

(2013) 01 RAJ CK 0244

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1507 of 2012

Neha Choudhary and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Citation : (2013) 4 CDR 1900

Hon'ble Judges : Mohammad Rafiq, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : Ashok Gaur, Mr. Sachin Mehta, Mr. Sanjeev Prakash Sharma, s and Mr. Gaurav Sharma, for the Appellant; Girdhari Singh Bapna, Advocate General, Shri Sarvesh Jain for State, Shri Sagar Mal Mehta , Ms. Pallavi Mehta for Jhalawar Hospital and Medical College Society and Shri Angad Mirdha for the Medical Council of India, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—These appeals seek to challenge judgment of the learned Single Bench dated 25/10/2012 whereby, five writ petitions filed by the appellants were dismissed. Appellants writ-petitioners appeared in the Rajasthan Pre-Medical Test and were admitted to Jhalawar Medical College, Jhalawar - on the basis of their selection by the U.G. Admission Board for their admission to MBBS Course in the academic sessions starting from 2008, 2009 and 2010. In their writ petitions, appellants/writ-petitioners have challenged the fee structure of Jhalawar Medical College. All the appellants successfully qualified the Rajasthan Pre-Medical Test and were called to appear for counselling. By the time their turn to appear in the counselling came, all seats in the government medical colleges were exhausted and therefore they were offered admission in Jhalawar Medical College, Jhalawar. Jhalawar Medical College, Jhalawar, has intake of 100 seats of which 50 are free seats and students admitted against those seats are charged nominal fee at par with what is payable in government medical colleges, 35 payment seats and those admitted against these seats are required to pay fee as per the prescription by the Fee Regulatory Committee for private medical

college and 15 NRI seats. Petitioners were admitted against the payment seats on which they were required to pay for the batch of the year 2008 annual fee of Rs. 1,95,010/-, for the batch of year 2009 Rs. 2,61,675/- and for the batch of year 2010 Rs. 2,56,235/-. They took admission and paid fee for their first year and filed writ petition challenging the fee structure.

2. Jhalawar Medical College has been set up and is being run by a Society styled as Jhalawar Hospital and Medical College Society, a society registered under the Rajasthan Societies Registration Act, 1958 on 8/8/2007. As per prospectus of the Jhalawar Hospital and Medical College, the governing body of the aforesaid society consists of the following:--

i) Principal Secretary, Medical, Health & Family Welfare, Government of Rajasthan will be the ex-officio chairman of the Governing Board.

ii) Secretary, Medical Education, Government of Rajasthan (ex-officio Vice-chairman).

iii) Divisional Commissioner, Kota Division, Government of Rajasthan (ex-officio Member)

iv) District Collector, Jhalawar, Rajasthan (ex-officio Member Secretary)

v) Director, Aids (Hospital Administration), Directorate, Medical & Health Department, Jaipur (Coordinating Secretary).

vi) Principal Medical College, Jhalawar (ex-officio Member)

vii) Chief Medical and Health Officer (CMHO), Jhalawar, Rajasthan (ex-officio Member)

viii) Principal Medical Officer (PMO) Jhalawar/Superintendent of the hospital (ex-officio Member).

ix) Chief Executive Officer of the Society - Member

x) Distt. Treasury Officer, Jhalawar - Member ex-officio

xi) Assistant Registrar, Cooperative Societies, Jhalawar, Rajasthan (ex-officio Member)

xii) Registrar, the Medical University of Rajasthan, Jaipur (ex-officio Member)

xiii) & xiv) Two persons of eminence in medical education and health services to be appointed by the Government - Members.

3. For day to day functioning of the college and attached hospital, following member constituted the Executive Committee:--

i) District Collector, Jhalawar, Rajasthan (ex-officio) - Chairperson

ii) Principal Medical College, Jhalawar - Vice Chairperson

- iii) Chief Medical and Health Officer, Jhalawar, Rajasthan (ex-officio) - Member
- iv) P.M.O., Jhalawar/Superintendent of the Hospital (ex-officio) - Member
- v) Chief Executive Officer of the 4 Society - Member Secretary
- vi), vii) & viii) Three persons to be nominated by the Government from amongst the non-governmental members of the Governing Board - Members.

