

(2021) 06 SHI CK 0104

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 626 Of 2021

Maharishi Markandeshwar University & Another

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 24-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 15, 16, 19(1)(g), 29(2), 30(1)
Himachal Pradesh Private Educational Institutions (Regulatory Commission) Rules, 2011 — Rule 6 (1)(a), 6 (1)(b), 6 (1)(c), 6 (1)(d), 6 (1)(e), 6 (1)(f), 6 (1)(g)
Maharishi Markandeshwar University (Establishment And Regulation) Act, 2010 — Section 31(4), 32, 32(2)
Himachal Pradesh Private Medical Educational Institutions (Regulation Of Admission And Fixation Of Fees) Act, 2006 — Section 3, 3(3), 7, 7(1)
Himachal Pradesh Private Educational Institutions (Regulatory Commission) Act, 2010 — Section 8(a), 11
Indian Medical Council Act, 1956 — Section 10(A)

Citation : (2021) 06 SHI CK 0104

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : K.D. Shreedhar, Shreya Chauhan, Ajay Vaidya

Final Decision : Allowed

Judgement

,

Jyotsna Rewal Dua, J",

1. Petitioner No.1 is a private university, running petitioner No. 2 medical college. Their proposal, sent on 2.2.2019 seeking fee approval for certain",

new disciplines of MD/MS in the medical college for academic session 2019-20, was finally approved by the respondent State on 22.4.2020, wherein",

besides fixing/approving the fee for the already started academic session 2019-20 and for upcoming sessions 2020-21, 2021-22, certain other",

conditions were also imposed. Four such conditions, including retrospective fixing

of fee for academic session 2019-20, are not acceptable to the",
petitioners. Therefore, they have preferred this petition."

2. Facts,

2(i) Petitioner No.1-University was established under the Maharishi Markandeshwar University (Establishment and Regulation) Act 2010 (in short, MMU Act). It is running petitioner No.2 medical college in the State, which is the only private medical college in the respondent State."

2(ii) In 2018, Medical Council of India (MCI) granted permission to the petitioners for starting new MD/MS courses in 12 new disciplines from",

academic session 2019-20 onwards. H.P. Private Educational Institutions Regulatory Commission also gave its approval for these courses on,

31.12.2018. The fee for these new courses was to be approved by the respondent State.,

2(iii) On 02.02.2019, petitioners submitted their proposed fee structure for 12 new disciplines of MD/MS for academic session 2019-20 for approval to",

the State. The proposal was sent in terms of Section 32 of the MMU Act 2010, which reads as under:-",

â??32. (1) the University may, from time to time, prepare and revise, its fee structure and send it to the Government for its approval before",

31st December of every preceding academic year alongwith the approval of courses granted by the Regulatory Commission and the,

Government shall convey the approval within three months from the receipt of the proposal. Provided further that the fee structure for each,

course shall be decided before the issue of prospectus and shall be reflected in the prospectus:,

Provided further that the fee structure for each course shall be decided before the issue of prospectus and shall be reflected in the,

prospectus: Provided further that the fee structure shall not be revised or modified during the academic year.,

(2) The fee structure prepared by the University shall be considered by a committee to be constituted by the State Government, in the manner",

as may be prescribed, which shall submit its recommendations to the Government after taking into consideration whether the proposed fee",

is:.,

(a) sufficient for generating (i) resources for meeting the recurring expenditure

of the university; and (ii) the savings required for the, further development of the University; and (b) not unreasonably excessive.,

(3) After receipt of the recommendations under sub-section (2), if the Government is satisfied, it may approve the fee structure.",

(4) The fee structure approved by the Government under sub-section (3) shall remain valid until next revision.â??,

In terms of Section 32, the fee structure was to be decided for each course before the issuance of prospectus and was to be reflected as such in the", prospectus. State had to convey the approval for the fee structure within three months from the receipt of fee proposal. Apart from Section 32 of, MMU Act 2010, Sections 3 & 7 of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fees)", Act, 2006 also pertain to fixation of fee in private medical colleges. These read as under:-",

â??3.Regulation of admission, fixation of fee and madding of reservation",

(1) The State Government may regulate admission, fix fee and make reservation for different categories in admissions to Private Medical",

Educational Institutions.,

(2) The State Government shall ensure that the admission under all the categories in an institution is done in a fair and transparent manner;;

(3) The State Government, may constitute an Admission and Fee Committee, (hereinafter referred to as the â??Committeeâ??) consisting of",

such members as may be specified by the State Government by notification, to recommend the mode of admission, making of reservation,",

allocation of seats and fixation of fees etc. to the State Government.,

(4) The State Government, shall oversee the working of Admission and Fee Committee.",

(5) The terms and conditions of the Committee constituted under sub-section (3) and its members shall be specified, by the State Government,",

by notification from time to time.,

(6) If the State Government is satisfied that the institution affiliated to the Himachal Pradesh University, has contravened any provision of",

this Act, it may recommend to the Himachal Pradesh University for withdrawal of recognition or affiliation of such institution.",

(6b) Notwithstanding anything contained in this Act, the Private Medical Education Institutions shall be bound to comply with all the rules,"

directions and notifications issued by the State Government, from time to time, and provide all such facilities and assistance as are required",

to implement such rules, directions and notifications."

(7) The State Government, shall take appropriate action wherever deemed necessary, with regard to improvement in the system of making",

admissions in the institutions, charging of fee by the institutions and on any other matter, which may be necessary to facilitate smooth",

running of the system and to remove grievancesâ?|â?|â?|,

7. Fixation of fee- (1) The State Government while determining, or the Committed constituted under sub-section (3) of Section 3 while",

recommending to the State Government, the fee to be charged by a Private Medical Educational Institution, shall consider the following",

factors:-,

(a) the location of the institution;;

Clause 10., "The Tuition fee shall be charged annually, in two equal installments

Clause 13., "The excess fee charged from the students who were enrolled for PG Courses in the

academic session 2019-20 will be adjusted in the year 2020-21.

