(2013) 10 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 10632 of 2012

Sachin Mehta APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 3 CDR 1444

Hon'ble Judges : Amitava Roy, C.J;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Rajendra Soni, Mr. Vishal Soni, Mr. N.K. Garg and Petitioner-in-Person in DBCWP No. 10632/2012, for the Appellant; Sanjeev Prakash Sharma , assisted by Mr. Gaurav Sharma, S.S. Shekhawat, Saransh Saini, Anand Singh Rajawat, Angad Mirdha, M.A. Khan and Mr. Dinesh Yadav, Additional Advocate General for State, for the Respondent

Final Decision : Allowed

Judgement

Veerendr Singh Siradhana, J.—The petitioner, an advocate, in D.B. Civil Writ Petition (PIL) No. 10632/2012 (Sachin Mehta Versus State of Rajasthan & Ors.), registered as Public Interest Litigation (PIL), has challenged the action of Mahatma Gandhi University of Medical Sciences & Technology, RIICO Institutional Area, Sitapura, Jaipur (hereinafter referred to as ''the respondent-University'', for short), in notifying fee structure decided by the ''Fee Fixation Committee'' of the respondent-University, for the candidates selected for admission in Bachelor of Medicine and Bachelor of Surgery (MBBS, for short) and Bachelor of Dental Surgery (BDS, for short) Courses in Mahatma Gandhi Medical College and Hospital, Jaipur and Mahatma Gandhi Dental College and Hospital, Jaipur - educational establishments of respondent-University.

In D.B. Civil Writ Petition No. 12956/2012 (Aditya Singhal Versus State of Rajasthan & Ors.) and D.B. Civil Writ Petition No. 12958/2012 (Saurabh Badaya Versus State of Rajasthan & Ors.), the petitioners have challenged the same notification dated 13th July, 2012 whereby the fee of MBBS Course has been enhanced from Rs. 2.95 lacs to Rs. 6 lacs per year. Since, all the above-mentioned three petitions involve common question of facts and law relating to fee structure for admission to MBBS and BDS Course in Private Medical College(s), therefore, have been taken up together for adjudication.

For the purpose of convenience, the facts of D.B. Civil Writ Petition (PIL) No. 10632/2012 (Sachin Mehta Versus State of Rajasthan & Ors.) registered as Public Interest Litigation, shall be referred. The petitioner stating himself to be a public spirited citizen, has challenged the notice published by the respondent-University, notifying the fee structure decided by the ''Fee Fixation Committee'' constituted by the respondent-University, for the candidates selected for admission in MBBS in Mahatma Gandhi Medical College and Hospital, Jaipur and Mahatma Gandhi Dental College and Hospital, Jaipur - educational establishments of respondent-University.

2. Shorn of the unnecessary details, the essential facts for appreciation of the controversy raised are that the respondent-University by a publication in the daily newspaper "Rajasthan Patrika" dated 13th July, 2013, has raised the annual tuition fee for the MBBS Course from Rs. 2.95 lacs per annum per student to Rs. 6.00 lacs per annum per student. It is further contended that most of the Private Technical and Medical Educational Institutions in the State have transformed themselves into commercial business centres rather than centres of learning. Referring to the verdict of the Hon''ble Apex Court of the land in Islamic Academy of Education and Another Vs. State of Karnataka and Others, it is highlighted that the State Governments of the Country were directed to constitute a Committee headed by a Retired High Court Judge, who shall be nominated by the Chief Justice of that State, and other members to be nominated by the Judge, a Chartered Accountant of repute and a representative of the Medical Council of India or All India Council for Technical Education, as the case may be, for determination of fee structure in private educational institutions. Further, the Institutions are supposed to place their proposed fee structure before this Committee and the Committee would then decide the fee structure as may be chargeable by the Private Institute. It is further stated that the Committee so constituted in the State of Rajasthan has determined, for the present, fee for Medical College(s) not more than Rs. 2.95 lacs per annum per student for MBBS Course whereas the respondent-University suo-moto and without any authority of law, constituted a ''Fee Fixation Committee'' and has decided fee to the tune of Rs. 6.00 lacs per annum per student, which is highly exorbitant and far much over and above the fee determined by the ''Fee Regulatory Committee'' for the State of Rajasthan.