4. Learned Single Judge dismissed the writ petitions by repelling challenge to the fee structure holding that the Jhalawar Medical College in fact is a self-financing institution and also dismissed the writ petition on the ground of estoppel further holding that since the petitioners had accepted the admission by making deposit of the initial fee, they would now be estopped from challenging the fee structure. Learned Single Judge on the basis of the interim order passed in SBCWP No. 18153/2011 dated 18/1/2012 required all the petitioners in five writ petitions to pay the fee for the remaining semesters together with interest @ 15% p.a., which was hitherto not paid because of the interim protection given by this Court.

5. We have heard Shri Ashok Gaur and Shri Sanjeev Prakash Sharma, learned Senior Counsel appearing for appellants, Shri Girdhari Singh Bapna, learned Advocate General, Shri Sagar Mal Mehta, learned Senior Counsel appearing for respondent No. 5 and Shri Angad Mirdha, learned counsel appearing for Medical Council of India.

6. Learned senior counsels for the appellants have submitted that Jhalawar Medical College is for all practical purposes is a government medical college. No distinction can be made between the said college and the other government medical colleges. There is no private partnership till date. Even though Chief Minister of the State has the authority to induct private partner but no such decision has yet been taken. Building of the college as well as hospital was entirely funded by the State Government, which is substantiated from document Ann. 6 showing that a sum of Rs. 2596.00 lacs was sanctioned by the government for construction of the medical college building, against which Rs. 2174.76 lacs were spent upto 31/3/2009, the date on which the work was completed and building was handed over. Building was constructed by the Rajasthan State Road Development Corporation, which generally constructs the government buildings. Land was provided by the State Government free of cost. Existing government hospital was merged with the medical college of the aforesaid society. Thus, total amount of Rs. 45.13 crores in two phases viz. Rs. 16.91 crores in first phase and Rs. 28.22 crores in second phase, was sanctioned by the State Government. Finance Department of the Government issued a notification dated 26/06/2008 under the Rajasthan Civil Services (Medical Attendance) Rules, 1970 to include the hospital attached with the said college within its purview. Services of the existing medical and para-medical staff of the government hospital were deemed to be on deputation with the society. It is shown as a government society college on the website of the Medical Council of India as also on the website of the Rajasthan University of Health Sciences. It

was established under the recommendation of the cabinet committee on the basis of Cabinet decision. Reference is made to the order/Cabinet Memo No. 103/07/13.8.2007 whereby the Cabinet of the State decided to set up medical college at Jhalawar. Reference is also made to the cabinet memo/order on record with DBSAW No. 1525/2012 with reply to writ petition as Ann. R./2. The governing body of the Society and its executive committee, which is responsible for running its day to day affairs, entirely consists of Government officers.

7. A reference was also made to the minutes of meeting of the governing board dated 28/12/2010 Ann. R/1/2 in DBSAW No. 1525/2012 at Item No. 25 whereby it was decided to charge the higher tuition fee for admission against 35 payment seats on the basis of the recommendation of the Justice Bhargava Fee Regulatory Committee and 50 seats were considered as free seats and 15 seats for NRI quota for which a lump sum amount of Rs. 43 lacs was decided to be charged as tuition fee. Reference was made to the advertisement Ann. 8 dated 9/7/2009 inviting applications for admission against NRI seats, wherein Jhalawar Medical College was described as government medical college and it was given out that the said college being run by the society is fully owned and controlled by the Government of Rajasthan. Reference was made to the decision of the Member-Secretary of the fee regulatory committee at Ann. 8 showing that those recommendations were applicable to only three private medical colleges and four private dental colleges of the State. It was argued that in the instruction booklet/application form issued for the Rajasthan Pre-Medical Test, no mention whatsoever was made that higher tuition fee shall be charged against 35 seats in Jhalawar Medical College for the year 2007-08. It is thus clear that Jhalawar Medical College is in fact a government medical college in which there can be no disparity in the matter of charging tuition fee.

