

(2014) 12 MAD CK 0352

In the Madras High Court

Case No : Writ Petition Nos. 20720 and 22305 of 2014 and M.P. Nos. 1 and 2 of 2014

M. Aamira Fathima

APPELLANT

Vs

The Annamalai University

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Annamalai University Act, 1928 — Section 2(b), 2(c), 28, 28(4), 3

Annamalai University Act, 2013 — Section 20, 20(1), 4, 4(1)

Cochin University of Science and Technology Act, 1986 — Section 18

Constitution of India, 1950 — Article 14

Tamil Nadu Educational Institutions (Prohibition of Capitation Fee) Act, 1992 — Section 2(a), 2(b), 3, 4, 4(2A)

Citation : (2014) 12 MAD CK 0352

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioners in one writ petition joined the first year of the MBBS degree course in Raja Muthiah Medical College, which is a constituent of the Annamalai University, in the academic year 2013-14. The petitioners in the other writ petition joined the first year of the B.D.S. course in the same university in the academic year 2013-14. The petitioners in both the writ petitions have now moved over to the second year of the respective courses.

2. In 2013-14 when the petitioners joined the above courses, the University was governed by the provisions of the Annamalai University Act, 1928 and the students of M.B.B.S. were required to pay Rs. 5,54,370/- and the students of B.D.S. were required to pay Rs. 3,50,370/- towards fees as determined by the Senate and as indicated in the Prospectus for the year 2013-14. But certain ugly and unfortunate events that happened in quick succession from November 2012, culminated in the State of Tamilnadu passing the Annamalai University Act, 2013 repealing the 1928 Act. Under the new enactment, the State assumed complete control of the University, removing the role played by the Founder's family till then.

3. Therefore, when the academic year 2014-15 commenced and the students were notified that the fee payable for the current academic year would be the same as fixed in the previous year, in pursuance of a decision taken by the Senate, some students of the second year of the M.B.B.S. course have come up with the first writ petition seeking a writ of mandamus to direct the respondents to forbear from demanding or collecting any fee in excess of what is collected in Government Medical colleges. Similarly, some students of the second year of the B.D.S. course have come up with the other writ petition challenging the notice displayed in the Notice Board demanding the fee as determined by the Senate and seeking a directing to the respondents to collect only the fee that is collected by the Government dental colleges in the State of Tamilnadu.

4. I have heard Mr. AR.L. Sundaresan and Mr. C. Selvaraju, learned Senior Counsel appearing for the petitioners, Mr. A.L. Somayaji, learned Senior Counsel appearing for the University assisted by Mr. R. Suresh Kumar, learned Counsel and Mr. P. Sanjay Gandhi, learned Additional Government Pleader appearing for the State and Mr. Srinivasamurthy, learned counsel appearing for the Association of Teachers of the University, who got impleaded as parties to the writ petition.

5. The crux of the case of the petitioners is that after the assumption of complete control of the university by the State, under Tamilnadu Act 20 of 2013, the University cannot charge from the students undergoing medical and dental courses, a fee different from the fee charged for the students studying in Government medical and dental colleges. This contention, on its surface, appears to be simple and convincing, but it is only deceptively so. This can be understood only if we delve deep into some fundamental facts.

HISTORY

6. The Annamalai University was originally established under an enactment known as Annamalai University Act, 1928. A peep into the history of this enactment would show that one Raja Sir Annamalai Chettiar, who had established several institutions of higher education at or near Chidambaram, entered into an understanding with the local Government of pre independence days. Under the said agreement, he agreed to hand over all the institutions of higher education together with all its properties to the local Government along with a donation of Rs. 20 lakhs, for the purpose of establishing a teaching and residential university. As a quid pro quo, he reserved unto himself and his successors, certain powers and privileges. The terms and conditions of the agreement were incorporated in the Statute.

7. As per the Annamalai University Act, 1928, the Founder was to be the Pro Chancellor and every Vice Chancellor is to be appointed by the Chancellor only from a panel of three names recommended by the Founder. The expression "Founder" is defined in Section 2(c) of the Act to mean Raja Sir S.R.M. Annamalai Chettiar and after him, his son M.A. Muthiah Chettiar and after the lives of both of them, any adult male member chosen by the Chancellor from

among the members of Sir Annamalai Chettiar's family, tracing their descent through males. The Founder was not only made the Pro Chancellor for all times to come, but was also conferred special privileges including the privilege of nominating ex-officio members of the Senate. The Founder was also to be a part of the Board of Selection vested with the power to appoint teachers and the Registrar of the University.

8. In the year 1985, the University established a medical college by name Raja Muthiah Medical College. But, even before the same, a faculty of medicine was established in the year 1980 and under the aegis of the Department of Nursing, a degree course in Nursing was started by the University in the year 1980.

9. Under the Annamalai University Act, 1928, two funds were created, one known as permanent endowment fund and another known as general fund. The permanent endowment fund, as per Section 41(ii) of the Act, was to consist of (i) the sum of Rs. 20 lakhs provided by the Founder; (ii) the sum of Rs. 27 lakhs provided by the local Government; and (iii) the contributions made by the local Government, the Government of India, any local or other public body, the Founder or others.

10. Similarly, the general fund of the University is to consist of (i) the fees and income from endowments including the permanent endowment fund; and (ii) any contributions made by the local Government, the Government of India, any local or other public body, the Founder or others. This is in terms of Section 42.

11. Section 43 of the Act contemplated an annual contribution to the general fund, by the local Government at the rate of Rs. 1.5 lakhs. This amount got increased to Rs. 54 lakhs from the year 1981-82 and to Rs. 176 lakhs from 1.4.1985 less 20% overhead. Apart from the annual contribution, the local Government was also to give for the buildings and equipment of the University, a sum of Rs. 7.5 lakhs and such further amounts as they may deem fit to contribute. Therefore, the financial contribution made by the Government, right from the year 1928, is many times more than the value of the initial act of charity on the part of the founder.

12. But unfortunately, right from the beginning, the University was managed and administered with the least intervention by the Government, despite the fact that the funds sunk by the Government were of enormous proportions, when compared to the initial investment made by the Founder, so as to be coroneted as a philanthropist. The result was that the University was under the complete and exclusive control of the Founder.