Clause 21., "10% (ten percent) seats in all the courses will be reserved for Himachali Bonafide BPL

IRDP candidates free of â??Tuition feesâ??

Clause 22., "As per the provisions of section 8(a) of the Himachal Pradesh Private Educational

Institutions (Regulatory Commission) Act 2010 upto 1% (one) fee as assessed by the

Regulatory Commission is required to be credited to the fund established vide Act *ibid.* To

charge such percentage of the total fee as would be assessed by the Regulatory

Commissions for the Academic Session 2019-20 is permissible under section 8(a) of the Act

ibid subject to the final outcome of the Civil Appeal no. 11290 of 2013 and is to be

deposited with the HPPEIRCâ?|â??

substantive prayers;-,

â??(i) Issuance of a writ of certiorari quashing Clause No. 10, 13, 21 and 22 as contained in the Letter dated 22.4.2020 (Annexure P-7)",

along with letter dated 24.7.2020 (Annexure P-9) as illegal, unreasonable, arbitrary and against the mandate of this court as well as the",

Honâ??ble Supreme Court.,

ii) Issuance of direction to the respondents to allow the petitioner university to charge the yearly fee of MD/MS courses in one go and not in,

half yearly installments.,

iii) Issuance of direction to the respondents to allow the petitioner college to charge fee from the students admitted in academic,

batch/session 2019-20 of MD/MS course as per the fee proposal of the petitioner university.,

iv) Issuance of direction to the respondents to not press upon reservation of 10% EWS quota seats for Himachali Bonafide BPL/IRDP,

candidates free of tuition fees in MD/MS courses for academic session 2019-20, 2020-21 and 2021-22 in the petitioner university;"

v) Issuance of direction to the respondents not to charge 1% fee from the petitioner university under redundant section 8(a) of the H.P. Private,

Educational Institutions (Regulatory Commission) Act 2010;â?|â?|â??,

3. Contentions,

Ld. Senior Counsel for the petitioners contended that the respondents could not impose upon the petitioners the conditions in the above extracted four,

clauses, rather the same are per se illegal. Ld. Senior Additional Advocate General argued that the conditions in the impugned clauses are legal,"

backed by judicial precedents and have been lawfully imposed upon the petitioners by the State.,

3(i) In respect of clause 10, Ld. Senior Counsel relying upon 2003 (6) SCC 697 titled Islamic Academy of Education and another Vs State of",

Karnataka and others, submitted that it is within the domain of the petitionersâ?? educational institute to charge advance annual fee for an annual",

academic session. Insistence of respondents-State to charge annual fee in two equal installments is unauthorized and contrary to the settled legal,

position.,

Ld. Senior Additional Advocate General, argued that the condition was incorporated on the basis of judgment passed in Islamic Academy's case",

and was perfectly legal.,

3(ii) Regarding clause 13, whereby respondents fixed fee for academic sessions 2019-20, 2020-21 and 2021- 22, Ld Senior Counsel submitted that the",

decision upon the fee was arrived at by the Fee Structure Committee on 9.3.2020 and finally approved by the State on 22.4.2020. By this time,"

academic session 2019-20 had already started. Ld. Senior Counsel highlighted that it was on 2.2.2019 that the petitioners had sent their fee proposal,

for the session 2019-20 for 12 new disciplines of MD/MS courses, yet despite compliance by the petitioners at their end of completing all requisite",

formalities, the respondents kept on delaying fixing fee for these courses on one pretext or the other. Respondents were to fix the fee within the",

timelines, stipulated under Section 32 of the MMU Act 2010, the importance of which has also been highlighted in the directions issued on 20.5.2020",

by a Division Bench of this Court in CWP 1465 of 2018. Applicable statutes/ stipulations do not give unlimited time to the respondents for approving,

the fee. Despite receiving petitioners's fee proposal on 02.02.2019 for academic session 2019-20, respondents approved it only on 22.04.2020. The",

academic session 2019-20 had not only already started, but was about to come to an end by this time. Since the fee was not approved by the",

respondents by the start of academic session 2019-20 i.e. by June 2019, therefore, petitioners had no option but to charge the fee, as proposed in the",

letter dated 2.2.2019, from the students admitted in academic session 2019-20. The students had deposited this fee. The respondents, in the facts of",

the case, cannot direct the petitioners on 22.04.2020 to retrospectively charge a different and reduced fee from such students. This would also involve",

financial implications for the petitioners's unaided institute.,

Ld. Senior Additional Advocate General stated that because of various difficulties faced by the Fee Structure Committee, the fee for petitioners's",

new MD/MS courses could not be finalized by the State before 22.04.2020. Petitioners should have waited for State's approval of the fee for their,

12 new MD/MS courses before commencing the courses. There cannot be a situation where students of later academic sessions pay less fee,

(approved by the State) than the students of previous batch who pay higher fee (proposed by the petitioners). Therefore, Ld. Senior Additional",

Advocate General justified retrospective implementation of the fee approved by the State on 22.04.2020 to the academic session 2019-20, which had",

commenced in June 2019.,

3(iii) With respect to Clause 21, the projected case of petitioners is that there was no provision of 10% reservation of BPL/IRDP/EWS candidates",

free of tuition fees either in the MMU Act 2010 or in the prospectus issued for the concerned courses. This point was not even deliberated by the Fee,

Structure Committee. Its incorporation by the State in the letter dated 22.4.2020 was unauthorized, illegal and at variance to the circular issued by the",

