

**(2003) 10 DEL CK 0010**

**In the Delhi High Court**

**Case No :** CW No. 1993 of 2003 and CMs No's. 10978-79 of 2003

Educate India Society

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

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**Date of Decision :** 21-10-2003

**Acts Referred:**

All India Council for Technical Education Act, 1987 — Section 10, 23, 4

**Citation :** (2003) 8 AD 91 : (2003) 108 DLT 274

**Hon'ble Judges :** Vikramajit Sen, J

**Bench :** Single Bench

**Advocate :** Uday Lalit, Gaurav Aggarwal and Prasanjit Keswani, for the Appellant; C.S. Vaidyanathan Neeraj Jain, Kavita Wadia and Vineet Jhangji, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Vikramajit Sen, J.—Rule.

2. Since the facts that are germane for deciding this Petition are not in controversy, learned counsel for the parties have consented to the final disposal of the Writ Petition itself. Arguments have been addressed in great detail.

3. The facts are that the Petitioner/Society had set up in the year 1996 a technical institute in the name and style of Institute of Technology and Management at Gurgaon, Haryana, as an unaided self-financed professional college. The All India Council for Technical Education (AICTE) had approved its intake capacity of 160 students in respect of the academic year 1996-1997. Presently, the Society has the approval of the AICTE to admit 370 students for the academic year 2002-2005. It is contended by Mr. Uday Lalit, learned counsel for the Society that it had run into losses, ostensibly because the non-resident quota was not fully utilised. under the scheme established by the Hon'ble Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Unnikrishnan's case (supra), however, has been reviewed by

the Eleven Judge Constitution Bench of the Apex Court in T.M.A. Pai Foundation and Others Etc.Etc. Vs. State of Karnataka and Others Etc.Etc., and a substantially different regime has been established. TMA Pai has further been explained by a Constitution Bench of the Hon"ble Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, .

4. In January, 2003, the Society framed its Scheme for admission of students on merit-based selection criteria and also fixed the fee payable by the students, purportedly in consonance with the TMA Pai dictate, at Rs. 60, 700/- per year together with Rs. 8, 400/- as Development charges and other sundry charges, aggregating Rs. 69, 200/- annually. On 10.3.2003 the AICTE issued a Public Notice informing of its "Interim Policy Regulations" which would govern admissions to technical colleges in the academic year 2003-2004, inter alia, prescribing that the fee payable by students would be fixed by the State Level Committee. There is a mention in the Petition of the unconstitutionality of the AICTE dictate mandating that admissions have to be made only from the Merit List prepared by governmental authorities and that at least 85 per cent of the seats would have to be filled-up by counselling conducted by such governmental authorities. It appears that admissions/selection of students has been completed by adherence to these norMs. In these proceedings, however, the controversy centres around the uniform tuition fee fixed by the AICTE. Hence, all other questions are not considered or covered by this judgment.

5. The "Interim Policy Regulations" which has been published in the Gazette of India, Extraordinary, Part-III, Section 4, in exercise of the powers conferred u/s 23 of the All India Council for Technical Education Act, 1987, stipulates inter alias as follows:-

" In order to facilitate the institutions to work out a reasonable fee structure the AICTE, in pursuance of its statutory obligations u/s 10(j) of AICTE Act, which empowers to AICTE to fix Norms and Guidelines for charging tuition and other fees, would draft guidelines for fee fixation. The task of drafting of guidelines/ formula for fee fixation will be assigned to a high-powered a committee to be appointed by AICTE/MHRD, Govt. of India comprising members from academia, subject experts and economic and financial experts. Till such time, as an interim arrangement, the State Government may decide a uniform fee structure, to be made applicable to all the students including those of management seats, for the current academic year through its Fee Committee comprising members drawn from academia and financial experts, already constituted (to be constituted, if necessary) as per existing Regulations of AICTE. There shall be no "Payment" & "Free" category of fees as directed by the Hon"ble Supreme Court. The fee structure to be decided by the State committee should be such that it ensures forbidding profiteering by the institutions, in furtherance of judgment of Hon"ble Supreme Court. The uniform fee so decided shall be applicable to the fresh batch of students to be admitted during the current academic year, 2003-04 in all the private unaided institutions in the State. The existing students shall not be

subjected to such changes and shall continue to be governed by the present fee structure. The State Committee shall take all necessary steps while working out the fee structure to ensure prevention of commercialization of technical education. It shall be desirable for the private unaided institutes to provide scholarships or charge reduced fees to the economically weaker section and deserving meritorious students".