13. The near total control exercised by the Founder and the hands-off mode to which the Government had switched over, resulted in utter chaos and confusion, putting the once reputed University into the intensive care unit. In the year 2012, a series of protests in the form of hunger strikes, abstention from work and gate meetings were organized by the Joint Action Council of the Annamalai University Teachers and Staff Associations, alleging serious irregularities and mal-

practices of unimaginable proportions against the Founder. All these eventually snowballed into a crisis and the University was closed indefinitely with effect from 14.11.2012, leading to the postponement of examinations and unrest in the campus.

14. Realizing the gravity of the situation, the Government of Tamilnadu issued G.O.(1D). No. 345 Higher Education Department dated 14.12.2012 constituting a Special Local Fund Audit Team comprising of various officers of the Department of Local Fund Audit. The Team was directed to conduct a special audit in terms of Section 28 of the Annamalai University Act, 1928.

15. After inspecting the records and holding an enquiry, the Special Local Fund Audit Team submitted a report, which disclosed shocking state of affairs. The salient features highlighted by the report are as follows:

(i) That the University never adhered to the statutory provisions or the Government or the University Grants Commission Norms in the matter of appointment or promotion or fixation of pay, resulting in a financial loss of about Rs. 22.69 Crores during the years 2009-10 and 2010-11;

(ii) That due to the appointment of persons over and above the norms fixed, the University had incurred excess expenditure for the year 2010-11, to the tune of Rs. 43.46 Crores, under the stream of regular education, Rs. 21.09 Crores under the Stream of distance education, Rs. 45.44 Crores under the stream of self financing courses and Rs. 109.99 Crores under all streams for the teaching and non teaching categories;

(iii) That despite making all statutory deductions and paying net salaries to the employees, the University failed to remit into the provident fund, contributory pension fund and pension fund, a huge amount of Rs. 178.15 Crores;

(iv) That all contracts for all types of construction works were entrusted by the University only to a company promoted by the Founder, leading to the actual expenditure exceeding the estimates by more than 13% to 30%;

(v) That despite terming certain courses as self financing courses, the University had to utilize its other funds to the tune of more than Rs. 268 Crores for supporting the self financing courses; and

(vi) That due to mal-administration, an overall deficit of Rs. 272.64 Crores and a liability of Rs. 238.21 Crores have arisen over the past 15 years.

16. In the light of the report of the Special Local Fund Audit Team pointing out the above irregularities, the Government of Tamilnadu passed yet another order in G.O.(1D). No. 346 Higher Education dated 14.12.2012, constituting a High level Committee comprising of (i) Principal Secretary to Government, Higher Education Department, (ii) Principal Secretary to Government, Finance Department; (iii) Development Commissioner; and (iv) Secretary to Government, Law Department, to analyze the audit report submitted by the

Special Local Fund Audit Team.

17. After examining the report and the supportive material, this High Level Committee concluded that the Founder had grossly abused the privileges conferred upon him and that despite receiving grants from the State Government to the tune of Rs. 427.98 Crores during the period from 1998-99 to 2012-13, the University had landed up in serious financial crisis. Therefore, the Committee recommended that the Government shall issue necessary directions to the Senate and the Syndicate and also to appoint some person to carry out those directions.

18. In pursuance of the aforesaid recommendations, the Government issued a letter dated 7.3.2013 to the Vice Chancellor, to convene the meeting of the Syndicate and Senate, to respond to the report of the Special Local Fund Audit Team. A special meeting of the Senate was held on 13.3.2013 and the meeting of the Syndicate was held on 14.3.2013. The report of the Syndicate showed that by and large, the findings of the Special Local Fund Audit Team were correct. Therefore, the Government issued a directive on 26.3.2013 to convene a special meeting of the Senate and the Syndicate. This was opposed by the Vice Chancellor by a reply dated 1.4.2013 on the ground that a second meeting will serve no purpose.

19. Therefore, the Government, by G.O. Rt. No. 1401, Public Department, dated 4-4-2013, appointed an Administrator in exercise of the powers conferred by Section 28(4) of the Annamalai University Act, 1928. Thereafter, the State Legislature passed the Annamalai University Act, 2013, repealing the 1928 Act and putting in place a new enactment. The new Act came into force with effect 25.9.2013. By this Act, whatever role had been given to the Founder and his male descendants under the 1928 Act was completely removed. Though a new Vice Chancellor has not been appointed, the Administrator, who happens to be an Officer of the Indian Administrative Service, is now managing and administering the University. It is in the background of this past history, that the claim made by the petitioners in these two writ petitions has to be examined.

RELEVANT PROVISIONS OF THE 1928 ACT:

20. Section 3 of the 1928 Act enlisted the powers and purposes of the University. Under Clause (I) of Section 3, a power was conferred upon the University to demand and receive such fees and other charges as may be prescribed. Section 32 of the Act empowered the Academic Council either on its own motion or on the submission of a draft by the Syndicate, to issue regulations. The matters in respect of which, the Regulations may be made, are listed in Section 31. Under Clause (e) of Regulation 31, the fees to be charged for the courses of teaching given by the teachers of the University, the fees for tutorial and supplementary instructions given by the University for admission to the examinations, the fees payable for degrees and diplomas of the University and for the registration of the graduates etc., are some of the matters, for which provision may be made in the

regulations.

21. Therefore, it appears that the University had always been fixing and collecting fees in respect of every one of the courses offered by the University and its constituent colleges, of its own accord. The fees so fixed, have always been approved by the Academic Council in terms of the regulations made under Section 32 and hence they had a statutory character.

RELEVANT PROVISIONS OF THE 2013 ACT:

22. Section 4 of the 2013 Act indicates the objects and the powers of the University. Sub-Section (13) of Section 4 shows that the University has the power to fix fees and to demand and receive such fees as may be prescribed. Section 20(1) of the Act lists the powers of the Syndicate. Under Clause (m) of Sub-Section (1) of Section 20, the Syndicate has the power to prescribe the fees to be charged for admission to the examinations, degrees, titles and diplomas of the University and for all or any of the purposes specified in Section 4. Similarly, Clause (ab) of Sub-Section (1) of Section 20 empowers the Syndicate to charge and collect such fees as may be prescribed.