Ministry of Health & Family Welfare Government of India, the decision of Board of Governors in Supersession to Medical Council of India and also",

contrary to the stand taken by the Union Government before the Honâ??ble Apex Court in SLP 20692/2019, decided on 25.2.2020. It was urged that",

as on date, there is no policy of the Union Government to apply 10% reservation for EWS, as provided in Constitutional Amendment Act 2019 to",

private unaided medical colleges, like the petitionersâ?? and definitely not for super-specialty courses. It was also contended that had there been",

such a policy for providing 10% reservation to EWS with free-ship, i.e. without tuition fees, then the petitioners would have challenged the same on",

the grounds of being contrary to the dictum of Apex Court in T.M.A. PAI Foundation & others Vs State of Karnataka 2002(8)SCC481 , Modern",

Dental College Vs State of Madhya Pradesh 2016 (7) SCC 353, 2010 (14) SCC 186, wherein rights of self financing private educational institutes",

were expounded.,

Opposing this stand, the respondents stated that 10% reservation for EWS is in accordance with the Constitution Amendment Act 2019 and in",

conformity with the State Government instructions, issued on 20.8.2020, in compliance to the directions issued on 5.9.2017 by a Division Bench of this",

Court in CWPIIL 103/2017 as well as in furtherance of guidelines issued by Ministry of Social Justice and Empowerment.,

3(iv) Lastly, it was submitted by Ld. Senior Counsel that the Fee Structure Committee had not deliberated/recommended deposit of 1% fee under",

Section 8(a) of HP Private Educational Institutions (Regulatory Commission) Act

2010, therefore, this condition could not have been imposed upon the",
petitioners in clause 22. Referring to certain orders passed by the Honâ??ble Apex Court, it was urged that such a direction could not be thrust upon",
the petitioners in view of interim orders passed in related matters by the Honâ??ble Supreme Court. Ld Senior Additional Advocate General,
submitted that this aspect is governed by the orders passed by the Honâ??ble Apex Court in C.A. No. 11290 of 2013 titled State of HP Vs H.P.,
Private Universities Management Association and another.,

4. Observations,

Whether the respondents could lawfully impose conditions under impugned clauses 10, 13, 21 and 22 while approving the fee structure in",

petitionersâ?? institute, vide communication dated 22.4.2020 (Annexure P-7), is the question raised in this writ petition. For convenience, these",

clauses, hereinafter, are being considered separately;-4(i) Clause 10",

4(i)(a) This clause applies following condition on the petitioners;-â??The Tuition fee shall be charged annually, in two equal installmentsâ??",

4(i)(b) The legality of charging advance fee for the entire course by some educational institutes came up before the Honâ??ble Supreme Court in,

Islamic Academy of Education and another Vs. State of Karnataka and others 2003 (6) SCC 697. The institutes justified their action of collecting,

advance fee for the entire course i.e. for all the course years on the ground that at times students may leave the course midway causing the seats to,

become vacant for the remainder of the course, which would adversely affect private educational institutes. The Apex Court held as under on the",

issue:-,

Â â??8. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance",

the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student,

would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat,

would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one,

semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to",

give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in,

midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The",

balance fees must be kept invested in fixed deposits in a nationalized bank. As and when fees fall due for a semester/year only the fees,

falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall,

due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.,

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.,

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 enure to the,

benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned studentsâ?!.â??",

Honâ??ble Apex Court held that institutions shall charge fee only for one year/semester, as the case may be. If an institute felt that its students may",

leave the course midstream then it may require the students to furnish a bond/bank guarantee that the balance fees for the whole course would be,

received by the institute even on leaving of course midstream. It was further held by the Court that if any institute had collected advance fee, then",

only the fees of that semester/year could be used by the institute and remaining fees was to be deposited in bank till the time the same falls due.,

Interest earned on such deposits was payable to the students from whom the fees were collected.,

4(i)(c) Admitted position here is that MD/MS courses in petitionersâ?? institute are of three years duration, being run on yearly basis and not",

semester-wise. There are many MD/MS courses offered in petitionersâ?? medical college. 12 such courses in question were approved in 2018 and,

started w.e.f. academic session 2019-20. The tuition fee for the MD/MS courses was charged on annual basis by the petitioners for the academic,

session 2019-20 as well as for other ensuing academic sessions.,

Though the entire duration of the courses in question is of three years but these courses are being run on yearly basis, therefore, petitioners can",

definitely charge and collect advance fee for the year from the students admitted in these courses.,

4(i)(d) There was no rebuttal on part of the State to an emphatic factual assertion made by the petitioners that in the meeting convened on 9.3.2020,"

there was neither any agenda before the Fee Structure Committee nor any discussion took place before it for directing the petitioners to charge annual,

fee in two equal installments. The Committee, therefore, neither discussed nor recommended to the State Government to edict the petitioners to",

charge and collect annual fees from its students in two equal installments. The only pleaded reason behind insertion of this clause is that charging of,

tuition fee on half yearly basis is permitted by the Apex Court in Islamic Academy's case. The stand taken in the reply is based upon incorrect,

quotation of sentences from para 8 of judgment delivered in Islamic Academy's case. This is apparent from following para 5 of preliminary,

submissions of the reply filed by respondents No. 1 to 4:-,

5. That the MMU has also sought relief on point no. 10 of letter dated 22.4.2020 that the "tuition fee shall be charged annually,"

in two equal installments. In this regard, it is submitted that the Hon'ble Apex Court in Writ Petition (civil) 350 of 1993 titled as",

Islamic Academy of Education vs. State of Karnataka has held that "in our view an educational institution can only charge prescribed,

fees one semester/year. If an institution feels that any particular students may leave in midstream then, at the highest, it may require that",

student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left,

in midstream, thus the fee can charge on half yearly basis."