8. Learned senior counsel for the appellants have further argued that when all students have been drawn from a common stream and selected for admission on the basis of common entrance examination, no artificial classification can be made amongst them for the purpose of payment of fee. Those admitted against 50 seats, though may have appeared higher in the merit list but nevertheless they also competed along with the writ petitioners in the same entrance examination. Students falling in latter category therefore cannot be required to pay higher tuition fee. Method of payment of higher fee against 35 seats as compared to those admitted against 50 free seats for the same batch has been held to be illegal by the Supreme Court in eleven-Judge Constitution Bench judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, over-ruling another judgment of Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., Allowing so would amount to cross subsidization of fee of students admitted against 50 seats by those admitted against 35 seats.

9. Reference was made to the observations made in Islamic Academy of Education and Another Vs. State of Karnataka and Others, in which Supreme

Court laid down that even the private unaided institutions shall have to submit their fee structure before fee regulatory committee, which shall finally decide the fees structure. However, there is no such provision for the Government College or for Government owned medical or aided medical college. Such college therefore cannot be allowed to take similar stand as that of private unaided college and cannot on their own charge higher fee. Reference was also made to the observations of the Supreme Court in paras 64 to 69 and 71 & 72 of TMA Pai Foundations case. Allowing respondent college to resort to higher fee structure at par with what is prevalent in private/unaided medical colleges, would amount to profiteering in a way and would be wholly illegal and unconstitutional. It is argued that learned Single Judge has failed to appreciate that neither the Rajasthan Pre-Medical Test nor on the notice board of the college nor even on the website of the University till 2009, were the appellants/writ petitioners ever informed that they would be required to pay higher tuition fee if they are admitted against 35 payment seats. Observation of the learned Single Judge that the appellants had knowledge about the fee structure is factually unfounded. Such information was given to the appellants only at the time of counselling. The rule of promissory estoppel as a general rule cannot be applied to their case. Appellants had no choice but to accept the admission against those seats by making initial deposit of the fee for one semester or else those seats would have been offered to the candidates lower in merit. Learned senior counsel for the appellants further argued that appellants were not in a position to bargain because if they had not deposited the fee, they would have lost their seats. Principle of promissory estoppel therefore cannot be applied to their case because they could challenge the fee structure only after they were admitted. Reliance in this connection was made to the judgments of Supreme Court in Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, and Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, Per contra, Shri Girdhari Singh Bapria, learned Advocate General has opposed the writ appeals and submitted that writ petition of Shri Amit Kumar Mittal has been filed with the delay of one year, who approached this Court after making deposit of fee of two years of 2008-09 & 2009-10 and therefore such writ petition would not be maintainable and the judgment of supreme Court in Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, on which reliance was placed by the learned Single Judge, applies to the present appeals with full force. Society has been impleaded as party to the writ petition with the delay of three years, that too in later two writ petitions, therefore as far as first three writ petitions are concerned, they are liable to be dismissed for delay and laches. Government was already running six medical colleges. It had no additional funds or resources to set up another medical college therefore a deliberate decision was taken to establish the medical college in public private partnership. The government has provided aid to the respondent college only to the extent of its budget deficit and would continue to provide such aid only till such time a private partner is found. In other words, what the learned Advocate General has submitted that the day the private partner is

found, aid would be discontinued by the government. It is argued that the appellants chose to take admission against payment seats and there was no compulsion for them and they did so on their own. Admissions on the basis of the common entrance Pre-Medical Test have been made to MBBS Course followed by counselling as per merit list prepared in that test for whole of the State. Petitioners were informed that Jhalawar Medical College would have first 50 seats as free seats for which nominal fee is chargeable, as in the government medical colleges. Admission against 35 payment seats would be offered to the candidates lower in merit if they agreed to pay higher tuition fee applicable to private medical colleges. Recommendation of the fee regulatory committee for charging fee against 35 payment seats has been applied for the purpose of analogy so that there is no uncertainty as to what fee is chargeable for payment seats. It was argued that if website of the Medical Council of India and Rajasthan University of Health Sciences has shown the Jhalawar medical college as government Society College, that does not make it a government college. The government has taken deliberate decision to establish Jhalawar medical college as self-financing institution because it already has other medical colleges in the State and therefore did not want to create a running financial liability. Judgment of the learned Single Judge is therefore perfectly just and appropriate.