23. The Syndicate is conferred with the power under Sections 31 and 32 to issue Ordinances. The matters in respect of which, such Ordinances could be issued, are listed in Section 31. One of these items, for which, provision may be made in the Ordinances, is to be found in Clause (i) of Section 31. It is with respect to the fees to be charged for courses of study, research, experiment, practical training and for admissions to the examinations, for degrees, titles, diplomas and other academic distinctions of the University.

24. Therefore, it is clear that both under the 1928 Act and under the 2013 Act, a power is statutorily conferred upon the University to fix the fees. It is in exercise of such a power that the University had admittedly fixed a fee of Rs. 5,54,370/- for the first year of the MBBS course for the academic year 2013-14 and the same was indicated in the prospectus issued for the year. In exercise of the very same power, the University had fixed a fee of Rs. 5,54,370/- for the academic year 2014-15 also. Similarly, in respect of the BDS course, the fee fixed for the academic year 2013-14 was Rs. 3,50,370/-. The same fee is prescribed for the BDS course for the current academic year 2014-15 also. Such fixation has taken place, in exercise of the power conferred by Statute.

25. As stated earlier, the petitioners in the first writ petition applied for admission to the first year of the MBBS degree course for the academic year 2013-14 in terms of the prospectus issued for the year 2013-14. They also paid a total fee of Rs. 5,54,370/- for the academic year 2013-14. Likewise, the petitioners in the second writ petition applied in pursuance of the prospectus of the year 2013-14 and got admitted to the first year BDS course and paid a fee of Rs. 3,50,370/-.

26. All these petitioners have now moved over to the second year of the MBBS degree course or the BDS degree course, as the case may be. By virtue of the

resolution bearing No. 11 passed on 21.3.2014 by the Syndicate, the Syndicate had decided to charge for the academic year 2014-15, the very same fee that was charged for the academic year 2013-14. Therefore, the petitioners were required by the University to pay the fees, for the academic year 2014-15.

27. Aggrieved by such fixation of fees by the Syndicate for the academic year 2014-15, at the same rate as was fixed for the academic year 2013-14, a few students are said to have made a representation to various authorities on 27.5.2014. Thereafter, they have come up with the above writ petitions.

28. Interestingly, the copy of the representation enclosed to the first writ petition does not contain the names of the students, who were parties to the representation. At the top of the representation, it is merely stated that the persons sending the representation are the students of batch 2013. At the end of the representation, four signatures are found, in a zigzag manner without indicating the names as against those signatures.

29. The representation allegedly sent by the students of the first year of the BDS course on 21.1.2014 appears to be in a much better shape. Though the said representation also does not contain the names of the students on the top of the representation, the names are indicated at least towards the end of the representation with signatures. For the purpose of completion of narration, it must be recorded that the resolution of the Syndicate dated 21.3.2014 is not under challenge in either of the writ petitions. But, in the second writ petition, a demand made by the Registrar on 1.7.2014 from the students of the BDS course is under challenge, though the resolution of the Syndicate is not challenged.

CONTENTIONS:

30. The case of the petitioners in both these writ petitions is that Section 3 of the Tamilnadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act 1992 (hereinafter called the Capitation Fee Act, 1992) prohibits the collection of any capitation fee by any educational institution. The expression capitation fee is defined in Section 2(a) to mean any amount, by whatever name called, paid or collected, directly or indirectly, in excess of the fee prescribed under Section 4. Section 4(1) of the Act empowers the Government to regulate by notification, the tuition fee or any other fee or deposit that may be received or collected by an educational institution. Section 4 was amended by the Tamilnadu Act 41 of 2007 with effect from 14.11.2007. By the said amendment, Sub-Section (2A) was inserted under Section 4, whereby all educational institutions imparting education leading to a degree in medicine or engineering were prohibited from receiving or collecting any fee in excess of the amount fixed by the Committee on Fixation of Fees constituted by the Government. The expression educational institution is defined in Section 2(b) of the Act to mean every institution, by whatever name called, whether managed by any person, private body, local authority, trust or university, except the educational institutions established by the Central Government or under any law made by Parliament.

31. The Committee on Fixation of Fee constituted by the Government, has fixed the tuition fees for the MBBS course for the academic year 2014-15 at Rs. 2.30 lakhs for two self financing colleges, Rs. 2.60 lakhs for one self financing college and Rs. 2.80 lakhs for other self financing colleges. In so far as the ESIC medical colleges are concerned, the Committee had fixed the tuition fees at Rs. 24,000/- for the academic year 2014-15. In so far as the BDS course is concerned, the Committee had fixed the fee at Rs. 1.15 lakhs for all self financing colleges, for the academic year 2014-15. In so far as the Government colleges are concerned, the Government itself had fixed (without reference to the Fee Fixation Committee) only a fee of Rs. 12,290/- for the MBBS course and Rs. 10,290/- for the BDS course for the academic year 2014-15.

32. Therefore, the contentions of the petitioners are:

(i) That Raja Muthiah Medical College is an educational institution within the meaning of the expression under Section 2(b) of the Capitation Fee Act;

(ii) That therefore, by virtue of Section 4(2A) read with Section 3 of the Capitation Fee Act, the respondent University or its constituent colleges cannot collect more than the fee stipulated by the Fee Fixation Committee;

(iii) That if any educational institution, despite being covered by the Capitation Fee Act, 1992 did not go before the Fee Fixation Committee, the institution is obliged to charge only that fee, which is the lowest fixed by the Committee for any institution for that academic year; and

(iv) That once the Government had taken over the University and the college, the institution has become a Government college and hence, the Government cannot charge such an exorbitant amount of fee from this college especially when they charge only Rs. 12,290/- for the students of all other Government medical colleges and Rs. 10,290/- for the students of all other Government dental colleges.

