characterised as capitation fees and it has to be held that professional colleges has a right to levy and collect the other fee for providing the facilities which are not included in the subject curriculum.

42. Section 7 of the Act deals with the regulation of fee. As per Sub-section (1) of Section 7 of the Act, the Government by notification regulate the tuition fee or any other fee that that may be levied and collected by any educational institution in respect of each class of students. As per Sub-section (2) of Section 7 of the Act, no educational institution collect any fees in excess of the fee notified under Sub-section (1). Section 7(3) of the Act makes it an obligation on the part of the

educational institution issue an official receipt for the fee collected by it. In these cases, the respondent-Medical college has issued official receipt for the amount so collected over and above the admission fee. The receipt which was issued pursuant to the collection of the said fee is relating to caution money deposit, development fee, maintenance fee, health insurance fee, library fee, laboratory fee, college magazine, college calendar, students association fee, identify card, sports and games fee, Inter University Tournaments fee, College day and other celebrations fee. Medical examination fee apart from admission fee.

43. As per the material annexed to the counter, the NTR Health University issued an admission notification for the year 1997-98, which is in consonance with the directions of the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . In the notification, it has been mentioned that the other charges are to be levied as per the norms of the admitting college. It has also to be further seen whether the notification issued by the NTR Health University has got any force of law.

44. In the following decisions, it has been held that the brochure/prospectus (admissions notification) has got a force of law.

1. Miss. Romini Susan Kurian Vs. State of A.P. and others, .

2. Indu Gupta Vs. Director, Sports Punjab and Another,

As the brochure has been issued by the competent authority in conformity with the scheme of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , it has to be held that the brochure has got force of law.

45. The Apex Court in case of State of West Bengal Vs. Sailendra Nath Sen, at Para 169 has observed as follows:

"We must clarify that charging the permitted fees by the private educational institutions -which is bound to be higher than the fees charged in similar Governmental institutions by itself cannot be characterized as capitation fees"

46. In view of the above cited decisions and of the observations of the Apex Court, the action of the respondent-Medical College in charging an amount of Rs. 27,000/- over and above the fee structure prescribed by the Government by the second respondent college would amounts to capitation fee or permitted fee?

47. The petitioners had the information in the notification issued for the year 1997-98 itself regarding the charging of the fee as per the norms of the admitting college. The Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., has observed as follows:

"(5) Each professional college shall intimate the competent authority, the State Government and the concerned University in advance the fees chargeable for the entire course commencing that academic year. The total fees shall be divided into number of years/semeslers of study in that course. In the first instance, fees only for the first year/semester shall be collected. The payment student will be, however, required to furnish either cash security or bank guarantee for the fees payable for the remaining years/semesters. The fees chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent Court. The competent authority shall issue a brochure, on payment of appropriate charges, along with the application form for admission, giving full particulars of the courses and the number of seats available, the names of the colleges, their location and also the fees chargeable by each professional college. The brochure will also specify the minimum eligibility conditions, the method of admission (whether by entrance test or otherwise) and other relevant particulars."

48. A Division Bench of this Court in the case of Miss. Romini Susan Kurian Vs. State of A.P. and others, , has observed with regard to the binding nature of the prospectus which reads as follows:

"When the prospectus relating to admission in 1st MDBS course clearly mentioned that only the children of Armed personnel who are in receipt of Gallantry Awards mentioned under category (c) will be eligible for consideration and the Gallantry awards have been enumerated therein, which are identically the same as mentioned in Army Order 59/79, the university cannot be directed to include Vishist Seva Medal which falls under the category of distinguished service devotion to duty awards in the category of Gallantry Awards. Xxx

The prospectus issued by the University binds the candidates who seek admission and unless any portion of the prospectus is held to be illegal, Court cannot direct either amendment of the prospectus or consideration of the claim of a student in a manner otherwise than that provided in the prospectus."

49. A Full Bench of the Punjab and Haryana High Court in the case of Indu Gupta Vs. Director, Sports Punjab and Another, emphasised the value of the brochure in the following terms:

"The terms and conditions of the brochure for admission to professional colleges where they use pre-empty language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intend behind the terms and conditions of the brochure, more particularly where the cut-off date itself has been provided in the brochure. The brochure has the force of law."