10. Shri Sagar Mal Mehta, learned senior counsel for respondent No. 5 has argued that in three of these writ petitions, the society was not even made party, therefore, in so far as those writ petitions are concerned, they are liable to be dismissed as no relief possibly can be granted against the society. Learned senior counsel has placed reliance on the judgment of K.C. Thomas Vs. R.L. Gadeock and Another, that a society registered under the Act may not be a body corporate, quite distinct from its members, yet it has got a separate existence for many purposes. It has its own identity, personality or entity which, for all purposes is not identical with that of the members constituting it. Therefore, the fact that it has independent existence from the government cannot be denied. If so far no private partner has come forward, the society cannot be blamed for the same and it does not change character of the society. It also does not convert the respondent college into a government medical college. Learned senior counsel further argued that most of the recurring expenditure is being met by the respondent college from its own resources. It is only what remains as deficit, which is contributed by the government. Learned senior counsel made reference to clause (xii) of the Instructions of Admission to MBBS for the year 2008-09 and argued that aforesaid provision required for deposit of fee at the time of second counselling, which clearly proves that candidates were aware of process of the fee structure of college to which they are allocated for admission at the time of first counselling. Learned Single Judge therefore was perfectly justified in holding that principles of estoppel would apply and petitioners would be precluded from challenging fee structure after having accepted admission and deposited fee. It is contended that voluntarily contribution made by the State Government to the extent of deficit budget cannot be considered to be aid as there is no compulsion

for the State Government to do so. This at the maximum can be considered as a donation, which society can receive even from other agencies as well. As far as allotment of the land by the government and the budget provided for construction of building is concerned, learned Senior Counsel referring to clause 31 of the Rules and Regulations of the Jhalawar Hospital and Medical College has argued that it is clearly provided therein that if and when society is dissolved, all its claims and liabilities and all its land and building and other assets according to provisions of Secs. 13 and 14 of the Rajasthan Registration Act, 1958 shall vest in the State Government.

11. Shri Sagar Mai Mehta, Learned senior counsel has argued that admissions are being made as per Ordinance 272 II-A, which provides 50 free seats, 35 payment seats and 15 seats for NRI. The said provision still holds the field. In many self-financing institutions of the country, separate fee structure has been provided. The State of Kerala vide notification of the Government of Kerala dated 5/8/2011 Ann. R. 5/12 filed with reply to SBCWP No. 18153/2011, provided separate fee structure for self-financing colleges/engineering institutes. Learned senior Counsel has argued that even according to judgment of the Supreme Court in TMA Pai Foundations *supra*, maximum freedom has been granted to the unaided private colleges. Since respondent college is self-financing institution, it has to be considered an unaided institution. It is denied that charging nominal fee from students admitted against first 50 seats and higher tuition fee from those admitted against 35 payment seats would amount to a cross subsidization of the cost of education of those falling in the first category. Referring to the observations made in paras 30 and 37 of the judgment of the Supreme Court in TMA Pai Foundations *supra*, learned senior counsel argued that those observations would not apply to self-financing institutions like the respondent college. It is argued that only Rs. 2235/- p.a. as tuition fee is being charged for those admitted against 50 free seats in the respondent college. It would be well-nigh impossible to run a medical college in private partnership on charge of such negligent fee. Even amongst the admitted students, 30 students of SC/ST receive scholarship. Reliance was placed on judgment of the Supreme Court in Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., wherein it was held that the State Government could start self-financing colleges. It is only by charging fee from students admitted against next 35 seats, would the Society be able to recover its losses. Recommendation of the fee regulatory committee has been adopted only for the purpose of analogy so that there is no uncertainty. Even Supreme Court in Islamic Academy of Education *supra* held that there can be no fixing of rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of students. It is argued that the learned Single Judge has rightly dismissed the petition on the principles of promissory estoppel by citing judgment of Supreme Court in Cochin University of Science and Technology and Another Vs. Thomas P. John and Others,

12. Shri Angad Mirdha, learned counsel appearing for Medical Council of India has submitted that the dispute whether the society has been funded by the government and therefore it is a government college, is between the appellants, said society and the government. Medical Council of India has recognized such college as government Society College. It has therefore in its website, described this college accordingly. But this college cannot be treated as private medical college.