33. In response, it is contended by Mr. A.L. Somayaji, learned Senior Counsel appearing for the Annmalai University as follows:

(i) That having applied and got admission to the respective courses in pursuance of the prospectus issued by the institutions, the petitioners are bound by the terms and conditions contained in the prospectus;

(ii) That the fees stipulated by the college and the University are in terms of the provisions of the Statute and hence, there was no violation of Section 3 of the Capitation Fee Act;

(iii) That primarily, the object of the Capitation Fee Act is to curtail the menace of self financing colleges fleecing the students and hence, the Government colleges and the State run universities do not come within the terms of reference of the Fee Fixation Committees; and

(iv) That the mal-administration and mismanagement of the University and its

constituent colleges for more than three decades, have resulted in all its courses including the MBBS and BDS courses being run only on deficit finance and that therefore, the very continuance of courses will be completely in jeopardy, if even the present fee structure is set at naught.

34. I have carefully considered the rival submissions.

35. From the rival contentions, I think the following questions arise for consideration:

(i) Whether the petitioners, who are admitted to the MBBS and the BDS courses in pursuance of the prospectus of the year 2013-14, are bound by the terms and conditions contained in the prospectus?

(ii) Whether Raja Muthiah Medical College, which is a constituent of the Annamalai University, is a college, to which, the provisions of the Capitation Fee Act, 1992 would apply? and

(iii) Whether the Raja Muthiah Medical College and the Annamalai University, in the peculiar facts and circumstances of the case, are bound to collect only the fee fixed by the Fee Fixation Committee for other colleges, despite no reference having been made to the Fee Fixation Committee in respect of it ?

QUESTION NO.(i):

36. The first question arising for consideration is as to whether the petitioners, who had secured admission to the BDS and the MBBS courses in the respondent University, are bound by the terms and conditions contained in the prospectus or not ?

37. The answer to this question, in normal circumstances, is not very difficult to find out. In a catena of decisions, the Supreme Court has already held that the conditions stipulated in the prospectus are binding on the students as well as the institutions. Prospectus, in simple terms, could be considered as an invitation to offer and the applications made by students for admission in terms of the prospectus, constitute the offer. The admission of the students in terms of the prospectus constitutes acceptance and thereupon a binding contract is born between the institution and the students.

38. In *Midhuna Nathan and Vs. State of Tamil Nadu and Others*, , a Division Bench of this Court took note of the development of law on the point and held that the rules and norms contained in a prospectus are binding. Just as they are binding on the Selection Committee and the Authorities, they are equally binding upon the students.

39. Similarly, in *Sri Ram. A rep. by his father and natural guardian Mr. P. Arumugham Vs. State of Tamil Nadu and The Secretary, Tamil Nadu Engineering Admissions Anna University*, , D. Murugesan, J (as he then was) pointed out that prospectus is binding both upon the Government and upon the students. The learned Judge quoted the decision of the Division Bench in *Midhuna Nathan* as

well as two earlier decisions of this Court. The learned Judge also cited the decisions of the Supreme Court, which were to the same effect.

40. Again in *S. Arulselvan Vs. The Government of Tamil Nadu and Teachers Recruitment Board Government of Tamil Nadu*, this Court went to the extent of holding that even this Court will not have the power to amend or alter or add something to the prospectus. However, this Court pointed out that the scope of judicial review over the prospectus is restricted to cases where certain clauses are incorporated in the prospectus contrary to the rules.

41. In this case, the conditions contained in the prospectus are not under challenge before me, on the ground that they are in violation of the Statute. Therefore, I am not here concerned with the judicial review over a condition contained in the prospectus.

42. However, it is contended by Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the petitioners that there is no estoppel against Statute. Once a statutory enactment such as the Capitation Fee Act mandates that no educational institution shall collect or receive any fee in excess of what is prescribed by the Fee Fixation Committee, the respondents cannot, according to the learned Senior counsel for the petitioners, fall back upon a clause contained in the prospectus.

43. Drawing my attention to the judgment of the Supreme Court in *Krishna Bahadur Vs. Purna Theatre and Others*, Mr. AR.L. Sundaresan, learned Senior Counsel contended that there is a distinction between estoppel and waiver. Though the principle of waiver is also akin to estoppel, there is a small difference. While estoppel is a rule of evidence, waiver is contractual and may even constitute a cause of action. But, the Supreme Court pointed out in the said decision that to bring a case within the scope of waiver, it must be established that the party, against whom waiver is set up, was fully aware of his rights, but had agreed not to assert the right for a consideration. Therefore, the contention of Mr. AR.L. Sundaresan, learned Senior Counsel for the petitioners is that so long as no knowledge is attributed to the petitioners about their rights, the respondents cannot set up waiver against the petitioners. It is his contention that the petitioners were not aware of their rights and that therefore, their admission in pursuance of the prospectus, cannot constitute waiver.

44. But, the above contention of the learned Senior Counsel for the petitioners loses sight of one important aspect. The petitioners today claim a right allegedly conferred upon them statutorily under the provisions of the Capitation Fee Act, 1992 read with the amendment made under Tamil Nadu Act 41 of 2007. Whether the petitioners are entitled to the benefit of the same at all, is a different question, which I shall take up for consideration in the next part of this order.

45. But, even assuming for a moment that the Act applies, there is no dispute about the fact that even a right conferred by statute can be waived. In para 10 of the very same decision of the Supreme Court relied upon by the learned counsel for the petitioners, the court held that "a right can be waived by the party for

whose benefit certain requirements or conditions had been provided for by a Statute, subject to the condition that no public interest is involved therein." The Court also pointed out that "statutory right, however, may also be waived by his conduct."

46. Therefore, two questions follow, namely (1) whether the petitioners had knowledge of their rights, so as to constitute waiver and (2) whether such waiver of the statutory right was contrary to public interest.

47. The answer to the first question is not very difficult to be found. Once it is agreed that the rights claimed by the petitioners flowed out of a statutory enactment, law presumes that every student was aware of the statutory enactment. No one can plead ignorance of a statute. The fact that the Capitation Fee Act, 1992 and the Amendment Act 41 of 2007 have been notified and published in the Tamil Nadu Government Gazette are not controverted. Therefore, every citizen of the State of Tamil Nadu is presumed and obliged to know about the statute. The petitioners cannot be allowed to plead ignorance of the statute, to avoid the contention regarding waiver.