50. The notification for admission into first year MBBS course for the year 1997-98 was issued by the NTR Health University which is the competent authority. In the said notification, it is made known to the students along with

other information that other charges payable is as per the norms of the admitting college. The students including the petitioners have taken admission basing on such information given in the Notification/ brochure of the college.

51. Under the above circumstances and in view of the judgment of the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and of this Court in the case of Miss. Romini Susan Kurian Vs. State of A.P. and others, and of the Full Bench of the Punjab and Haryana High Court in the case of Indu Gupta Vs. Director, Sports Punjab and Another, it has to be held that the respondent-Medical College being a private unaided medical college, it can collect higher fee over and above the admission fee.

52. In view of the observation of the Apex Court in the case of Nedurimilli Janardhana Reddy Vs. Progressive Democratic Students'' Union and Others, , if the word ''or'' is interpreted as ''and'' in Section 7 of the Act, it has to be observed that private unaided medical colleges constitute a separate class by themselves and they have got the power to levy and collect fee in respect of each class of students by issuing official receipt. As observed above, the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., has held that charging the permitted fees by the private educational institutions - which is bound to be higher than the fees charged in similar governmental institutions - by itself cannot be characterized as capitation fee.

53. Clause 5 of the Scheme framed by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., makes it clear that the competent authority shall issue a brochure on payment of appropriate charges along with the application for admission and giving full particulars of the course and the number of seats available, the names of the colleges, their location and also the fees chargeable by each professional college. The brochure will also specify the minimum eligibility conditions, the method of admission and other relevant particulars. The petitioners herein were admitted in MBBS course for the academic year 1997-98. The brochure supplied by the NTR Health University, which is the competent authority under the Statute has stated in categorical terms that the students has to pay the fee as chargeable as per the norms of the admitting the college.

54. As per Clause 6 (a) of the Scheme in the Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , every State Government shall forthwith constitute a committee to fix the ceiling on the fees chargeable by a professional college or class or professional colleges, as the case may be. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate. A reading of Clauses 5 and 6 of the Scheme goes to show that the brochure must specify the fee that would be collected by each professional college and the Apex Court also made an observation by way of clarification that charging the permitted fees by the private educational institutions, which is bound to be higher than the fees charged in similar

governmental institutions by itself cannot be characterized as capitation fee. Thus the action of the respondents in collecting fee of Rs. 27,000/-other than the tuition fee if viewed as per the admission notification of the NTR Health University for 1997-98 is in conformity with the observations of the Apex Court in paras 169 and 170 Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and the petitioners joined in MBBS course after fully knowing the contents of the Notification, which has a force of law in view of the observations made above. Further, the respondent Medical college has also issued an official receipt for collecting the said amount as per Section 7(3) of the Act and therefore it has to be held that the respondent-Medical College has right to collect the amount of Rs. 27,000/-. The above amount shall not be termed as capitation fee but it is only levied for providing infrastructural facilities and also for other special convenience which are not included in the subject curriculum. Moreover the amount so collected is supported by the official receipt given by the respondent Medical college. In the receipt issued by the respondent-Medical College for Rs. 27,000/-, it has been mentioned that said fee is being collected towards admission fee, caution money deposit, development fee, maintenance fee, health insurance fee, library fee, laboratory fee, college magazine, college calendar, students Association fee, identity card, sports and games fee, Inter university Tournaments Fee, College day and other celebrations fee, Medical expenses fee. Thus, the above fee is being collected to provide other facilities, which are not covered in subject curriculum. It is not the case of the petitioners that respondent-medical college is commercialising the education by collecting the said fee and that the respondent-medical college is not providing good education on par with other medical colleges. Thus, in the absence of such allegations and in view of the fact that the amount is being collected for providing other facilities that are not covered under subject curriculum, it has to be held that the amount so collected can be termed permitted fee but not capitation fee.