(emphasis supplied),

The words "thus the fee can charge on half yearly basis" used in above extracted para are neither part of para 8 of the judgment in Islamic,

Academy's case nor reading of para 8 of the judgment (extracted earlier) leads to such a conclusion. As already noticed, the Hon'ble",

Supreme Court in Islamic Academy's case, while deprecating the practice of charging advance tuition fees for the entire course by the private",

educational institutions, has not debarred them from charging and collecting advance fee for the year/semester, as the case may be. It is not the case",

of the respondents that the petitioners had been charging and collecting advance fees for the entire course i.e. for all the course years. Petitioners had,

charged and collected advance fee for a year, as the courses in question run on yearly basis for a total of three years. Since the course in question is",

being run on yearly basis, therefore, the petitioners are within their right to charge tuition fees, annually, for the yearly session and to collect the same",

at the start of the academic session. Such an act cannot even be termed as exploitory, as contended by the State. It is not the case of the respondents",

that the petitioners had collected the fees over and above that was prescribed. During hearing of the case, Ld. Senior Counsel for the petitioners",

stated that petitioners are themselves sensitive to the genuine financial difficulties faced by any of its students with regard to deposit of advance,

annual fee and in appropriate cases, this condition is exempted to ameliorate the hardships. The statement of Ld. Senior Counsel is noted. For all the",

aforesaid reasons, the respondents cannot assertively impose the condition incorporated in clause 10 of the communication dated 22.4.2020 ("

Annexure P-7) ordering the petitioners to charge annual tuition fees in two equal installments. This condition is not sustainable. However, at the same",

time, statement of Ld. Senior Counsel is noted that petitioners are themselves looking after the interest of its students in deserving cases where its",

students face genuine financial difficulties regarding deposit of advance annual fee, by passing appropriate orders."

4(ii) Clause 13,

4(ii)(a) Clause 13 reads as under;-,

â??.The excess fee charged from the students who were enrolled for PG Courses in the academic session 2019-20 will be adjusted in the,

year 2020-21.â??.

4(ii)(b) The fee structure in petitionersâ?? medical college is governed by Section 32 of MMU Act 2010 and Sections 3 & 7 of the Himachal,

Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2006. In terms of these provisions (extracted",

earlier), the fee structure for the courses in petitionersâ?? medical college is to be decided before the issuance of prospectus and has to be reflected",

there.,

The Government is to convey its decision upon the fee proposal within three months from the receipt of the proposal.,

4(ii)(c) In the year 2018, the Medical Council of India approved MD/MS courses in 12 new disciplines in petitioners's medical college to be started",

w.e.f. academic session 2019-20. The H.P. Private Educational Institutions Regulatory Commission also gave its nod for introduction of these new,

courses on 31.12.2018. As per Act of 2010 and Act of 2006, the fee for these courses was to be approved by the State Government. Petitioners sent",

their fee proposal for these 12 courses for approval to the State on 02.02.2019. The courses were to start w.e.f. June 2019.,

The Fee Structure Committee's deliberations over petitioners' fee proposal were outstretched and lasted for more than a year. It was only on,

9.3.2020 that the committee could finalize and send its recommendations to the State Government, which were finally approved on 22.4.2020.",

However, academic session 2019-20 had started by June 2019. It cannot be the respondents' case that commencement of academic session 2019",

-20 by June 2019 was not in the knowledge of either the Fee Structure Committee or the State Government. Rather, while responding to various",

communications of the Committee, these aspects were specifically brought to the notice of all the concerned quarters by the petitioners while",

requesting to expedite finalization of the fee structure keeping in view the commencement of academic session 2019-20. It is the admitted case of the,

parties that new courses were approved by the MCI and by the Regulatory Commission - respondent No.5. The prospectus for centralized counselling,

for MD/MS courses was issued by State department of Medical Education and Research. The 12 newly approved MD/MS courses in petitioners',

institute were included in this prospectus for allocation of seats in counseling. Petitioners reflected the fee proposed by them in their letter dated,

2.2.2019 as the prescribed fee (subject to state's approval) in their prospectus for these courses issued in April 2019. Respondents-State has not,

established its contention that the petitioners could not have commenced the new PG courses before finalization of the fee for such courses. No letter,

has been placed on record commanding the petitioners not to commence the courses till the State approves the fee for the courses. The Fee Structure,

Committee constituted by the State was still deliberating over the fee structure when the courses started in June 2019. Students admitted in these,

courses deposited the fee as reflected in the prospectus. These students had completed almost one year of the three years course when based on Fee,

Structure Committee's recommendation of 9.3.2020, the respondent State on 22.4.2020 approved the fee structure for these 12 new courses and",

reduced the proposed fee by about 20%. Relevant recommendations made by the Committee are;-,

1. The fee structure for the PG Course(s) will be the same for consecutive three batches i.e. 2019-20, 2020-21 and 2021-22.",

2. Fee will not be increased till the completion of the course i.e. it will remain fixed for three years duration of the course.,

3. The excess fee charged from the students who were enrolled for PG course(s) in the academic session 2019-20 will be adjusted in the,

year 2020-21!.