13. We have given our anxious consideration to the rival submissions and perused the material available on record.

14. Question that arises for consideration in the present set of appeals is whether there can be two set of fee structure for the students admitted from a merit list prepared on the basis of common entrance examination after decision of Supreme Court in TMA Pai Foundations supra and related thereto would also be a question whether charging of higher fee from the students admitted against 35 seats would amount to cross-subsidization of fee of the students admitted against 50 free seats by them?

15. Respondents are justifying pattern of having 50 free seats, 35 payment seats and 15 NRI seats by contending that the same is based on the provisions contained in Ordinance 272 II-A of University Ordinance but that pattern in the aforesaid University ordinance appears to have been inserted on the basis of the judgment of Supreme Court in Unni Krishnan J.P. supra much prior to the eleven-Judge Constitution Bench judgment of Supreme Court in TMA Pai Foundations supra, which declared the same as illegal and unconstitutional. Supreme Court in TMA Pai Foundations case examined the correctness of Unni Krishnan J.P. supra. Supreme Court in paras 37 and 45 held as under:--

37. Unni Krishnan judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats are evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has even the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

45. In view of the discussion hereinabove, we hold that the decision in Unni Krishnan case insofar as it framed the scheme relating to the grant of admission

and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, the Medical Council of India, the Central and State Governments etc. are overruled.

16. Having held that judgment of Unni Krishnan J.P. *supra* in so far as it framed the scheme in fixing different fee was not correct and having over ruled the same, Supreme Court in TMA Pai Foundations *supra* then examined the question of government interference in the case of private unaided and aided colleges and institutions. It held that once aid is granted to a private professional institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. At the same time, it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management. Yet, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management.

17. Character, in which the respondent society has been framed, does not clearly bring it within the purview of private aided medical college. The composition of its governing body and executive committee, allotment of the land, grant of funds for construction of the building, the transfers of the government medical/teaching paramedical teaching staff on deputation to the said institution, merging government hospital with medical colleges, decision of the cabinet to set up the medical college and representation by Medical Council of India and Rajasthan University of Medical and Health Sciences its being a government society college indeed makes it a government controlled medical college particularly when till date no private partner has been associated. Nevertheless it has to be accepted as a self-financing institution. Question that requires determination is whether the government or for that matter, the society running the Jhalawar Medical college, would be justified in reviving the pattern on which 100 seats are divided

viz. 50 free seats, 35 payment seats and 15 NRI seats, which pattern was devised by the Supreme Court in Unni Krishnan's case and was held to be illegal by the eleven-Judge Constitution Bench judgment of Supreme Court in TMA Pai Foundations case. It must however be noted that no such observations therein were made with regard to government medical colleges or colleges, which are fully owned, controlled and managed by the government set up on the pattern of self-financing institutions.

18. In Pushpagiri Medical Society vs. State of Kerala & Ors., (2004) 8 SCC 135, an unaided minority college filed writ petition before Supreme Court challenging the constitutional validity of Sec. 4 of the Kerala Self Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004, which provided that 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 or in any agreement, the fee to be collected from the candidates admitted in the government quota shall be the same as the fee prevailing for the corresponding course in the State Government colleges. Section 4(1)(b) of the said Act stipulated that the fee to be collected from the candidates admitted in the management quota shall be determined by the management taking into consideration the inevitable expenses for running the institution. Supreme Court held that Sec. 4 of the Act, brings in cross-subsidy which, prima-facie, is not permissible as per the decision in T.M.A. Pai Foundation case. It was further held by the Supreme Court that the question as to whether the students can afford or not the fee fixed by fee regulatory committee is not relevant for the present purposes. No one stops the State Government to subsidize such students as it may deem just, fit and proper.