55. The learned Government Pleader appearing for the official respondents filed G.O. Ms. No.68, Health, Medical and Family Welfare (F1) Department, dated 14-3-1997, G.O. Ms. No. 297 dated 1-8-1997 and G.O. Ms. No. 320 dated 6-8-1998 and G.O. Ms. No. 611 dated 23-12-1998 to show that the Government has constituted a committee as per the guidelines in Clause 6 (a) of the judgment of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and has fixed a fee and hence the respondent-Medical College cannot charge more than the fee prescribed by the Government as per above GOs for the academic year 1997-98. The learned Counsel for the petitioners also submits that the respondent-Medical College is bound to collect fee as per the above GOs. The learned Counsel for the petitioners also submits that the notification issued by the NTR Health University for the academic year 1998-99 does not specify that the student have to pay the fee as per the rules of the admitting college.

56. However, the learned Counsel for the respondent-Medical college submits

that a committee was constituted by the Government for fixation of uniform fee structure other than tuition fee in private medical, dental colleges including minority colleges and the Committee in its meeting held on 10-6-2002 has decided to recommend the Government to collect a sum of Rs. 30,000/- towards college admission fee, laboratory fee, examination fee etc., and also recommended to collect Rs. 10,000/- towards caution money deposit (refundable-one-time).

57. In the notification issued by the NTR Health University for the year 1997-98, which is in consonance with the scheme framed by the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , it has been stated that the other fees payable will be as per the norms- of the admitting college and the petitioners have taken admission as per the above admission notification i.e., brochure which has force of law. But, the notification of the NTR Health University for the 1998-99 did not contain the clause that the students have to pay the fee as per the norms of the admitting college. However, a reading of the scheme at Clause 5 and 6(a) of the Scheme framed by the Supreme Court in Unni Krishnan ''s case (AIR 1933 SC 2178) makes it clear that the fees fixed shall be for a period of three years. Accordingly, it has to be construed that the fee of Rs. 27,000/- which is the fee levied by the college in 1997 holds good for a period of three years.

58. The Supreme Court in the case of Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., has emphasised the need of collecting higher fee in the colleges started in the home stales, in the following terms:

"Undoubtedly, financial capacity to bear the higher fees will be a consideration which may come an individual student to either accept or decline the offer of a seat. But, this would be so even in a case where the fees are lower. There may be meritorious students who are so poor that they cannot afford even the low fees which are charged. But, that is not a ground for saying that the admission is not available on merit. For those who are financially handicapped, special facilities in the form of merit scholarships or freeships should be made available. We are happy that at least for 10% of such seats, a meritorious student who would have otherwise got admission, but for his inability to pay the fees, is going to be granted a freeship under the present Scheme. We hope that such seats will increase in future as more funding becomes available. The difficulties of such students, however, should not come in the way of other meritorious students who would like to avail of technical education in these colleges and who, apart from being meritorious, are also in a position to pay some what higher fees in return for obtaining the facility of higher technical educations in their home state.

59. From the above discussion, it is clear that the petitioners did not place any material to show that they are not getting any infrastructural facilities and they also did not contend that the quality of education in the said college is not good when compared with other colleges. As observed by the Apex Court, the

petitioners are receiving the medical education in their home State by way of paying the said amount of Rs. 27,000/- for the facilities provided in their home state.

60. Under the above circumstances and in view of the judgment of the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and of this Court in the case of Miss. Romini Susan Kurian Vs. State of A.P. and others, 0 and of the Full Bench judgment of the Punjab and Haryana High Court in the case of Indu Gupta Vs. Director, Sports Punjab and Another, and also in view of the observations made by the Apex Court in the case of Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., , it has to be held that the respondent-Medical College being a private unaided medical college, it can collect other fee over and above the tuition fee as the collection of the said fee is for providing the infrastructural facilities and also for other special conveniences for the welfare and benefit of the students community at large which are not covered under the subject curriculum. It is not the case of the petitioners that by collecting the said fee, the respondent-Medical College is commercializing the education and that it is not using for their welfare and that the respondent Medical College is not providing medical education with good standards.

61. For the foregoing discussion and in view of the findings that the notification/ brochure issued by the NTR Health University has force of law in view of the judgment of this Court in the case of Miss. Romini Susan Kurian Vs. State of A.P. and others, and of the Full Bench judgment of the Punjab and Haryana High Court in the case of Indu Gupta Vs. Director, Sports Punjab and Another, the respondent-Medical College has the power to collect fee over and above the tuition fee since it is mentioned in the notification that the other fees payable will be as per the norms of the admitting college.

62. In the result, these writ petitions fail and they are accordingly dismissed. No costs.