48. On facts, it is admitted that Raja Muthiah Medical College and the Annamalai University were never referred by the State Government to the Fee Fixation Committee. Therefore, they have always charged the fee as determined by the Academic Council and the Syndicate, even after the issue of the 1992 Act and the 2007 Amendment. None of the students including the petitioners ever approached this Court seeking a direction to the State to refer this University and its constituent colleges to the Fee Fixation Committee.

49. As a matter of fact, if we have a look at the method of admission of students to professional courses to the State of Tamil Nadu, we would understand that the toppers in the higher secondary examination participate in the single window counselling conducted by the State. In the order of priority, the students naturally choose Government medical colleges. Thereafter, they choose self financing colleges located in areas nearby their residences or self financing colleges in the order of their reputation.

50. It is only those students, who could not get admission under the single window counselling to the Government medical colleges or to self financing colleges in the academic year 2013-14, who opted to join the respondent University and its constituent colleges. At the time when the petitioners joined the Respondent University, for the academic year 2013-14, the fee structure in Government Colleges was around Rs. 12,000/- for M.B.B.S., and around Rs. 10,000/- for B.D.S. It was around Rs. 2.80 lakhs in self financing colleges. These facts were reflected in the prospectus issued by the Selection Committee of the State Government for the year 2013-14 and hence the petitioners had actual (not even deemed) knowledge of (1) both the fee structure in Government Colleges, self financing colleges and the Respondent University and (2) the provisions of the Capitation Fee Act, 1992 and the amendment thereto. Once a

statutory enactment is notified in the Gazette, the public are presumed to have knowledge of the same, in view of the provisions of the General Clauses Act. Therefore, the one and only answer to the first question is that the petitioners had full knowledge and that therefore, they cannot plead ignorance to escape the consequences of waiver.

51. The second question is whether such waiver of a statutory right is contrary to public interest or not. If it is contrary to public interest, the same cannot be permitted.

52. The Capitation Fee Act, 1992 and the Amendment of 2007, are intended to regulate, if not curb, the menace of commercialisation of education and exploitation of children. But with the growing tendency on the part of the successive Governments, to dissociate themselves from the field of education and to focus more on profit making ventures such as the sale of liquor, private players have come to occupy the field of education. With the explosion of population and the ever growing need for institutions of higher education, the field of education became a hunting ground for investment. Therefore, the State intervened in the form of the Capitation Fee Act, 1992. Hence, prima facie, any contract entered into by a student or parent with a self financing institution, so as to waive the right conferred by the Capitation Fee Act, 1992, will be completely contrary to public interest and the same cannot receive the approval of this Court.

53. However, the case on hand stands on a slightly different footing. The Respondent University is not comparable to self financing institutions started for the purpose of commercialisation of education and the exploitation of children. The University has today come under the total and exclusive control of the State Government, after its coffers were plundered. The State has virtually taken over a sick and abandoned baby though not under the cradle baby scheme. Therefore, unless the petitioners are deemed to have waived their right and taken to have submitted themselves to the conditions stipulated in the prospectus, the very survival of the M.B.B.S. and B.D.S. Courses and the continuance of the same along with a 1200 bedded hospital, will be in jeopardy. Therefore, it is in public interest to hold that the petitioners have waived their statutory right under the Capitation Fee Act.

54. The argument of public interest can also be tested from another angle. As pointed out earlier, the petitioners in these two writ petitions, could have secured admission to the Government Medical and Dental Colleges in the Single Window Counselling held in 2013-14, had they been so meritorious as their counterparts who secured admission to these colleges. In such an event, they would have been paying only Rs. 12,000/- and Rs. 10,000/- respectively for these courses. At least if the petitioners had come in the second list of meritorious candidates in the Single Window Counselling held for 2013-14, they would have joined the Government Quota in the self-financing colleges and they would be paying about Rs. 2.80 lakhs. But the petitioners herein did not come within the zone of

consideration, in the Single Window Counselling of 2013-14, to come under any of the above two categories. This is why they joined the Respondent University, agreeing to pay Rs. 5,54,370/- per year for the M.B.B.S. Course and Rs. 3,50,370/- per year for the B.D.S. Course.

55. Today, due to the sudden turn of events and due to the fortuitous circumstance of the Government taking over the Respondent University, if I hold that the petitioners are liable only to pay the same fee as charged in Government Colleges, despite the prospectus conditions, an inequitable and unjust consequence may flow. The students, who are more meritorious than the petitioners herein and who were allotted to the self financing colleges in the single window counselling, are now paying a fee of Rs. 2.80 lakhs in those colleges. But, the petitioners, if they succeed in these writ petitions, would be paying a lesser fee than their more meritorious counterparts, merely because of the fortuitous circumstances, in which, they are now placed after the Annamalai University Act, 2013 was passed.

56. To put it differently, if the conditions contained in the prospectus regarding the fee structure is deemed to have been eclipsed by the statutory provisions of the Capitation Fee Act, 1992, the benefit should first go to those more meritorious students, who had to take admission to other self financing colleges. Such a situation that would result in an inequitable treatment of more meritorious students is contrary to public interest. Therefore, a finding that the petitioners herein had waived their statutory right, will not go contrary to public interest. On the contrary, such a finding will be in public interest, especially in the facts and circumstances of the case.