Condition at serial No.3 above, found its way in impugned clause No. 13 of the communication dated 22.4.2020. Stand of State is that fee for the",

batches admitted in academic sessions 2020-21 and 2021-22 cannot be less than that of batch admitted in academic session 2019-20. It is also urged,

by the State that petitioners should have waited for the approval of the fee structure before starting the academic session 2019-20.,

4(ii)(d) Decision upon petitioners' fee proposal was to be taken within the timeline stipulated in Section 32 of the MMU Act 2010. The approved,

fee was to be reflected in the prospectus. The State, in any event, was to decide the fee structure within 3 months from the date of submission of the",

fee proposal. Facts summarized above clearly indicate that timely decision upon the fee proposed by the petitioners was not taken. Considering the,

impending commencement of academic session 2019-20, the petitioners, in the prospectus issued for the session, reflected the fee as proposed by",

them to the State Government. The fee was subject to approval of State Government. This fee was deposited by the students admitted in the courses.,

State took no decision with regard to the fee by the time courses commenced in June 2019. Almost a year later, the fee structure was approved by the",

State with around 20% reduction in the proposed fee. In the peculiar facts, the fee approved by the State on 22.4.2020 could certainly be applied and",

implemented for academic sessions 2020-21 and 2021-22, which were yet to start on 22.4.2020 but not for session 2019-20 which had already started",

in the interregnum. Academic session 2019-20 had started in June 2019 and had almost completed its one year by the time fee approval came on,

22.4.2020. No provision either in the MMU Act 2010 or in the Act of 2006 was brought to my notice permitting retrospective determination or,

implementation of the fee for a previous academic session. The recommendations and approval of the fee necessarily relate to an ensuing academic,

session and not for the session gone by. Retrospective fixation of fee even otherwise involves financial implications and may adversely affect an,

unaided, self financed private medical college. The petitioners are, therefore, justified in contending that the fee structure approved in the notification",

dated 22.4.2020 can only be applied to the prospective academic sessions i.e. 2020-21 and 2021-22.,

4(ii)(e) Timely determination of the fee is the essence of Section 32 of the MMU Act. A Division Bench of this Court, while deciding CWP 1465 of",

2018 filed by the petitioners titled Maharishi Markandeshwar University and another Vs State of HP and others vide judgment dated 20.5.2020, had",

issued following directions;-,

â??7â?|.Having decided these writ petitions, we also deem it necessary to reiterate well recognized principle that if a Statute has conferred a power to",

do an act and has laid down the method in which that power has to be exercised, it prohibits doing of the act in any other manner than that what has",

been prescribed. (Refer Nazir Ahmed Vs King Emperor AIR 1936 PC 253, State of Uttar Pradesh Vs Singhara Singh & ors AIR 1964 SC 358, Zuari",

Cement Ltd Vs Regional Director ESIC Hyderabad & ors AIR 2015 SC 2764, Uddar Gagan Properties Ltd Vs Sant Singh & ors 2016(11) SCC 378)",

We have already held that fee structure for the petitioners is governed by sections 3 & 7 of the Act of 2006 as well as section 32 of Act of 2010. To,

clarify, we issue following directions, which shall be followed for academic session 2021-22 and onwards;-",

i) Petitioner university can send its proposal of fee revision for approval to the State by 31st December of every preceding academic year.,

ii) The fee revision proposal shall be examined by the State and/or competent authority in accordance with provisions of section 3 & 7(1) of,

2006 Act and Section 32(2) of 2010 Act.,

iii) While examining the fee proposal, the competent authority besides granting opportunity of hearing to the petitioners shall also give a",

reasonable opportunity to the representatives of the students studying and intending to study there to express their views on the proposal,"

which shall be considered in accordance with law.,

iv) Final decision on the proposal shall be taken by the State and conveyed to the petitioners and all concerned authorities on or before,

31st March of the next year i.e. within a period of 90 days from the last prescribed date of receipt of the fee revision proposal. In case no,

decision on the fee revision proposal is communicated by the State to the petitioners within the stipulated period then the fee proposed,

under the fee revision proposal shall be treated as finally approved.,

v) It shall be open for the State to fix provisional fee for the petitioners in public interest with due intimation to them within the stipulated,

period. However such provisional fee shall be finalized and communicated as such to the petitioners and all concerned authorities within a,

period of 90 days from the date of fixation of provisional fee or before the issuance of Prospectus, whichever is earlier.",

vi) Approved final fee structure for the petitioners for each course shall be reflected in the prospectus for the next academic session.,

vii) Fee once finally approved shall not be revised or modified during the academic year and shall remain as such till its next revision in,

accordance with lawâ?|â??,

Though the above directions are for academic session 2021-22 and onwards, however, the underlying object of direction No. (iv) is timely approval of",

the fee structure for the courses before the publication of prospectus for the next academic session. As per this direction, in case the State",

Government does not decide the issue of fee within stipulated time, then the fee proposed by the institute shall be construed to be the approved fee. In",

the present case, the courses in question were approved by the concerned authorities. The fee proposal was submitted for these courses by the",

petitioners on 02.02.2019. Respondentsâ?? deliberations over it were still going on when the prospectus for the academic session 2019-20 was,

published by the State Department of Medical Education & Research, wherein the

courses in question in the petitioners' medical college were",
 included for seats allocation during counselling. Petitioners also published the prospectus quoting the fee for the courses as was proposed by them on,
 02.02.2019 subject to State's approval. State, however, did not take any decision w.r.t. petitioners' fee proposal. The academic session 2019-",
 20 started in June 2019 and the students admitted in the session paid the fee as per the prospectus. The fee finalized a year later by the respondents, in",
 the facts of the case, therefore, cannot be retrospectively applied to the students admitted in academic session 2019-20. Respondent State has not",
 demonstrated that petitioners could not have commenced the PG courses before finalization of the fee. It is admitted case that the new courses were,
 approved by MCI as well as by respondent No.5-the Regulatory Commission. No legal embargo has been pointed out which debarred the petitioners,
 from commencing the courses for want of State's approval of the fee for the courses. The delay in finalization of the fee was not for any fault of,
 the petitioners. Respondents 1 to 4 have themselves owned this delay in their supplementary affidavit. The reasons assigned therein for the delay have,
 not even been attributed to the petitioners. It is also borne out from the record that running of the courses in academic session 2019-20 was in the,
 knowledge of respondents. It is also not the case of respondents that they had ever directed the petitioners not to run the courses before the State,
 approves and fixes the fee.,
 For all the aforesaid grounds, clause No. 13, applying the fee approved on 22.4.2020 retrospectively to the academic session 2019-20, which had",
 started in June 2019, cannot be held to be lawful.",