19. The facts of the judgment rendered by the Supreme Court in Institute of Human Resources Development and others etc. Vs. T.R. Rameshkumar and others etc., are similar to the present case. There were nine Government Engineering Colleges in the State of Kerala. The Government of Kerala with a view that it was not possible to set up new Engineering Colleges, decided vide notification dated 24/12/1992 to start two self-financing Engineering Colleges from academic year 1993-94. It was decided that one college each shall be established by these two societies namely; Institute of Human Resources Development for Electronics and Lal Bahadur Shastri Engineering Research and Consultancy Centre. Both the institutions/societies were registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, XII of 1955, which respectively imparted instructions for B.Tech. Course in Computer Engineering and Electronic Engineering. 75% of the seats of these colleges were decided to be filled in on the basis of open merit applying the reservation policy, 10% were to be filled in by the students of SC/ST and remaining 15% from NRI quota. These institutions were fully controlled by the State of Kerala. The question before the Supreme Court was whether these institutions can be allowed to make a departure from scheme set up in Unni Krishnan J.P. supra on the plea that scheme so framed was meant only for

private colleges and these institutions were not private educational institutions. Government has been compelled to set up them as a self-financing institution in view of the lack of finance. It was contended that these institutions are charging from the students of general category candidates a sum of Rs. 12,500/- per year as tuition fee and from the students of SC/ST category candidates, tuition fee of Rs. 6,250/- per year as compared to Rs. 46,800/- charged by some private Engineering Colleges. In those facts, Supreme Court in para 9 of the said judgment held, as under:--

9. Can such a departure from Unni Krishnan be permitted? The basic difference between institutions governed by the scheme in Unni Krishnan and the present institutions is that these institutions are controlled by the State and, therefore, their working and utilisation of funds are under the control of the State. The essence of Unni Krishnan on the other hand, can be summed up in one sentence: There should be no commercialisation or profit taking by private educational institutions. This Court was very concerned about the high fees charged by private technical educational institutions. They earned large profits which were not utilised in providing adequate infrastructure or teaching facilities in these institutions. Most private colleges provided sub-standard training, making no improvements in their equipment, teaching staff or teaching aids. They simply pocketed large profits made from heavy fees charged to students. It was to stop this exploitation of students that the scheme was framed. In terms, the Unni Krishnan scheme provides that it will not be applied to Government Institutions. It is true that Unni Krishnan did not contemplate self-financing institutions set up by or sponsored by the Government. But looking to the confidence reposed by Unni Krishnan in the Government in fixing proper fees even for private self-financing educational institutions, it is clear that the scheme of Unni Krishnan applies only to purely private educational institutions which are self-financing. It is designed to ensure that they do not make undue profits or exploit students. Unni Krishnan, however, is not against self-financing educational institutions. On the contrary, it has recognised the need for self-financing educational institutions to augment the efforts made by the State in setting up educational institutions in the field of technical education.

20. In the above quoted case, challenge was made to the fee structure before the High Court of Kerala by students admitted in those institutions contending that State Government was already running six Government Colleges and three are aided colleges, which provided 2391 "free seats" available to all candidates of merits. Tuition fee charges in these nine institutions is Rs. 495/- per annum but these two institutions are providing admission and charging against additional 480 seats a sum of Rs. 12,500/- per annum. Repelling that argument, it was held by the Supreme Court in para 15 of the judgment, as under:--

15. It is also urged by the respondent that the two colleges do not admit students entirely on merit because a meritorious student who is higher on the merit list may not be able to secure admission if he is not in a position to pay the