Predicated on this Interim Policy Regulations of the AICTE, the Technical Education Commissioner and Special Secretary to the Government of Haryana, Technical Education Department had issued a Circular on 21.4.2003, almost verbatim of that of the AICTE, the relevant portion of which reads as follows:

" Fee matters

i. Fee for 100% seats in various Self-financing colleges would be uniform for a particular course in a particular college. Differential fee for the same course in same college would not be permitted.

ii. In order to facilitate the institutions to work out a reasonable fee structure the ACITE, in pursuance of its statutory obligations u/s 10(j) of AICTE Act, which empowers to AICTE to fix Norms and Guidelines for charging tuition and other fees, would draft guidelines for fee fixation. The task of drafting of guidelines/ formula for fee fixation will be assigned to a high powered committee to be appointed by AICTE/Ministry of Human Resource Development, Government of India comprising members from academia, subject experts and economic and financial experts. Till such time, as an interim arrangement, the State Government would decide a uniform fee structure, to be made applicable to all students including those of management seats, for the current academic year through its Fee Committee comprising members drawn from academic and financial experts, already constituted as per existing Regulations of AICTE. There shall be not "Payment" & "Free" category of fees as directed by Hon"ble Supreme Court. The fee structure to be decided by the State Committee would be such that it ensures forbidding profiteering by the institutions, in furtherance of judgment of Hon"ble Supreme Court. The fee so decided shall be applicable to the fresh batch of students to be admitted during the current academic year, 2003-2004 in all the private un-aided institutions in the State. The existing students shall not be subjected to such changes and shall continue to be governed by the present fee structure The State Committee shall take all necessary steps while working out the fee structure to ensure prevention of commercialization of technical education. It shall be desirable for the private unaided institutes to provide scholarships or charge reduced fees to the economically weaker section and deserving meritorious students".

6. The Society, in terms of its letter dated 24.5.2003 and annexures thereto had disclosed the projected expenses of the Institute, including total salaries payable to the teaching and non-teaching staff, guests faculty, etc. The Society had contended that the "major constraint on quality improvement of self-financed

education is the acute inadequacy of available resources by unrealistic fixation of fees. The rational way of fixing the fees, would have been to work out the cost of such an education, which is commensurate with the guidelines, outlined by AICTE". It appears that different fee structure has been established, the upper limit of which is Rs. 40, 000/- per student per academic year. It has been highlighted that this fee structure is avowedly founded on a teacher/student ratio of 1:15, which runs counter to the AICTE norms of 1:10. The Society is also aggrieved with the irrationality of equating it with other institutes such as Y.M.C.A. Institute of Engineering, Faridabad which, unlike the Society, receives financial aid from the State. Emphasis has also been placed on the indubitable position that there is a great variance in the fees set down in different States of India. The Society also explained that its projections for the current academic year onwards is based on a teacher/ student ratio of 1:10, as recommended by the AICTE, which ratio in the earlier years could not be maintained because of inadequacy in tuition fee collection. It is also highlighted that in the projections for the current and prospective years the Society has budgeted for contingent and management expenses aggregating less than 15 per cent which are within the parameters set down by the Apex Court. There are, of course, other institutions which can only charge much lower fee, but these are stated to be almost fully funded by the State. I must immediately clarify that the quantum of the fee chargeable by the Petitioner is not the subject matter of this Petition and must be left to the wisdom of the Committee for Determination of the Fee Structure and Supervision of Admissions in Technical and Medical courses. It appears that a letter dated 15.10.2003 (yesterday) has been addressed by the Chief Secretary, Haryana to the Registrar General, Punjab and Haryana High Court, Chandigarh, requesting the Hon"ble Chief Justice to nominate a retired judge for Chairing these Committees.

7. The prayers in the Writ Petition that have been pressed before me are as follows:

" (a) issue an appropriate writ, order or direction quashing the impugned provisions of the Interim Policy Regulations No. F.37-3/Legal (v)/2003 issued by the All India Council for Technical Education, New Delhi on 10.03.2003 (Annexure P-8 to the present petition); and/or

(aa) issue an appropriate writ, order or direction quashing the impugned provisions of the Interim State Policy/Guidelines issued vide Memo No. 770-773 issued by the State of Haryana on 21.04.2003 (Annexure A-1), and/or