4(iii) Clause 21,

While approving and fixing the fee for the courses in question, the State incorporated following condition in clause 21 of Annexure P-7 dated",

22.4.2020:-,

"10% (ten percent) seats in all the courses will be reserved for Himachali Bonafide BPL IRDP candidates free of Tuition fees.",

Petitioners project that 10% quota for Economically Weaker Sections cannot be applied to their medical college.,

4(iii)(a) Genesis of above condition may be traced to the Constitutional Amendment Act 2019. The 103rd Amendment of the Constitution of India,

{(One hundred and third) Amendment Act 2019} added following sub-clause 6 to Article 15 of the Constitution w.e.f. 14.1.2019:-,

â??(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making;-,

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses,

(4) and (5); and,

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses,

(4) and (5) in Article 15 in so far as such special provisions relate to their admission to education institutions including private educational,

institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30,"

which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats,

in each category.,

Explanation - For the purpose of this article and article 16, â??economically weaker sectionsâ?? shall be such as may be notified by the",

State from time to time on the basis of family income and other indicators of economic disadvantageâ?|â??,

4(iii)(b) On 29.1.2019, Ministry of Health & Family Welfare Government of India issued a circular regarding reservation for economically weaker",

sections (EWS) for admission in Central Educational Institutions. The circular aimed to implement the mandate of 103rd Constitutional amendment. It,"

inter-alia, provided that every Central Educational Institution, with prior approval of the competent authority, shall increase the seats over and above its",

annual permitted strength in each branch of study/faculty. This was to ensure that the number of available seats, excluding those reserved for EWS, is",

not less than the number of such seats available in each category for the academic session immediately preceding the date of coming into force of the,

guidelines. This reservation was, however, not to be applied in Super Specialty Courses. While issuing the directions for Central Educational Institutes,"

State Governments/UTs were also requested to give effect to the Constitutional Amendment Act in respect of all higher educational institutions,

funded/aided directly or indirectly by the State Governments w.e.f. academic

session 2019-20. Amongst various bodies, the Board of Governors, in",

supersession of Medical Council of India, was also asked to take all necessary measures including enabling amendments in the Regulations to facilitate",

implementation of the provisions of Constitution (Amendment) Act 2019 with immediate effect.,

4(iii)(c) The Board of Governors, in supersession of Medical Council of India, convened a meeting on 13.6.2019 and considered the proposals of",

States/UTs for increase of Undergraduate (UG) seats in medical colleges for implementing 10% EWS quota. It was clarified to BoG that proposal for,

increase of seats under EWS category is meant only for those who are economically weak and are not eligible under any other quota i.e. SC/ST/OBC,

etc. Vertical reservation was to be applied to seats under State Quota only. For implementing EWS quota, it was proposed :- (a) not to consider",

colleges with intake capacity of 250 ; (b) not to consider those colleges which were given letter of permission under Section 10(A) of the MCI Act for,

academic session 2019-20 ; (c) not to consider colleges denied permission for renewal of seats and (d) not to consider colleges/institutions with very,

high percentage of reservation. The increase of seats under EWS quota was to be considered only for colleges duly recommended and forwarded by,

the State Governments/UTs. The issue of extending EWS quota to institutions other than the State Government Colleges was discussed and it was,

decided to await and implement Central Government Instructions on the subject. The proposal for increase of undergraduate seats for implementation,

of 10% EWS quota was recommended for consideration of Central Government.,

A reading of the minutes of meeting of BoG makes it crystal clear that the BoG had considered applying 10% EWS reservation only to undergraduate,

courses and that too in the Government Medical Colleges.,

4(iii)(d) Implementation of 10% EWS quota in private unaided institutes was considered by the Apex Court in SLP(C)No. 20692/2019 titled Priyansh,

Jain Vs Union of India. The High Court had dismissed the writ petition filed by a private medical institution praying for mandamus to the MCI for,

granting approval of additional intake of 25% seats under the EWS category for academic session 2019-20. Assailing the judgment, the appellant had",

urged before the Apex Court that the policy was to cover the self financing institutions as well. On behalf of Union of India, it was submitted that",

question of formulation of policy involves consultation within various Government departments. The consultation was stated to be underway and,

appropriate decision was yet to be taken for academic session 2021-22. It was also submitted that policy invoked w.r.t. 2019-20 was only for the,

Government institutions/Government aided institutions/those who were receiving any kind of aid under PPP mode.,

Relevant portion of the order is extracted hereinafter :-,

“Mr. Nadkarni, learned ASG, appearing for the Union of India submits that the question of formulation of policy is underway since”,

it requires consultation within various departments of the Government of India and with regard to the academic year 2021-2022 the,

Government of India shall take an appropriate decision. Mr. Nadkarni, learned ASG, submits that as far as the policy, which has been”,

invoked with regard to 2019-20 was only with regard to the Government Institutions, Government aided institutions and those who were”,

receiving any kind of aid under PPP mode. The writ petition, which was filed in the Delhi High Court, was with regard to academic session”,

2019-20. The High Court dismissed the writ petition.,

The statement having been made before us that Government of India is formulating appropriate policy to implement 10% reservation for,