3. The learned counsel for the petitioners reiterating the contents of the writ applications vehemently argued that the moot question for determination is:--

Whether the respondent-University could decide its own fee structure contrary to the directions issued by the Hon''ble Apex Court of the land in a catena of judgments?

4. Placing reliance on the verdict of the Hon''ble Supreme Court in case of Islamic Academy of Education & Anr. (supra), the learned counsel for the petitioners would urge that the controversy is no more res-integra for the reason that the Hon''ble Supreme Court in order to give effect to the judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, directed the State Governments/concerned authorities, to set up in each State a Committee headed by a Retired High Court Judge, who shall be nominated by the Chief Justice of that State. Further, referring to the question No. 1 i.e. whether the educational institutions are entitled to fix their own fee structure? as examined by the Hon''ble Supreme Court under paragraph 7 in case of Islamic Academy of Education & Anr. (supra), the action of the respondent-University has been stated to be in violation of the law, at this juncture, it will be relevant to extract paragraph 7, which reads thus:--

7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, mere are statutes/regulations which govern the fixation of fees and as this Court had, not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI''s case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short ''MCI'') or the All India Council for Technical Education (in short ''AICTE''), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to

nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

5. The Hon''ble Supreme Court under paragraphs 19 and 20 further observed as under:--

19. We now direct that the respective State Government do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges to fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/ s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified

that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

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

6. To check the indulgence of the educational institution in profiteering or otherwise exploiting students financially, the Hon''ble Supreme Court under paragraphs 159, 160 and 161 observed thus:--

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

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

161. Fees once fixed should not ordinarily be changed for a period of three years, unless there exists extra-ordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/Body set up. For this purpose the application should not be filed later than April of the preceding year, of the relevant education session. The authority/ Body shall take the decision as regards fees chargeable later by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalised bank. In other words, no employee or any other person employed by the Management shall be entitled to take fees in cash from the students concerned directly, The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a

suitable case it may also lose its recognition or affiliation.

7. The learned counsel for the petitioners further in order to fortify his submissions referred to the law declared by the Hon''ble Apex Court of the land in case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, wherein their Lordships while examining the question with reference to the guidelines in the matter of regulating the fee payable by the students to the educational institution as issued in case of Islamic Academy of Education & Anr. (supra) observed as under:--

140. The learned senior counsel appearing for different private professional institutions, who have questioned the scheme of permanent Committees set up in the judgment of Islamic Academy, very fairly do not dispute that even unaided minority institutions can be subjected to regulatory measures with a view to curb commercialization of education, profiteering in it and exploitation of students. Policing is permissible but not nationalization or total take over, submitted Shri Harish Salve, the learned senior counsel. Regulatory measures to ensure fairness and transparency in admission procedures to be based on merit have not been opposed as objectionable though a mechanism other than formation of Committees in terms of Islamic Academy was insisted on and pressed for. Similarly, it was urged that regulatory measures, to the extent permissible, may form part of conditions of recognition and affiliation by the university concerned and/or MCI and AICTE for maintaining standards of excellence in professional education. Such measures have also not been questioned as violative of the educational rights of either minorities or non-minorities.

141. The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

142. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

143. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on an uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee-structure.

144. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

145. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or adhoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

146. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their job and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

147. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.

148. On Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails. However, the observation by way of clarification, contained in the later part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question No. 1.

8. The learned counsel would further submit that in view of the judgment in T.M.A. Pai (supra) and various other judgments by the Hon''ble Supreme Court, the scheme evolved of setting up two Committees regulating admission and determining fee structure as directed in the judgment in Islamic Academy of Education & Anr. (supra), cannot be faulted for infringement of Article 19(1)(g) read with Article 30 in case of unaided professional educational institutions of both categories until the suitable legislation or regulation framed by the State is brought into force. Moreover, as observed by the Hon''ble Supreme Court in case of P.A. Inamdar (supra), the decision of Committee being quasi-judicial in nature is subject to judicial review. The learned counsel for the petitioners further fortified his submissions by a decision delivered by the Division Bench of the High Court in Writ Petition No. 5655 of 2006; A.B. Shetty Memorial Institute of Dental Sciences Versus Fee Fixation Committee, decided on 9th November, 2009 dismissing the petition filed by the A.B. Shetty Memorial Institute of Dental Sciences (supra) upholding the fee fixed by the Fee Fixation Committee for admission in P.G. Medical Courses in aided and unaided private colleges and simultaneously ordered the petitioner institute to refund the excess fee collected from the students over and above the fees fixed by the Fee Fixation Committee. The learned counsel also brought to the notice of this Court an order passed by the Hon''ble Supreme Court in Civil Appeal No. 2856 of 2009; (Chancellor, Guru Ghasidas University & Ors. Versus Sudiep Shrivastava & Ors.) wherein the Hon''ble Supreme Court upheld the fee fixed by the Fee Regulatory Committee appointed by the High Court and further making an order for adjustment of the excess fee, if any.