57. A case comparable to the one on hand arose from the High Court of Kerala and landed up eventually in the Supreme Court. In that case, the Cochin University of Science and Technology reserved 10% of the seats in the undergraduate four year B.Tech course started in the year 1995, for NRIs. A fee structure was originally prescribed for the year 1995-96, but the same was increased from the next academic year. But, from the year 1999-2000, the fee structure was streamlined. Therefore, students, who got admitted to the course during the years 1997-98 and 1998-99 approached the High Court claiming parity of treatment along with NRI students of the batch 1999-2000. The Kerala High Court allowed the writ petition holding (i) that there was no rationale for subjecting the students of two batches to a higher rate of fee; and (ii) that though the action of the University was founded upon the fee structure indicated in the prospectus, the right of the students flowed out of Article 14 of The Constitution and that therefore, there can be no estoppel. The University appealed to the Supreme Court. In its decision in Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, , the Supreme Court, while reversing the judgment of the Division Bench of Kerala High Court, held that the argument of estoppel in such cases would be available to an educational institution. In paragraph 19 of its decision, the Supreme Court

rejected even the contention of the students that the fee prescribed by the University had the trappings of a capitation fee. The view taken by the High Court that the plea of estoppel was not available in the light of the rights flowing under Article 14, was overruled by the Supreme Court on the ground that estoppel was a plea in equity and that the same was not available to the students. Pointing out that the fee collected by the University flowed out of a power conferred upon the University by the statute, the Supreme Court held in paragraph 20 as follows:

"Mr. Rao has finally submitted that as the fee for the years 1995-1996 and 1996-1997 had been fixed by a committee set up under the directions of the Supreme Court it was not open to the syndicate to suggest a higher fee thereafter. We find, however, that there seems to be a misconception as to the facts as it is the specific case of the University that the fee had been fixed by the syndicate under Section 18 of the Cochin University of Science and Technology Act, 1986 and not by any committee."

58. Therefore, in fine, I hold on question No.(i) that the petitioners cannot plead ignorance of the statutory provisions and that by choosing to accept the conditions contained in the prospectus and gaining admission into these courses, the petitioners should be deemed to have waived their rights, for the purpose of securing admission into the respondent University.

QUESTION NO.(ii):

59. The second question that arises for consideration is as to whether the Raja Muthiah Medical College, which is a constituent of the Annamalai University, is a college, to which, the provisions of the Capitation Fee Act, 1992 would apply or not.

60. It is true that the State of Tamil Nadu issued the Tamil Nadu Act 57 of 1992 for abolishing the practice of collection of capitation fee by educational institutions, long before the Supreme Court intervened. The preamble to Act 57 of 1992 shows that the object of the Act was not merely to curb the practice of collection of capitation fee, but also to arrest the large scale commercialisation of education. Therefore, any interpretation of the provisions of the Capitation Fee Act, 1992 should be made keeping in mind two things namely (a) that the Act came into existence long before the Supreme Court directed the regulation of fee structure of self financing colleges; and (b) that the object of the Act is to curb the menace of commercialisation of education.

61. Annamalai University is a State run university. The medical courses offered by the University are originally designed to be self supporting and not self financing courses. But today, the situation in the University has become so bad that it requires extraneous support to sustain these courses, even with the fee structure that is now prevalent. The deficit that has accumulated over a period of time, under the medical account alone, is quite shocking.

62. Mr. A.L. Somayaji, learned Senior Counsel invited my attention to an extract of the medical account for the years 1985-86 to 2014-15. It will be useful to extract the entire statement as follows, so that the question as to whether the stream of medical education in the Respondent University can be said to be commercialised, can be better appreciated:

ANNAMALAI UNIVERSITY

Abstract of Medical Account from years 1985-1986 to 2014-2015 (up to 31.07.2014)

Note: Audit for the years 2012-2013 and 2013-2014 under process in Local Fund Audit.

63. A careful look at the above statement, which is submitted after the Special Local Fund Audit Team had conducted a local fund audit would show that these courses are now run on deficit financing. Therefore, the question of commercialisation of education, which forms the foundation for the invocation of the Capitation Fee Act, 1992 does not arise.

64. In paragraph 11 of the counter affidavit filed by the University, it is stated that even after collecting Rs. 5.54 lakhs per student per year, as fee for the MBBS course, the finances of the college are on deficit. The income under the medical account for the year 2013-13 was actually Rs. 60.53 Crores as against the expenditure of Rs. 85 Crores leaving a deficit of Rs. 24.47 Crores. The estimate of revenue as per the budget estimates for 2014-15 was only Rs. 61.42 Crores as against the estimated expenditure of Rs. 100.95 Crores resulting in an estimated deficit of Rs. 39.53 Crores. The medical college has a 1200 bed tertiary level collegiate hospital with all faculties and super specialities supported by a modern 24 hour laboratory and radiological imaging service equipped with Doppler, Ultrasound Mammography, Digital X-Arm, C-Arm, CT Scan and MRI Scan.

65. It is stated in paragraph 14 of the counter affidavit that as per the report of the Special Local Fund Audit Team, there was an excess expenditure to the tune of Rs. 45.44 Crores for the year 2010-11 due to excess posts, under self financing stream. Therefore, it is clear on facts that the Capitation Fee Act, 1992 that was enacted with the object of de-commercialisation of education, cannot be applied to the case of the respondents, unless the Government had chosen to refer the University to the Fee Fixation Committee.

66. Having said that, let me also have a look at the scheme and provisions of the Capitation Fee Act, 1992, to find an answer to the second question, even independently of the facts of the present case that stare at our face.

67. As stated earlier, the object of the Act was to curb the practice of commercialisation of education. Section 3 of the said Act declares that notwithstanding anything contained in any law, judgment or order of any Court or other authority, no capitation fee shall be collected by any person either for himself or on behalf of any educational institution or on behalf of the

management of such institution. Section 3 reads as follows:-

"3. Notwithstanding anything contained in any law for the time being in force or in any judgment; decree or order of any court or other authority, no capitation fee shall be collected, --

(a) by any person who is in charge of, or is responsible for, the management of any educational institution; or

(b) by any other person either for himself or on behalf of any such educational institution or on behalf of any such management of any educational institution."

68. The expression "Capitation Fee" is defined under Section 2(a) to mean "any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under Section 4".

69. Section 4 of the Capitation Fee Act, enables the Government to regulate the tuition fee or any other fee, by Notification in the Gazette. In its original form, Section 4 of the Capitation Fee Act, read as follows:-

"4.(1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institution in respect of any or all class or classes of students:

Provided that before issuing a notification under this sub-section, the draft of which shall be published in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

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

70. By Act No. 41 of 2007, the Capitation Fee Act, 1992 was amended. By the said amendment, a new sub-section namely Sub-Section (2-A) was inserted in Section 4. It reads as follows:-

"(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), no educational institution imparting education leading to a degree in medicine or engineering shall receive or collect any fee in excess of the amount fixed by the "Committee on fixation of fee" constituted by the Government.