(ab) by an appropriate writ, order or direction in the nature of certiorari or such other writ of similar nature, quash and set aside the impugned Notification No. 1723-1805/Engineering dated 30th June 2003, (Annexure A-2), quash and set aside impugned press release issued on 31.08.03 (Annexure A-3) and quash and set aside the impugned letter issued by the State of Haryana dated 20th September, 2003 (Annexure A-6); and/or

(ac) by an appropriate writ/order/direction in the nature of a mandamus or such other appropriate writ, direct the Respondents to permit the Petitioner to charge Rs. 69, 200/- p.a. per student i.e. the fee fixed by it, subject to the approval by the Fee committee as and when the same is constituted; and/or

8. It will also be relevant to mention that the Society had approached the Hon"ble Supreme Court on its failure to obtain the desired interim relief from this Court. However, the SLP was dismissed on 3.7.2003 but liberty was granted to the Society" to obtain undertaking from the students that in the event of the High Court upholding the entitlement of the Petitioner to charge higher fee, the student shall remain bound to pay the same". My attention has also been drawn to a number of letters addressed to the Secretary, Technical Education, Government of Haryana in connection with the constitution of the Fee Committee before commencement of the academic session 2003-2004, in reply to which the Joint Director, Technical Education, Haryana has alluded to the Order of the Apex Court dated 14.8.2003 in Writ Petition (Civil) No. 350 of 1993 viz. Islamic Academy case and to the observations " each technical institute must place before this Committee, well-in-advance of the academic year, its proposed fee structure". In the event, these words have been relied upon out of context.

9. The only question which falls for determination in these proceedings is whether the Society must strictly adhere to the prescribed fee of Rs. 40, 000/- per year or may collect Rs. 69, 200/- per annum per student, being the fee fixed the the Society.

10. The pronouncements of the Apex Court on this legal conundrum are to be found in the TMA Pai"s case and as explained by the Constitution Bench in the Islamic Academy case in these passages, which have been relied upon on both sides of the Bar:

"6. In view of the rival submissions the following questions arise for consideration:

- (1) whether the educational institutions are entitled to fix their own fee structure;
- (2) whether minority and non-minority educational institutions stand on the same footing and have the same rights;
- (3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and
- (4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission.

#### Question 1

7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide

facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in T.M.A. Pai case the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its

recognition/affiliation.

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20. Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament. The expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.

Mr. Vaidyanathan has relied heavily on the following paragraphs of separate judgment of His Lordship, S.B. Sinha, and particularly paragraph 161:-

147. On a bare reading of the relevant paragraphs of the judgment, some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizen carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in paragraph 56, economic forces have a role to play. They, thus, indisputably have to plan their investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is: (a) capitation fee, and (b) profiteering.

152. The ground reality, however, cannot be lost sight of. It is true, as has been contended by the learned counsel appearing on behalf of the applicants, that the Central Government in answer to the question raised in Parliament has stated that the expenses incurred by the State for imparting education to the students is very high. It may vary from three lakhs to five lakhs. Some States, however, in their colleges charge about rupees five thousand per year; whereas the unaided institutions demand anything between rupees two lakhs to five lakhs.

153. Some State Governments unfortunately followed suit, hiked fees and like many private unaided institutions the State of Haryana has also demanded the entire amount of fees for the whole course.

154. The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in paragraph 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

156. While this Court has not laid down any fixed guidelines as regards fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

157. The institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course.

158. Profiteering has been defined in Black's Law Dictionary, 5th Edn. as:

"Taking advantage of unusual or exceptional circumstances to make excessive profits;"

159. With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.

160. The respective institutions, however, for the aforementioned purpose must file an appropriate application before the Committee and place before it all documents and books of accounts in support of its case.

161. Fees once fixed should not ordinarily be changed for a period of three years, unless there exists an extraordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/body set up. For this purpose the application should not be filed later than April of the preceding year of the relevant education session. The authority/body shall take the decision as regards fees chargeable latest by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalized bank. In other words, no employee or any other person employed by the management shall be entitled to take fees in cash from the

students concerned directly. The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation.

162. However, there cannot be any doubt that before any such order is passed, the institutions concerned shall be entitled to an opportunity of being heard. For the aforementioned purpose, the State shall set up a machinery to detect cases where amounts in excess of the permitted limit are collected as it is the general experience that students pay a huge amount.

163. However, if for some reason, fees have already been collected for a longer period the amount so collected shall be kept in a fixed deposit in a nationalized bank against which no loan or advance may be granted so that the interest accrued thereupon may ensure to the benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned students".