9. The learned counsel for the petitioners referring to the rejoinder also pointed out that the Fee Regulatory Committee, Rajasthan, after due deliberations, proposed the fee to be charged by the Private Medical Colleges for the academic session 2010-11 for the Course of MBBS as Rs. 2.95 lacs per student per year

and for the Course of BDS in private colleges the fee to be charged has been determined as Rs. 1.55 lacs per student per year and this fact is evident from the order dated 29th July, 2010. Further, the interim fee as determined by the Fee Regulatory Committee, Rajasthan, is subject to final determination. Therefore, in the face of fee fixed by the Fee Regulatory Committee, Rajasthan, the fee structure determined and published for the MBBS and BDS Course by the respondent-University is not sustainable in the eye of law. The learned counsel also referred to the public notice regarding fee as reflected on the website of the Medical Council of India, holding out to the students/public at large not to pay fee more than the fee fixed by the Fee Regulatory Committee of the respective States. Repelling the submissions of the respondent- University for having purchased the land for a huge amount, the learned counsel invited the attention of this Court to the communication dated 4th September, 1999 with reference to the allotment of plot for establishment of hospital and institutional complex at Sitapura Industrial Area, stipulating the terms and conditions of allotment of the land measuring 54,332 square meters, on which the medical college is situated, which specifically stipulates a condition under Clause-XIV with regard to fee to be charged, reads thus:--

The pattern of fee shall be as per guidelines of AICT/ICMR/State Government/ Supreme Court''s order.

10. Further, the allotment of land has been made at a very nominal rate, it is urged.

11. In response to the notice of the writ application(s), the State-respondent number 1 and 3 as well as respondent-University have submitted their counter-affidavits raising preliminary objections as to the very maintainability of the writ petition as Public Interest Litigation. Mr. Sanjeev Prakash Sharma, learned Senior Counsel, appearing on behalf of respondent-University, raised preliminary objection that the writ application in the form of a Public Interest Litigation is not maintainable. Firstly, the writ petitioner, an advocate, is in no manner connected to the Medical Education and further he has not spelt out as to how the respondent-University was engaged in illegal profiteering and commercializing the Medical Education and the writ application filed as a Public Interest Litigation, pretending to act in the name of Pro Bono Publico, is in fact pro bono-et-malo. Secondly, the respondent number 2, a University established under the Mahatma Gandhi University of Medical Sciences and Technology, Jaipur Act, 2011 (hereinafter referred to as ''the Act of 2011'', for short), passed by the Rajasthan Legislative Assembly, has its constituent educational establishments i.e. Post Graduate Medical College (Mahatma Gandhi Medical College); Mahatma Gandhi Dental College; Pharmacy, Nursing and Physiotherapy College, Nursing School etc., and is imparting education by way of several diploma courses in various fields of Medical Science, and ranks 10th as a Medical College of repute, as reflected in the survey conducted by the India Today Group. Thirdly, the respondent-University being wholly a private unaided University, owns its

campus and land bearing required infrastructure which has been acquired with the help of loan from the Banks and promoters, without availing any concession from the State Government and has also satisfied the required norms set out by the Medical Council of India. The learned Senior Counsel for the respondent-University also pointed out that highest rank was achieved by the students of Post Graduation in the field of Medical Science in the year 2012. Therefore, by no stretch of imagination, the Institute could be levelled as a business centre or involved in commercialization of education in the fie Medical Science. Fourthly, the fee structure has been determined considering the overall requirements of the expenditures on infrastructure, staff and further, the fee has been computed by the ''Fee Fixation Committee'' including a Chartered Accountant, and the proposal which was laid before the ''Fee Fixation Committee''. Fifthly, the fee structure is only applicable to the students, who opt and volunteer to take admission in the private unaided Mahatma Gandhi Medical College and is relatable to the expenses required for the purpose of such studies. Reliance has been placed on the verdicts of the Hon''ble Supreme Court delivered in cases of State of Uttaranchal Vs. Balwant Singh Chaufal and Others,