Explanation:- For the purpose of this sub-section, "Committee on fixation of fee" means the Committee constituted in pursuance of the direction of the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, ."

71. The expression "Educational Institution" is defined in Section 2(b) of the Tamil Nadu (Prohibition of Collection of Capitation Fee) Act, 1992 (Tamil Nadu Act 57 of 1992) as follows:-

"(b) "educational institution" means any institution, by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu and any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament) as the Government may, by notification specify:"

72. Therefore, in order to come within the mischief sought to be eradicated by the Capitation Fee Act, the following pre-requisites are to be fulfilled:-

(i) The institution must be an educational institution within the meaning of section 2(b);

(ii) What is sought to be paid to or collected by such institution, should be a capitation fee within the meaning of section 2(a);

(iii) if the institution in question is one, imparting education leading to a degree in medicine or engineering, the amount collected by whatever name, should be in excess of what is fixed by the Committee constituted by the State Government, in pursuance of the directions issued by the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, .

73. Let me now see whether the first prerequisite is satisfied. The definition of the expression "educational institution" is so wide, as to include such institutions managed by even a local authority or University. But an educational institution established by the Central Government or under any law made by the Parliament, is not covered by the definition, as seen from the words appearing within brackets, in Section 2(b).

74. But there are two limbs to Section 2(b). The first is any institution, by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu. The second limb of Section 2(b) is any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament).

75. But, the above two limbs of Section 2(b) are followed by the words "as the Government may, by notification specify". Therefore, to be an educational institution within the meaning of Section 2(b), for the purpose of application of

the provisions of this Act, it must have been notified by the State Government under this Act. As a matter of fact, Mr. A.L. Somayaji, learned Advocate General produced a copy of the Government Order constituting the Fee Fixation Committee and the reference made to it. Neither the Respondent University or its constituent colleges are included therein. This is why the Fee Fixation Committee never ventured to take up the question of fixation of fee for the courses run by the Respondent, either before or after the 2007 amendment.

76. Let me assume for a minute that the words "as the Government may, by notification specify", go only with the second limb of Section 2(b) and they do not go with the first limb. Even then, the Act may not apply. This is for the reason that despite the Amendment Act 41 of 2007 coming into force on 14.11.2007, the Capitation Fee Act, 1992 was never applied to Annamalai University, either from 1992 or at least from 2007. The reason is too obvious.

77. The Annamalai University was established originally under an enactment of the pre-independence days. Section 2(b) excludes from the purview of the definition of the expression "educational institution", those institutions established by the Central Government or under any law made by the Parliament. The Annamalai University Act, 1928, received several amendments by virtue of the Government of India (Adaptation of Indian Laws) orders of 1937, 1940, 1943 etc. Therefore, merely because the Act was repealed and replaced by Tamil Nadu Act 20 of 2013, it cannot be said that the first limb of Section 2(b) would apply, without the State Government referring the University to the Fee Fixation Committee.

78. Assuming for a minute that the first limb of Section 2(b) is attracted and that the first pre-requisite for the invocation of the provisions of the Capitation Fee Act is satisfied, I do not think that the other two pre-requisites are satisfied. This is for the reason that the Government never referred either the Annamalai University or any medical or engineering college run by the State itself, to the Fee fixation Committee constituted in pursuance of the decision of the Supreme Court in Islamic Academy. To understand this, it is necessary to go to the 3rd question arising for consideration in the cases on hand. Therefore, let me now move over to the 3rd question.

QUESTION NO. (iii):

79. The 3rd question is whether the Raja Muthiah Medical College and the Annamalai University, in the peculiar facts and circumstances of the case, are bound or not, to collect only the fee fixed by the Fee Fixation Committee for other colleges, despite no reference having been made to the Fee Fixation Committee in respect of it.

80. To find an answer to this question, a peep into the history of constitution of the Fee Fixation Committee may be necessary. Therefore, let me now revert back to the historical perspective.

81. In W.P. No. 350 of 1993, filed by Islamic Academy of Education, a Bench of Five Judges of the Supreme Court doubted the correctness of the view taken earlier in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* . Therefore, the matter was placed before the Bench of Seven Judges. The Bench of Seven Judges directed the matter to be placed before a Bench of Eleven Judges, on the ground that under the 42nd Amendment to The Constitution, education had been included in Entry 25 of List 3 of the 7th Schedule to The Constitution. Before the Eleven Judges Bench, whose ultimate decision is reported in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,* , all parties (except students and philanthropists in the field of education) agreed to give a decent burial to the ratio laid down in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,* and to exorcise the ghost of *Unnikrishnan*. Five questions were formulated for consideration, one of which was whether there could be Government regulations in case of unaided and aided private institutions and if so, to what extent. In paragraph 50 of the decision of the Chief Justice of India, which constituted the majority view, the Court broadly classified the right to establish and administer educational institutions into five categories, one of which was to set up a reasonable fee structure. In its discussion on question No. 3, the majority divided the institutions into (i) private unaided non minority educational institutions; (ii) private unaided professional colleges; (iii) private aided professional non minority institutions; and (iv) other aided institutions.

82. In so far as private unaided professional colleges are concerned, the Supreme court held in paragraph 69 of the report in *T.M.A. Pai*, that the management of private unaided professional colleges should adopt a rational fee structure and that they would not be entitled to charge a capitation fee. The Court pointed out that the power of the State to devise an appropriate machinery to make sure that no capitation fee is charged, is to ensure that there is no profiteering.

83. Since *T.M.A. Pai Foundation* raised more questions than it sought to resolve, a series of litigations arose in different courts following the various directives issued by the State Governments as well as the Statutory Authorities. Therefore, a Five Judges Bench was constituted in *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, for clarifying the doubts/anomalies, if any, arising out the decision of the Larger Bench in *T.M.A. Pai Foundation*. Four questions were taken up for consideration by the Five Judges Bench. The first question that was taken up for consideration in *Islamic Academy of Education* was whether the educational institutions are entitled to fix their own fee structure. While answering the first question in paragraphs 7 and 8 of its decision, the majority held in *Islamic Academy of Education* that each institution 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 students. It was also held that the institutions must be able to generate surplus funds to be used for the betterment and growth of the

educational institutions. In order to enable each institution to have such a leverage, the Court directed all the State Governments, to set up a Committee headed by a retired High Court Judge, to examine the fee structure of the educational institutions and to determine the fee. The Court held that once the fees are fixed by the Committee, the educational institution cannot charge either directly or indirectly any other amount over and above the amount so fixed. The Court held that if any other amount (over and above that fixed by the Committee) was charged, the same would amount to charging of capitation fee. The relevant portion of the decision in Islamic Academy of Education is extracted as follows:

"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 Government/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."