EWS category of candidates for the year 2021-2022, we are of the view that nothing more is to be decided in these special leave petitions.”,

However as stated by learned ASG, the Government of India may taken an appropriate decision with regard to 10% reservation for EWS”,

category with respect to session 2021-22 on or before 30.6.2020”,

4(iii)(e) A. Petitioners is a private unaided self financed medical college dependent upon fee collected from its students. It was established under,

The Maharishi Markandeshwar University (Establishment and Regulation) Act 2010. Section 31(4) of the MMU Act speaks about reserving 25%,

seats for admission to each course for bonafide Himachalis. The MMU Act, as it stands today, does not provide for reservation to EWS/BPL/IRDP”,

categories of candidates. Also, there is no provision therein for reserving any seat free of tuition fee (freeship seats). It is also not in dispute that in”,

the prospectus issued for admission to various courses in the petitioners institutes for 2019-20, there was no mention for reservation of 10% seats”,

for ESW/BPL/IRDP candidates. No amendment in the Act providing for 10% reservation to ESW has yet been carried out.,

4(iii)(e)B. The circular issued by Ministry of Health & Family Welfare Government of India on 29.1.2019 pertained to implementing 10% reservation,

for EWS in Central Educational Institutes. There also, this reservation was not to be applied to Super Specialty courses. For applying 10% EWS",

reservation, the Central Educational Institutes were to increase the number of seats over and above their annual permitted strength in each branch of",

faculty to ensure that available seats (excluding those reserved for EWS) is not less than the number of seats available to each category in the,

academic session immediately preceding the date of coming into force of the circular. The circular had in fact requested the State Government to give,

effect to the Constitution Amendment Act 2019 in respect of higher education institutions- funded/aided, directly or indirectly by the States starting",

from the academic year 2019-20. This circular, therefore, was not applicable to the private unaided medical institute like the petitionersâ?? and",

certainly not to the Super Specialty courses.,

4(iii)(e)C. The circular issued by Central Ministry of Health & Family Welfare on 29.1.2019 had asked various concerned authorities including BoG in,

supersession of Medical Council of India to take necessary measures, including enabling amendments to facilitate implementation of Constitutional",

Amendment Act 2019. Pursuant to this, the BoG convened its meeting on 13.6.2019. Increase of seats in medical colleges for implementing 10%",

EWS quota was decided to be given to Government Medical Colleges (undergraduate seats) for academic session 2019-20 with certain riders. No,

positive decision was taken by the BoG in this meeting for extending the EWS quota to institutions, other than the State Government Colleges. The",

BoG decided to await and implement the Central Government Instructions on the subject. The decision taken in BoG meeting, therefore, does not",

come to the aid of impugned clause 21. There was no decision either of the Central Government or of the BoG in supersession of MCI to implement,

10% reservation for EWS in private unaided medical colleges and certainly not in super specialty courses.,

4(iii)(e)D. Before the Honâ??ble Apex Court, in SLP(C) 20692/2019, Union of India on 25.2.2020 stated that 10% reservation for EWS was only",

for Government Institutions/Government aided institutions/ institutions receiving any kind of aid under PPP mode for academic session 2019-20.,

Decision for providing reservation for EWS category w.r.t. academic session 2021-22 was yet to be taken. This stance of Union of India supports,

petitioners' contention that 10% reservation for EWS has not yet been made applicable by Union of India to the institutes like petitioners',

medical college.,

4(iii)(e)E. It is not the case of the respondents that any policy has been framed by Union of India for applying 10% reservation for EWS to the private,

unaided self financing medical colleges, more specifically to the super specialty courses being run therein. It is also not the case of the respondents",

that for implementing 10% reservation for EWS, any corresponding increase in the existing admission capacity of the petitioners' institute has",

been provided for, as envisaged in the circular dated 29.1.2019.",

Also, from the documents placed on record, it cannot be said that issue of reserving 10% seats for EWS -free of tuition fees in the petitioners',

medical college, was either before or deliberated by the Fee Structure Committee. The issue has financial implications for an unaided self financed",

medical college. A feeble argument raised by the State that condition has been imposed in the clause for implementing the order passed on 5.9.2017 in,

CWPIL 103/2017 titled Court on its own motion Vs State, is misfounded. The said order pertains to reservation of seats for persons with disabilities.",

Also, no benefit can be extracted by the respondents from the communication dated 20.8.2020 which professes to implement the order passed on",

5.9.2017 in CWPIL 103/2017 and is otherwise later in point of time to the approval of fee granted by the State on 22.4.2020. No other provision was,

brought to my notice by the respondents in support of Clause 21.,

For all the aforesaid reasons, the respondents, at present, cannot direct the petitioners to reserve 10% seats in all the courses for Himachali bonafide",

BPL/IRDP candidates- EWS candidates. In view of above discussion it is not necessary, at this stage, to delve on the issue whether a private unaided",

self financed medical college, like the petitioners' can be compelled to reserve seats free of tuition fees.",

4(iv) Clause 22,

Clause 22 directs the petitioners to deposit 1% fee as per Section 8(a) of the

Himachal Pradesh Private Educational Institutions (Regulatory, Commission) Act 2010 and reads as under;-,

As per the provisions of section 8(a) of the Himachal Pradesh Private Educational Institutions (Regulatory Commission) Act 2010 upto,

1% (one) fee as assessed by the Regulatory Commission is required to be credited to the fund established vide Act ibid. To charge such,

percentage of the total fee as would be assessed by the Regulatory Commissions for the Academic Session 2019-20 is permissible under,

section 8(a) of the Act ibid subject to the final outcome of the Civil Appeal no. 11290 of 2013 and is to be deposited with the,