12. The learned Senior Counsel further pointed out that the State of Rajasthan constituted the Fee Regulatory Committee, headed by Mr. Justice S.N. Bhargava, a retired High Court Judge, as Chairman nominated by the Hon''ble Chief Justice of the Rajasthan High Court and later on members were inducted on the recommendations of the Chairman. The Committee after preliminary discussion with regard to the fee structure, called upon all the Medical Colleges and Dental Colleges of the State to submit their proposal(s) for fee fixation and after a due deliberation during the meetings, held from time to time, the Fee Regulatory Committee declared an interim annual fee structure of Rs. 1.30 lacs for MBBS Course and Rs. 0.70 lacs for BDS Course, as was conveyed vide order dated 16th June, 2004 for the academic session 2003-04 and the same was made applicable for academic sessions 2004-05 and 2005-06 as well.

13. The Fee Regulatory Committee considered the proposals for the academic session 2006-07, 2007-08 and 2008-09 and again fixed, as an interim measure, an annual fee of Rs. 1.95 lacs for MBBS Course and Rs. 1. 25 lacs for BDS Course vide order dated 30th July, 2007. The annual fee for academic session 2008-09 was fixed at Rs. 2.05 lacs for MBBS Course and Rs. 1.30 lacs for BDS Course vide its order dated 30th May, 2008. The Fee Regulatory Committee after having considered the proposals for Post Graduation MD/MS Course and MBBS Curse fixed an interim fee structure of 4.50 lacs for Post Graduate MD/MS Course for the academic session 2009-10 vide order dated 28th May, 2009. So also an interim fee structure for academic session 2010-11 was fixed at Rs. 6.00 lacs vide order dated 21st May, 2010. Interim annual fee of Rs. 2.45 lacs for MBBS Course and Rs. 1.55 lacs for BDS Course was fixed vide order dated 15th July, 2009. Again annual interim fee of Rs. 2.95 lacs was determined for the academic session 2010-11 vide order dated 29th July, 2010. The interim fee structure for Post Graduate MD/MS Course and BDS Course for the academic year 2011-12,

continued the same as was determined for academic session 2010-11.

14. The learned Senior Counsel for the respondent-University referring to the Act of 2011, pointed out that the respondent-University in order to prepare its own fee structure and send the same for approval of the ''Fee Fixation Committee'', proceeded as per the mandate of Section 33 of the Act of 2011, which reads thus:--

33. Fee structure--(1) The University may, from time to time, prepare its fees structure and sent it for approval of the committee constituted for the purpose.

(2) The committee shall consider the fees structure prepared by the University and if it is satisfied that the proposed fees is-

(a) sufficient for:--

(i) generating 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, it may approve the fees structure.

(3) The fee structure approved by the committee under sub-section (2) shall remain in force for three years and the University shall be entitled to charge fees in accordance with such fees structure.

(4) The University shall not charge any fees, b whatever name called, other than that for which it is entitled under sub-section (3).

15. The learned Senior Counsel further pointed out that the term ''Committee'' has been defined by virtue of mandate of Section 28 of the Act of 2011, which reads thus:--

28. Committee - The authorities or officers of the University may constitute such committees with such terms of reference as may be necessary for specific tasks to be performed by such committees. The constitution of such committee and their duties shall be such as may be prescribed by the Statutes.

16. Further explaining the constitution of the Committee by the respondent-University, the learned senior counsel urged that the Committee constituted was headed by Justice Shiv Kumar Sharma, a Retired High Court Judge and former Chairman of Rajasthan Legal Services Authority, who is now Member of Law Commission of India and four members including one Chartered Accountant, Mr. Shyam Lal Agarwal; Former Vice Chancellor, NALSA National Law University, Hyderabad & Vice Chancellor of National Law University, New Delhi, Dr. Professor Ranbir Singh; Vice Chancellor, Dr. D.Y. Patil University, Pune, Dr. Professor P.N. Razdan and Chartered Accountant & Company Secretary and Financial Advisor, Mahatma Gandhi University of Sciences & Technology, Jaipur, Mr. R.N. Kagata. Therefore, the impugned fee structure proposed and published by the respondent-University is perfectly legal, valid and in consonance with the

directions issued by the honourable Supreme Court and hence, cannot be faulted.