higher fees. This argument is fallacious. Admission to the open merit seats in these colleges is available entirely on merit. Undoubtedly, financial capacity to bear the higher fees will be a consideration which may compel an individual student to either accept or decline the offer of a seat. But this would be so even in a case where the fees are lower. There may be meritorious students who are so poor that they cannot afford even the low fees which are charged. But that is not a ground for saying that the admission is not available on merit. For those who are financially handicapped, special facilities in the form of merit scholarships or freeships should be made available. We are happy that at least for 10% of such seats, a meritorious student who would have otherwise got admission, but for his inability to pay the fees, is going to be granted a freeship under the present scheme. We hope that such seats will increase in future as more funding becomes available. The difficulties of such students, however, should not come in the way of other meritorious students who would like to avail of technical education in these colleges and who, apart from being meritorious, are also in a position to pay somewhat higher fees in return for obtaining the facility of higher technical education in their home State. Undoubtedly, in a State which has a high record of educational achievements, where people have enjoyed good educational facilities for higher education at low cost, this kind of a departure may cause some resentment. But the choice is between not having the colleges or having them on a self financing basis. It is necessary in national interest that we have a sufficient number of technically trained personnel of the requisite caliber to work for the nation. In cases where merit and means combine there is no reason why self financing educational institutions should not step in to meet the national requirement for such qualified personnel of good caliber.

21. We are conscious of the fact that judgment of Supreme Court in Unni Krishnan J.P. *supra* in so far as it provided on the aspect of fee structure has been over-ruled by the eleven-Judge Constitution bench judgment of Supreme Court in TMA Pai Foundations *supra* but nevertheless Unni Krishnan J.P. *supra* was precursor to TMA Pai Foundations *supra* in so far as it provided for the fee structure for the private unaided educational institutions. Argument is that impugned fee structure amounts to cross subsidization of fee of students admitted against 50 seats by those admitted against 35 seats, but it may be noted with regard thereto that like Unni Krishnan J.P. *supra*, the observations of the Supreme Court in paras 64 to 69, 71 & 72 were meant for private unaided/recognized/affiliated institutions and not for a Government institution or Government set-up self-financing institutions, which would be evident from the observations made in paras 38 and 39 of TMA Pai Foundations judgment. Moreover, in the fee structure of the respondent-college, the governing body of the society or the State Government, charge only paltry sum of Rs. 2235/- per annum from a student, which proves that the government has subsidized fee of at least first 50 students against free seats. As held by the Supreme Court in Pushpagiri Medical Society *supra*, there is no impediment for the government to subsidize fee of certain percentage of students admitted in a government

controlled self-financing institution.

22. We may in this connection, also refer to the recent judgment of Supreme Court in *Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others*, in para 28 of which, it was observed by the Supreme Court, as under:--

28. Having regard to the principles laid down in *T.M.A. Pai Foundation, Islamic Academy Education and Inamdar* whereby the previous scheme in *Unni Krishnan* was held to be unconstitutional, insofar as private unaided professional educational institutions are concerned, the question of two fee structures - one for the "State quota" students and one for the "management quota" students does not arise. These decisions contemplate the determination of fee structure for each college with reference to the various parameters like location, nature of the professional course, investment in infrastructure including and building, infrastructure and facilities available by way of buildings, labs, equipments, salaries to faculty and staff, the cost of administration and maintenance and reasonable surplus for growth and development of the institution mentioned therein. There can therefore be only one fee structure for all students of a private unaided professional educational institution. This of course does not come in the way of different fee structures being applied in regard to government institutions and aided institutions, nor does it come in the way of weaker sections of students "admitted" to unaided private professional educational institutions being extended scholarships, grants, fee concessions, etc. on a voluntary basis, either by the institutions themselves or by the Government.

(emphasis ours).

23. We find from the impugned-judgment that the learned Single Judge has while dismissing the writ petitions also held that writ petitioners after having secured admission and paid the fee of first semester would be estopped from questioning the validity of fee structure. In the facts of the case, even if appellants were offered payment seats at the time of counselling with clear information that they would be required to pay much higher fee, acceptance of such admission by the appellants on such higher fee and thereafter by making payment of such fee of first year, they acquiesced in accepting correctness of the action of the respondents. Learned Single Judge has therefore rightly held that they were estopped from questioning correctness of such fee.