HPPEIRC,

Petitioners contend that Section 8(a) of the Act stands stayed by the Courts and its implementation, at this stage, cannot be insisted upon by the,

respondents.,

4(iv)(a) It is not in dispute that amongst other reliefs, prayed for, the vires of Ss.8(a) of the Act ibid were challenged in CWP 10140/2012 titled as",

H.P. Private Universities Management Association Vs State of H.P. and others. On 1.12.2012, an order was passed by a Division Bench of this",

Court staying operation of Section 8(a) of the Act. Relevant extract of this order is as under;-,

2. There shall be a stay of the operation and implementation of the following provisions of the H.P. Private Educational Institutions,

(Regulatory Commission) Act, 2010;"

i) Section 8(a) &

ii) Section 11 dealing with penalties except those penalties prescribed under Rule 6 (1)(a) to 6 (1)(g) of the Himachal Pradesh Private,

Educational Institutions (Regulatory Commission) Rules 2011.,

3. There shall be a direction to the 3rd respondent to keep all the penalties received under section (d) under separate account..

4(iv)(b) CWP 10140/2012 was decided on 19.10.2013 declaring H.P. Private Educational Institutions (Regulatory Commission) Act 2010 and the,

Rules framed thereunder as ultra-vires the Constitution of India. The operative part of the judgment reads as follows;-,

32. For the reasons already noted, we are inclined to allow this writ petition

and make the same absolute in terms of prayer Clauses (a)",
and (b), as prayed for."

33. Accordingly, this writ petition succeeds. The rule is made absolute in terms of prayer Clauses (a) and (b) of the writ petition, with costs."

Prayer clauses (a) and,

(b) read thus:

Â â??a) issue Writ of Mandamus and/or Certiorari or any other appropriate Writ, order or directions to the Respondents declaring",

Himachal Pradesh Private Education Institution (Regulatory Commission) Act, 2010, and the rules made thereunder, as ultra-vires the",

Constitution of India;;

b) consequently, declare that the assessment orders, circulars, notices passed by Respondent No.3 are without authority of law and quash",

the same;â??,

By virtue of the judgment, the Act inclusive of section 8(a) was declared ultra-vires. All assessment orders, circulars and notices passed under the",

Act were quashed.,

4(iv)(c) In Civil Appeal No. 11290/2013 filed by the respondent State challenging the judgment dated 19.10.2013, following order was passed by the",

Apex Court on 8.5.2014;-,

Â â??â?|Heard.,

Pending further orders from this Court, we direct that status quo ante, as it prevailed on 18.10.2013 i.e. immediately before the",

pronouncement of the impugned judgment, shall continue to be maintained.",

The hearing of the appeal is expedited.,

Liberty is also granted to mention for early hearingâ?|â??,

Under the above order, the Apex Court clearly put in place the position as was existing a day prior to the passing of judgment dated 19.10.2013. On",

18.10.2013, the Act was though valid but operation and implementation of some of its Sections stood stayed. The suspended Sections included Section",

8(a) under which the respondents have now directed the petitioners to deposit 1% fee under impugned clause 22 of communication dated 22.4.2020.,

4(iv)(d) The above sequence poses no difficulty to fathom that in terms of order

passed by the Apex Court on 8.5.2014 regarding implementation of, the Act, the situation as was prevailing on 18.10.2013 was to continue. Indisputably, implementation and operation of Section 8(a) of the Act stood", stayed on 18.10.2013. This was stayed vide an interim order passed on 1.12.2012 in CWP 10140 of 2012. The interim order was in force on, 18.10.2013. The H.P. Private Educational Institutions Regulatory Commission-Respondent No.5 in its separate reply has admitted this factual position, that on 18.10.2013, the interim order passed on 1.12.2012 was in operation, which had stayed implementation of various provisions of the Act," including Section 8(a). Respondent No.5 has also stated that "it is strictly adhering to the position as it prevailed on 18.10.2013 and is not charging, any fee towards section 8(a) from any Private University including Petitioner University". In this regard, respondents No. 1 to 4-State has also stated", in para 20(R) of its reply on merits that "Further action in the matter is required to be taken as per directions of the Hon'ble Supreme Court.", When the operation and implementation of Section 8(a) of the Act is stayed then there arises no question of respondents' charging 1% fee under, this section from the petitioners., Considering above position, the respondents at present cannot charge 1% fee (cess) from the petitioners under Section 8(a) of the H.P. Private Educational Institutions (Regulatory Commission) Act 2010. Charging of fee under Section 8(a) of the Act will have to abide by the orders passed in, CA 11290/2013., 5. No other point was urged., Conclusion., In light of above discussion, this writ petition succeeds and is accordingly allowed as under :-", " (a) Clause 10 of the communication dated 22.04.2020 (Annexure P-7) ordering the petitioners to charge annual tuition fee in two equal installments," is quashed and set aside., (b) Clause 13 of the communication dated 22.04.2020 (Annexure P-7), applying the fee approved on 22.04.2020, retrospectively to the academic", session 2019-20 for the courses in question in the petitioners' Medical College is also quashed and set aside.,

(c) At present, the respondents cannot direct the petitioners to reserve 10% seats in all the courses for Himachali bonafide BPL IRDP-EWS",

candidates free of tuition fee. Therefore, Clause 21 is quashed and set aside.",

(d) The respondents, at present, cannot charge 1% fee from the petitioners under Section 8(a) of the Himachal Pradesh Private Educational",

Institutions (Regulatory Commission) Act 2010. Clause 22 of communication dated 22.04.2020 (Annexure P-7) is, therefore, quashed and set aside.",

Pending applications, if any, also stand disposed off.",