17. It is further urged that since the block of 3 years lapsed after academic session 2009-10, therefore, it became necessary to revise the fee structure and accordingly, the Fee Regulatory Committee constituted by the respondent-University, taking into consideration all the financial aspects involved, determined the fees of Rs. 10 lacs per annum per student for Post Graduate MD/MS Course and Rs. 6 lacs per annum per student for MBBS Course; and also advised to meet out the difference by separate small courses and reduction in the development costs. The Board of Management of the respondent-University has approved the recommendations of Rs. 6 lacs per annum per student for MBBS Course to be made effective from 2012 onwards and Rs. 10 lacs per annum per student to be made effective from the new academic year 2013-14 as admission to Post Graduate MD/MS Course had already been made. Thus, the action of the respondent-University is perfectly legal and valid and calls for no interference by this Court.

18. The State-respondents in their counter-affidavit did not dispute the powers of the respondent-University under the Act of 2011 but, admitted the fact that the fee structure is determined by the ''Fee Regulatory Committee'' of Rajasthan, is the criterion for payment to the Private Medical College(s). Moreover, a specific condition was stipulated in the INFORMATION BOOKLET while allotting 127 students, in consequence of RAJASTHAN PRE-MEDICAL TEST - 2012, to Mahatma Gandhi Medical College (a constituent education institution of the respondent-University)..

19. We have heard the learned counsel for the parties and with their assistance perused the material available on record. We have given our anxious consideration to the rival submissions and have also considered the nature of the directions issued by the honourable Supreme Court from time to time on the issue of determination of the fee structure in the case of private professional educational institutions.

20. Learned senior counsel for the respondent-University referring to the case of T.M.A. Pai (supra), urged that right to establish and maintain educational institutions including the majority religious community as a private ''educational institution'' would include all the educational institutions and the word ''private'' is used in contradiction to Government Institution. Since an educational institution imparting education in different Courses of studies needs qualified teachers, adequate infrastructure and good amenities to meet out the professional education and demand and therefore, economic element has a vital role to play and hence, the decision on the fee to be charged is available to the private educational institution, which does not seek or is not dependent upon any fund of the Government. Therefore, the interest of public at large would be better served by quality educational institutions established on the autonomy and non-regulation of the administrator in the right of appointment, admission of students and fee to be charged. The learned counsel further stressed that the

respondent-University has rightly determined the fee structure without any element of profiteering, but for a reasonable surplus for furtherance of professional education and future development on that aspect.

21. On the question whether the respondent-University is entitled to fix its own fee structure; the learned senior counsel pleaded that the respondent-University has fixed the fee structure, in dispute, to generate funds necessary to run the Institution and provide necessary facilities to the students as well as for betterment and growth of the Educational Institution, in consonance with the principles propounded and declared by the Hon''ble Apex Court of the land in the case of T.M.A. Pai (supra). Further, in the matter of determination of fee structure, the respondent-University has reasonably fixed the fee keeping in view the economic resources and finance that is required to meet out the expenses in running the institute and the institute is not involved in charging "capitation fee" or deriving any undue profit. The learned counsel also highlighted the fact that the expenses incurred by the Government institute for imparting medical education to the students is very high keeping in view the grants, which are received to the tune of Rs. 9 to 11 crores. Referring to the judgment and order dated 26th August, 2003 in D.B. Civil Writ Petition No. 4862 of 2003 in case of Vipul Garg & Anr. Versus State of Rajasthan & Anr., he further submitted that the action of the respondent-University is in consonance with the directions issued. The Committee headed by Mr. Justice S.N. Bhargava, a Retired Judge of this Court was constituted in compliance of the directions in Vipul Garg''s case (supra). Moreover, no student has come forward to challenge the fee structure determined by the respondent-University. Further, determination of fee structure cannot be a subject matter in public domain and therefore, the writ application registered as Public Interest Litigation merits rejection on that count alone. Moreover, after coming into force the Act of 2011, the respondent-University is vested with the authority to determine its fee structure and the proposed fee structure was laid before the ''Fee Fixation Committee'' constituted by the respondent-University, which approved the same and therefore, the action of the respondent-University is perfectly legal and valid, since the fixation of fee is also a part of the administrative action of an educational institution keeping in view the future projects and