24. Contention that since all those admitted against free seats and payment seats, were subjected to same entrance test, their admission having been made on the basis of common merit, therefore if the students admitted against free seats are required to pay only a nominal fee, appellants and the likes of them, cannot be required to pay much higher fee, cannot be accepted either. Argument that action of the respondents in doing so, would be discriminatory qua them cannot be accepted for the simple reason that government has set up the respondent-Jhalawar Medical College as self-financing institution and 50%

students are admitted against free seats on the basis of merit and they are only required to pay a sum of Rs. 2235/- p.a., on criteria of merit cum preference cum availability of seat, which is just and valid criteria. If by the time turn of the appellants and the likes of them reached in the counselling, all free seats were exhausted, they cannot be allowed to say that they were discriminated because admissions against free seats have been made purely on the basis of merit subject to availability of seat in the quota of free seats. Once those seats were exhausted, option was given to the candidates next below in the list, who accepted admission against payment seats with the clear understanding that if they accepted the admission, they would have to pay the higher fee. Two set of students thus would constitute distinct and separate class based on intelligible differentia of their inter-se merit. Argument of cross-subsidization would not be available to the appellants because they were admitted in a government controlled self-financing institution, which is managed by the government where there may be such differentiation in the tuition fee, as has also been held by the Supreme Court in *Modern Dental College and Research Centre supra*. Mere fact that so far no private partner could be found, does not change character of the respondent-college of being a self-financing institution. Observations of the Supreme Court in *TMA Pai Foundation supra* declaring cross-subsidization illegal, were made in the context of private unaided institutions and those observations can be applied only in that context. The argument of discrimination therefore cannot be upheld.

25. Adverting now to the validity of adoption of prescription of fee made by the Fee Regulatory Committee under the judgment of *TMA Pai Foundation supra* at the first blush, this argument appears appealing but on a deeper analysis, in the light of the fact that respondent-college is still offering free admission to 50 students, who are higher in merit than appellants and other likes of them admitted against payment seats, method adopted by the respondents cannot be said to be unjust, unreasonable or arbitrary. Moreover, private medical colleges having same intake of 100 seats are charging such fee for all 85 seats, which proportionately distribute the recurring expenses of complete establishment of a private medical college with attached hospital amongst 85 students, apart from what is charged from the students admitted in NRI quota. But the respondent-society, which is running the respondent-college, is charging the same fee only from 35 students admitted against payment seats and nominal fee of Rs. 2235/- per annum from those admitted against 50 free seats, apart from charging higher amount of fee from those admitted against NRI quota. This is indeed a big incentive to the students admitted on the basis of merit against 50 free seats, which is half of its total intake. Even if this is examined conversely by assuming as to what would be the position if the respondents adopted similar method of charging equal fee from the students admitted against all 85 seats i.e. from all those admitted against 50 free seats and 35 payment seats. If that was done, this would have substantially enhanced the cost of education even for those 50 students, who are now admitted against free seats and are otherwise required to

pay nominal fee of Rs. 2235/- per annum, payable in any other government medical college. This would have indeed been very harsh on them because in that event fee payable by them would have risen hundred times. If the Governing Body of the Society or for that matter, the State Government has deliberately set apart 50% of the intake in respondent-college to be offered as free seats by substantially subsidizing fee of the students admitted on merit, no fault can be found with such a method. Besides, the respondent-college is also offering all its seats to be pooled alongwith the intake of all Government Medical Colleges for providing education to reserve category candidates of Scheduled Castes and Scheduled Tribes as per policy of the State Government. Such students receive government Scholarship as well.

26. Lastly coming now to the question whether the respondent-college would be justified in charging interest @ 15% p.a. from all students when such interim-order was passed only in one of the writ petitions namely; SBCWP No. 18153/2011, we find that appellants in other appeals were led into filing writ petitions on account of interim-order passed by this Court in first of these writ petitions. It would therefore be too harsh upon them if they are saddled with interest @ 15% per annum on unpaid fee. However, we deem it appropriate to direct that if the appellants deposit the entire outstanding fee within two months from today, no interest shall be charged from them. If however they fail to deposit outstanding fee within the said period, respondent-college would be free to take appropriate action against them in accordance with law. As a result of above discussion, we do not find any infirmity in the judgment of the learned Single Judge. Consequently, all these appeals fail and are hereby dismissed, however with the slight modification in the order of the learned Single Judge on the question of charging interest from the appellants as indicated above.