11. In T.M.A. Pai Foundation and Others Etc.Etc. Vs. State of Karnataka and Others Etc.Etc., the Apex Court had observed thus:-

"55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan case the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized

educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, Therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, Therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of Fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in

the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

60. Education is taught at different levels, from primary to professional. It is, Therefore, obvious that government regulations for all levels or types of educational institutions cannot be identical; so also, the extent of control or regulation could be greater vis-?-vis aided institutions.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that State-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the State has to provide the difference which, Therefore, brings us back in a vicious circle to the original problem viz. the lack of State funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of State-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

62. There is a need for private enterprise in non-professional college education as well. At present, insufficient number of undergraduate colleges are being and have been established, one of the inhibiting factors being that there is a lack of autonomy due to government regulations. It will not be wrong to presume that the number of professional colleges is growing at a faster rate than the number

of undergraduate and non-professional colleges. While it is desirable that there should be a sufficient number of professional colleges, it should also be possible for private unaided undergraduate colleges that are non-technical in nature to have maximum autonomy similar to a school.

63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the Government or the university are clearly loaded against the management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the management in the event of some punishment being imposed, it was submitted that there should be no role for the Government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally,

the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, Therefore, be appropriate that an Educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an Educational Tribunal in a State - the object being that the teacher should not suffer through the substantial costs that arise because of the location of the Tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the Government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in *St. Stephen's College* case this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers - but how the private unaided institutions are to run is a matter of administration to be taken care of

by the management of those institutions.

#### Private unaided professional colleges

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, Therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and post graduation non-professional colleges or institutes.

69. In such professional unaided institutions, the management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/university subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is

not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational institution has to get recognition from the university concerned, which normally requires certain conditions to be fulfilled before recognition. It has been held that conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions".

12. Mr. Uday Lalit, learned counsel appearing for the Society has drawn my attention to the decision in Writ Petition No. 3061 of 2003 in which the Division Bench of the High Court of Bombay has analysed these Judgments and has directed " that the private professional colleges shall announce their fee structure within one week from today which shall be notified on the website and the same shall be submitted to the State Government for scrutiny by the Committee appointed as per the direction of the Supreme Court. The fees which are collected in the meantime shall be subject to the adjustment as per the decision of the Committee in respect of each college".

13. Mr. C.S. Vaidyanathan, learned Senior Counsel for the State of Haryana has raised two preliminary objections - (a) that the Petition has already been rendered infructuous and (b) that this Court ought not to exercise jurisdiction as the relief is against the State of Haryana. So far as the first objection is concerned, all that is happened is that the State of Haryana has requested the Hon'ble the Chief Justice of the High Court of Punjab and Haryana to nominate a retired High Court Judge to chair the Committee, which is yet to be formed and commence its task. The questions which have been raised in this Petition, however, are not put to rest merely on the constitution of such a Committee. The legal no dues is whether the AICTE or the State is empowered to fix the tuition fee. So far as the second objection is concerned, it should be recalled that the impugned fee structure established by the State of Haryana is structured on the directions of the AICTE. The focal party, Therefore, is AICTE. In any event this objection loses significance since the entire Writ Petition has been argued threadbare, and that the central question is whether the AICTE or any of its regional delegates have the power and authority to fix the pre-determined tuition fee. The main dispute should, Therefore, be decided.

14. What the Apex Court has laid down that all educational institutions must conform with standards set down by the University. Private unaided Colleges

should be free to prescribe their own fee, subject to the rider that education should not be transformed from a vocation to a commercial venture. The fixation of a uniform fee is not recommended by any of their Lordships of the Apex Court. The language in TMA Pai's case and of the majority judgment in the Islamic Academy's case, is precise and unambiguous. What it envisaged is that the College can propose its fee structure which will thereafter be approved or modified by the Committee after giving the College an opportunity of being heard. As soon as this exercise is complete the educational institution will have to comply with the fixation for a period of 3 years. While approving the fee structure the Committee ought not to interfere with the administration of the concerned educational institution since in those premises it would become a substitute for the State or bureaucratic control. The Committee must be enlightened enough to allow a free hand to the College and step in only if the proposed fees are wholly unrealistic or a disguise for dividends drawn by the Managements. This is for the reason that role of the Committee does not come to an end on the approval by it of the fees. It has been specifically empowered to monitor the financial working of the college concerned. For example, while making out its budget and fixing its fees in consonance with a teacher/student ratio of 1:10, this may not have been achieved in actuality. It may be proposed by the College to pay a very salary, below which an outstanding person or professor may not consent to join the faculty. At the initial stage a free hand must be given but while monitoring the activities of the educational institution it would be open to the Committee to take remedial steps in case the aggregate sums collected by the College have not been expended as anticipated in its budget. This monitoring is essential to plug the possibility of making secret profits. By a rule of thumb if the Committee finds that the surplus of income over expenditure exceeds the 15 per cent permissible to be retained towards Development etc., the Committee may prescribe measures for carrying out adjustments in future fees. If centres of higher education, or at least a few of them are to move from mediocrity to excellence, education therein may perforce become expensive. There are adequate safeguards in the TMA Pai and Islamic Institute Schemes to ensure that any Management should not deviate from the objective of disseminating quality education.