22. In support of the submissions, the learned senior counsel for the respondent-University placed reliance on the judgments delivered by the Hon''ble Apex Court of the land in cases of Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, State of Uttaranchal Vs. Balwant Singh Chaufal and Others, ; Indian Institute of Technology Vs. Raja Ram Verma and Others, ; Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, and Vipul Garg & Anr. Versus State of Rajasthan & Ors., D.B. Civil Writ Petition No. 4862/2003 and Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another,

23. Mr. Dinesh Yadav, learned Additional Advocate General for the State-respondents, has not disputed the existence of Fee Regulatory Committee of Rajasthan, constituted in compliance of the directions issued by the Hon''ble Supreme Court in the case of Islamic Academy of Education (supra) and reiterated the observations made by the Hon''ble Supreme Court in the case of P.A. Inamdar (supra). The learned Additional Advocate General further pointed out that the allotment of the students as a consequence of the Rajasthan Pre-Medical Test - 2012, whereby 127 students have been allotted to Mahatma Gandhi Medical College (respondent-University), was made with a specific condition relating to bond/fee structure for the candidates, to deposit fee as decided by the ''Fee Regulatory Committee'' constituted by the Government of Rajasthan for private colleges.

24. The arguments advanced with reference to the area covered under Entry 25 in relation to admission, relying upon the law declared in the case of Bharti Vidyapeeth (supra), are of no relevance keeping in view the nature of controversy in the instant case at hand and the one which was examined by the honourable Supreme Court which related to capitation fee. Therefore, in the case at hand it is unnecessary to the delve in that aspect of the matter.

25. In order to give effect to the directions issued in the judgment of TMA PAI''s case (supra), the Honourable Supreme Court, directed the respective State Governments/concerned authority to set up, in each State, a committee headed by a retired High Court judge, nominated by the Chief Justice of that State. The directions further stipulated that the other members, who shall be nominated by the Judge so nominated by the Chief Justice of that State, must include a Chartered Accountant of repute and further a representative of the Medical Council of India or the All India Council for Technical Education, depending on the type of private educational institution involved with reference to determination of the fee structure. Further, the Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee so formed has been also vested with the discretion to nominate/co-opt another independent members of repute. Each educational Institute is obliged place before this Committee, well in advance of the academic year, its proposed fee structure, along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee.

26. It has been left to the discretion of the Committee to approve the fee structure or to propose some other fee which can be charged by the private educational institute. It hardly needs to be emphasised that the fee fixed by the committee shall be binding for a period of three years and thereafter the institute would be at liberty to apply for a revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over

and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, and if an institution is found of charging capitation fees or profiteering that institution can be appropriately penalised and also face loss of recognition/affiliation. Thus, from a bare perusal of the nature of directions issued by the honourable Supreme Court, as aforesaid, it is apparent on the face of record that the matter for determination of fee structure is within the exclusive domain of the ''Fee Regulatory Committee'' to be put in place by the concerned State.

27. The direction of the honourable Supreme Court for setting up two sets of Committees in the States, issued under Article 142 of the Constitution of India, as clarified in the judgment itself, are to remain in force till appropriate legislation is enacted by the Parliament. The relevance of the directions with the object sought to be achieved is to ensure that the educational institutions are kept within its bounds, and do not indulge in profiteering or otherwise exploiting its students financially, till appropriate statutory regulations are brought into force. These objectives clearly resonate from the nature of directions issued and composition of the Committee proposed by the Supreme Court. Further, it has been made obligatory for the concerned educational institutions, before indication of the fee in the prospectus issued for admission, to have the same approved by the concerned authority/Body set up. The applications for that purpose are to be filed well before April of the preceding year, of the relevant academic session and the authority/Body shall take the decision as regards fees chargeable later by October of the year concerned, so that it can form part of the prospectus. No institution is allowed to charge any fee beyond the amount fixed by the Fee Regulation Committee constituted by the concerned State and further, the fee charged shall be deposited in a nationalised bank. It has been further directed by the honourable Supreme Court that the statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation. Thus, a bare perusal of the nature of directions issued and the object underlying the directions, leaves no room for any doubt that what the honourable Supreme Court contemplated is an independent body to determine the fee structure and therefore, we have no hesitation in concluding that the committee contemplated for determination of fee structure in the judgment of Islamic Academy, is a regulatory measures with the object, loud and clear, to protect the interest of the public at large and the student community in particular, while maintaining standards of professional education on non-exploitative terms in their institutions. A bare perusal of the directions issued from time to time in various judgments referred to and relied upon by the parties, the object