84. S.B. Sinha, J. in his separate, but dissenting note, wrote in paragraph 52 of the report that the first question that came up for consideration was whether unaided professional institutions are entitled to lay down their own fee structure or not. While answering the said question in paragraph 147, the learned Judge pointed out that beyond any doubt, the unaided institutions exercised a greater autonomy in the matter of determination of fee structure, and that economic forces have a role to play. The learned Judge indicated that what is actually forbidden is only (i) capitation fee; and (ii) profiteering. To come to the said conclusion, S.B. Sinha, J. actually relied upon the definition of the expression "capitation fee" as found in Section 2(b) of the Tamilnadu Act 57 of 1992. However, in paragraphs 154 and 156, the learned Judge pointed out certain things, which are necessary to be taken note of, to find an answer to the third question raised in these writ petitions. Therefore, paragraphs 154 and 156 are extracted as follows:

"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.

.....

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."

85. Keeping in mind, the above principles laid down in T.M.A. Pai and Islamic Academy, if we come back to the facts of the present cases, it could be seen that today, the Government has taken a positive stand that the fee fixed by the respondent University is not with the object of profiteering, but for the purpose of at least partially compensating for the expenditure involved in running the institutions. Raja Muthiah Medical College was originally designed to be a private unaided professional college supported by the Annamalai University from out of its funds. But today, it is financially in the intensive care unit and any attempt at reducing the fee structure would destroy the very institution and may result in 2 consequences namely (1) either the closure of the medical college on the ground of unviability or (2) the return of the University by the Government to the Founder's family. Both these consequences are disastrous for the students. This is why the Association of Teachers of the University came up with an application for impleading and they have now supported the case of the Government. The teaching and non-teaching staff of the University are now apprehensive that if the University and its constituent colleges become white elephants, incapable of being financially managed, the Government may wash its hands off, leading to the closure of the institutions or to the surrender of the institutions to the founder. This is why they got impleaded and supported the stand taken by the Respondents.

86. The very premise on which the Supreme Court proceeded in Islamic Academy was that each institution stands on a different footing. Today, if Raja Muthiah Medical College had gone before the Fee Fixation Committee and had furnished the statistics relating to income and expenditure, which I have extracted earlier, the Committee could have fixed a much higher fee than what is now charged. As on date, the institution is not even able to break even. Therefore, there is no question of profiteering.

87. In the academic year 2013-14 when the petitioners joined the Respondent University, they did not seek a reference of the institution to the Fee Fixation Committee. Today, if the Government hands over the University, back to the family of the founder, the management may even find it convenient to refer the college to the Fee Fixation Committee, since the chances of an enhancement of the fee from what it is now, are much brighter, in view of the present financial condition of the University. If it so happens, the students may themselves contend that Capitation Fee Act, 1992 does not apply to these institutions.

88. As a matter of fact, even now I have two alternatives before me, namely (1)

either to dismiss the writ petitions on the ground that the University and its constituent college are not referable to the Fee Fixation Committee (2) or to refer the University and its constituent to the Fee Fixation Committee. The second alternative will make the remedy for the petitioners, much worse than the disease. Therefore, even the third question is answered against the writ petitioners.

89. Admittedly, the education institutions run by deemed Universities in the State of Tamil Nadu, are not covered by Capitation Fee Act, 1992 even after its amendment in 2007. Rightly or wrongly, they are not even taken to be covered, as on date, by the ratio in Islamic Academy. As a consequence, the medical courses run by Sri. Ramachandra Medical College and University, SRM University, Saveetha University etc., are kept out of the purview of the Fee Fixation Committee, till date. Therefore, to make the Annamalai University and its constituent colleges come within the directives of the Fee Fixation Committee, merely because the Government was forced to take over the same to keep it alive, would be to inflict double jeopardy upon the Government. Today, the fee charged by the Respondent is authorised by the statutory provisions of the Annamalai University Act. The fee structure is also necessitated by the financial position of the college and justified by the income and expenditure account. In paragraph 62 above, I have given in a tabular column, the abstract of the medical account of the Respondent for the years 1985-86 up to the year 2014-15. This statement is not a cooked up one. It was prepared by the Local Fund Audit of the State of Tamil Nadu. It shows that the Closing Balance as on 31.07.2014 for the medical account alone is a negative balance of Rs. 385 Crores. Even if the accumulated losses over the years, which can be attributed to the gross mismanagement, misfeasance and malfeasance on the part of the founder, are deleted from the above figure, the receipts fall far short of the expenditure. For the year 2013-14, the receipts (income) were Rs. 59,59,38,958/-. But the expenditure was Rs. 78,24,85,056/-. Even with the annual fee of Rs. 5,54,370/- for a student of the M.B.B.S. and an annual fee of Rs. 3,50,370/- for a student of the B.D.S. Course, the University had a short fall of about Rs. 18 Crores in the academic year 2013-14. Therefore, it is impossible to hold that there is any profiteering by the Government and that therefore, the provisions of the Capitation Fee Act should be invoked to reduce the fee structure of the colleges in question.

90. In view of the above, the writ petitions are dismissed. No costs. M.P. No. 2 of 2014 in W.P. No. 20720 of 2014 for impleading is allowed. However, M.P. Nos. 1 of 2014 in both W.Ps. and M.P. No. 2 of 2014 in W.P. No. 22305 of 2014 are closed.

91. After pronouncing orders, it was brought to my notice that during the pendency of the writ petition, the time for payment of fees had expired. In view of the same, I direct the respondents not to take any coercive action against the petitioners until 09.12.2014, to enable them either to pay the amount or to work

out their remedies.