15. In the present case the Respondents have acted in haste, and beyond the functions permitted by the Hon'ble Supreme Court. They have preempted the action reserved to the Society. The Society had forwarded its fee structure in advance of the ensuing academic year. It is not a case where the Society's endeavor is to charge fees which are likely not to be approved by the Committee, by taking advantage of its own delay in forwarding the proposed tuition fees to the Committee. If a uniform fee fixed not by the educational institution but by the State is to be permitted it would obliterate the regime set down in the two judgments of the Apex Court. Mr. Vaidyanathan had vehemently submitted that a perusal of the Balance Sheet of the Society will disclose that its present proposal is far in excess of the expenditure in previous years. The Explanation given by

the Society, inter alia, that it was functioning on the Unnikrishnan's Scheme, that it was maintaining a teacher/student ratio higher than 1:10 may be plausible, but this is precisely the envisaged exercise and obligation of the Committee, and not of the State. If the Society is forced to adhere to the fees fixed by the State the Islamic Academy's regime will be set at naught. Let us leave education to the educationist, at least initially.

16. The most significant aspect of the regime established by TMA Pai's case is the introduction of laissez-faire into college education and the gentle but hopefully irreversible removal of education from total State or bureaucratic control and its transfer to the specialised and experienced hands of academics. It is now firmly entrenched in educational jurisprudence that in seeking affiliation to a University, the concerned College would have to strictly conform with the standards set by that University, in letter and more in spirit. Educational standards should be improved progressively, and maladministration should not be brooked even for a moment. This is how universities in America, UK and Europe are administered. The other facet of laissez-faire is that educational institutions would increasingly have to raise their own resources, thereby making it possible to channel State funds into improving school education, which is an essential right of every citizen of India. The stark reality is that graduates quite often feel fortunate if they secure even menial and cleaning jobs. University education can and is perused because it is absurdly cheap in our country. Financial constraints breed mediocrity. This is not to say that only the elite or financially strong are entitled to pursue higher studies. It is the bounden duty and obligation of the State to ensure that meritorious students desiring to pursue graduate and post graduate studies are provided financial assistance for their pursuits, by way of scholarships, bursaries or the like. If State funding in graduate and higher studies is drastically reduced, as it would if private enterprise is encouraged, there should be funds available for this purpose. Committee can also ensure that provisions in this regard are built into the budget of the concerned educational institution. The State may reasonably direct education institutes to make provisions for such purposes. This does not mean that education fees should be compulsorily reduced for all and sundry, since this will inexorably result if not in lowering of standards, then certainly in impeding the improvement and advancement of learning to its pinnacle. It cannot also be predicated that every citizen has the unqualified right to gain admission in any college. Each college, educational institution need not charge a uniform fee. Some can be more expensive than others. Where the fee structure does not correspond to the quality of teaching imparted, market forces will soon step in to reduce the fees commensurately. Some of the premier colleges around the globe have Professors whose salaries are comparable to Heads of business enterprises. This definitely results in raising not just the prestige of the college but more importantly the content of its educational standards. It is deleterious to the interest and quality of teaching if the college is perennially and painfully short of funds.

17. In these circumstances the Writ Petition is of substance and has merit. The fixation of a uniform fee of Rs. 40, 000/- is struck down. The Society shall be free to collect the fee proposed by it till such time as it is modified by the Committee for Determination of Fee Structure, to be chaired by a retired judge as nominated by Hon"ble the Chief Justice of Punjab and Haryana High Court . The fees which are collected shall be strictly accounted for and will be subject to the directions that may be passed by the Committee. The Petition is allowed and the Applications are disposed of in the above terms.

18. Parties shall bear their respective costs.