underlying the directions, to regulate the fee structure through an independent body, is thus, further strengthened. The scheme evolved by the Hon''ble Supreme Court for monitoring of the admission procedure and fee fixation is not violative of any of the provisions of Article 30(1) or the right of educational institutions, minorities and/or non-minorities even under Article 19(1)(g) of the Constitution of India. In our considered opinion these are reasonable restrictions which can be imposed, in the interest of the public at large and student community in particular.

28. There cannot be two views on the established proposition of law that even the non-minority unaided professional educational institutions can be subjected to similar restrictions which are found reasonable and in the interest of the public at large and student community in particular. In our considered view, on the basis of judgment in Pai Foundation (supra), and various other judgments of the Hon''ble Supreme Court, the scheme evolved for setting up the Committees for regulating admissions as well as for determination of fee structure by the judgment in the case of Islamic Academy (supra), cannot be faulted on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions. As has been observed by the Hon''ble Supreme Court the ''Fee Regulation Committee'' is headed by Retired High Court Judge, who is assisted by experts in accounts and management fields and the committee have also the advantage of hearing the contending parties while determining the fee structure. Therefore, in our considered conclusion the judgment delivered by the Hon''ble Supreme Court in the case of Islamic Academy, as regards setting up of committee with reference to and fee structure, is not in any way beyond the law declared by the Hon''ble Supreme Court in Pai Foundation (supra), as projected on behalf of the respondent-University. The contentions of the learned senior counsel, on those counts do not have much substance and are, therefore, rejected.

29. It hardly needs to be emphasized that minorities or non-minorities private professional educational institutions, in exercise of their educational rights are also obliged to maintain requisite standards of professional education by according admissions based on merit and making the professional education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure as has been held by the Hon''ble Supreme Court in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others,

30. The preliminary objection raised by the learned counsel for the respondent-University to the effect that determination of fee structure cannot be a subject matter in public domain and therefore, the writ application registered as Public Interest Litigation merits rejection; may not detain us for long since there are other two writ applications wherein the same notification is under challenge by the students. Moreover, having regard to the facts and circumstances of the case, the nature of controversy involved and its wider implications on the public

at large and the student community in particular, we deem it just and proper to entertain the litigation in pub c interest as well.

31. It is not in dispute that the Hon''ble Supreme Court with reference to the issue of fixation of fee structure to various professional courses in the country including MBBS and BDS Course, directed all the States to the fix fee structure through a Committee as per the directions issued in the case of Islamic Academic of Education (supra). It is also not in dispute that ''Fee Regulatory Committee'' was constituted by the Government of Rajasthan, in the backdrop of the verdict of the Hon''ble Supreme Court and directions issued in case of Vipul Garg (supra). Further, from the material available on record, it is also evident that the fee structure is determined by the Fee Regulatory Committee of Rajasthan, is the criterion for payment to the Private Medical College(s), as pointed out by the learned Additional Advocate General in the light of the specific condition stipulated while allotting 127 students consequent to RAJASTHAN PRE-MEDICAL TEST -2012 to Mahatma Gandhi Medical College (a constituent professional education institution of the respondent-University).

32. From the facts, circumstances and material brought on record in the writ applications, it is evident the respondent-University had no jurisdiction and/or authority to alter the conditions relating to fee structure once the process of admission to the MBPS and/or BDS Courses commenced which indicated the fee to be charged from the students as one determined by the Fee Regulatory Committee of the State, once the RAJASTHAN PRE-MEDICAL TEST - 2012 for admission to MBBS had been conducted and the results had been declared and a select list had also been prepared on that basis and students allotted to the institutes including the medical college of the respondent-University. In other words, once the process of selection had started on the basis of the terms and conditions spelt out in the INFORMATION BOOKLET and further detailed out while allotting the students to the concerned colleges, including the constant medical College of the respondent-University, then it was not within the jurisdiction and competence of the respondent-University to effect any changes in the criterion relating to fee structure contrary to one which has been determined by the ''Fee Regulatory Committee'' constituted by the State of Rajasthan.

33. The action of the respondent-University in providing for a Committee for the purpose of determination of fee structure as per the provisions of the Act of 2011 and publication of the notification dated 13th July, 2012, whereby the fee of MBBS Course has been enhanced from Rs. 2.95 lacs to Rs. 6 lacs per year; is in flagrant violation to the directions issued by the Hon''ble Supreme Court, resonating with the object, loud and clear, to have the fee structure determined by an independent body and therefore, the same cannot be sustained in view of the observations made by the Hon''ble Supreme Court in case of P.A. Inamdar (supra), wherein the Hon''ble Supreme Court repelled the suggestion made on behalf of the minority and non-minority professional educational institutions, to the proposal of post-audit and checks, after the institutions have adopted their

own admission procedure and fee structure, holding the same to be unacceptable in view of the experience of the educational authorities of various States.

34. In the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, under paragraph 146, the Hon''ble Supreme Court, in unequivocal terms has held that even non-minority unaided institutions can also be subjected to restrictions which are found reasonable and in the interest of the student community.

35. The Hon''ble Apex Court of the land also sounded a note of caution to the Committees not to indulge in assuming such powers and such functions as were never given or intended to be given to them rather to be more sensitive and to act rationally and reasonably with due regard for the ground realities. As a measure of check, even on the functioning of the Committees in case of Islamic Academic of Education (supra), under paragraph 147, the Hon''ble Supreme Court made the decision of the Committee subject to judicial review, if the Committee is found to have exceeded its power by unduly interfering in the administrative or financial matters of the unaided private professional institutions. Thus, it can safely be inferred that what the Hon''ble Supreme Court has contemplated for determination of fee structure with reference to unaided Private Educational Institutions, is the ''Fee Regulatory Committee'' constituted by the ''State''. Once the process of selection of candidates for admission to the MBBS and/or BDS Courses commenced and concluded on the basis of the INFORMATION BOOKLET, with reference to RAJASTHAN PRE-MEDICAL TEST - 2012, no change could, thereafter, be effected by the respondent-University, altering the terms and conditions contained in the INFORMATION BOOKLET, with reference to fee structure specifically stipulating therein i.e. fee as decided by the Fee Regulatory Committee formed by the Government of Rajasthan for private colleges. Thus, if such terms and conditions contained in the INFORMATION BOOKLET, were already in force, they would certainly have a bearing on the admission process, hence, it was not open to the respondent-University to alter the terms and conditions of the admission process.

36. For the reasons and discussions made in the foregoing paragraphs, we have no hesitation in holding that the respondent-University could not have put in place a ''Fee Fixation Committee'' to prepare its own fee structure in exercise of powers u/s 28 and/or 33 of the Act of 2011. Therefore, the action of the respondent-University in determination of the fee structure by the ''Fee Fixation Committee'' constituted by the respondent-University itself to supersede the interim fee structure already proposed by the ''Fee Regulatory Committee'' constituted by the ''State of Rajasthan'' headed by Mr. Justice S.N. Bhargava, cannot be sustained and hence, the impugned notification as published in Rajasthan Patrika dated 13th July, 2012 and impugned in other two writ applications, deserves to be quashed and set aside. Ordered accordingly. In the result, the writ applications succeed and are allowed; the impugned notification dated 13th July, 2012, published by the respondent-University, enhancing the fee for MBBS Course from Rs. 2.95 lacs to Rs. 6 lacs, is hereby quashed and set

aside. We also consider it appropriate to observe here that the Fee Regulatory Committee constituted by the State of Rajasthan will determine the fee structure finally in accordance with the directions of the Hon''ble Supreme Court. The students, who are admitted by the respondent-University/Medical Colleges will be required to pay the fee as may be finally determined by the Committee constituted by the State of Rajasthan, and in case the Committee fixing higher amount of fee, the same shall be payable by the students for the relevant academic year(s) of the course. We further direct the respondent-University to adjust the excess fee, if any, paid by the students. No costs.

