

(2014) 07 KL CK 0036

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 19203 and 20438 of 2013

Self Financing Para Medical Managements Association

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 19(6), 226

Citation : (2014) 3 KLT 943

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : Karukapadath, M.A. Vaheeda Babu, K.A. Noushad, Kandampully Rahul, Mithun Baby John and J. Ramkumar, Advocate for the Appellant; Roshan D. Alexander, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—These Writ Petitions impugn the orders passed by the State Government fixing the fees that can be collected by self financing colleges offering degree and diploma courses in the field of para-medical sciences. As the issues that arise for consideration are the same in both the Writ Petitions, they are taken up together for disposal by this common judgment. The brief facts that are necessary for the disposal of the Writ Petitions may be noticed; The petitioners in W.P.(C). No. 19203/2013 comprise of an Association of Managing bodies of Self Financing para-medical institutions and two para-medical institutions and the petitioners in W.P.(C). No. 20438/2013 comprise of the Managing bodies of nine para-medical institutions as well as individual members of such managing bodies. In both the Writ Petitions, the grievance voiced by the petitioners is against the alleged arbitrary fixation, by the State Government, of the fees that can be collected by the petitioners from students who are admitted to their institutes for the pursuit of para-medical courses offered by them. The petitioners contend that some of the member institutions of the Association are established and maintained by minority communities who are entitled for the privilege and protection under Art. 30(1) of the Constitution of India while the other institutions, being self-financing professional institutions,

have a right under Art. 19(1)(g) of the Constitution of India to fix their own fee structure, subject to the safeguards prescribed by the Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, and *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, .

2. It is pointed out by the petitioners that, pursuant to the limited powers conceded to the State Government, vide the judgments of the Supreme Court referred to above, the State Government had constituted an expert committee comprising, inter alia, of the Director of Medical Education, the Joint Director of Medical Education, the Vice-Principal of the Government Medical College, Calicut and the Director of PIPMS, Thiruvananthapuram, to go into the issue of fee structure for para-medical courses and make recommendations to the Government through a formal report. The expert committee had since gone into the matter and submitted a report to the Government with their recommendations. The State Government, however, proceeded to fix the fee structure for para-medical courses in the State at a level substantially lower than that recommended by the expert committee in their report. The petitioners contend that the fee structure recommended by the expert committee was, in itself, low and hence the action of the Government, in further reducing the fee structure, rendered the fixation of fees wholly arbitrary and unreasonable and violative of the fundamental rights of the petitioners.

3. It must be noticed at this stage that when W.P.(C). No. 19203/2013 came up for admission in August 2013, it was deemed necessary to make some interim arrangement in the matter of the fees that could be collected by the petitioner institutions while admitting students to the para-medical courses for the academic year 2013-14. Accordingly, vide an interim order dated 12.08.2013, we directed that, as against the tuition fees of Rs. 27,250 for Government merit seats and Rs. 52,000 for Management seats, stipulated for Degree Courses and Rs. 12,000 for Government merit seats and Rs. 33,000 for management seats, stipulated for Diploma Courses in the Government order, the petitioners could provisionally collect Rs. 30,000 and Rs. 52,000 respectively for Government merit seats and Management seats for the Degree Courses and Rs. 20,000 and Rs. 40,000 respectively for Government merit seats and Management seats for the Diploma Courses. This arrangement was to continue pending the final disposal of the Writ Petitions. We are given to understand that admission of students to the paramedical courses, during the last academic year, was effected on this provisional basis.

4. The State Government filed a counter affidavit in W.P.(C). No. 19203/2013, traversing the averments in the Writ Petition. In particular, it was pointed out that the petitioner had not disclosed certain material facts in the Writ Petition and hence it was not entitled to claim any discretionary relief from this Court. The counter affidavit alludes to the fact that the petitioners had entered into consensual agreements with the State Government wherein they had agreed to

follow the regulations, instructions or orders issued by the State Government and the Kerala Para-Medical Council in the matter of admission of students. It is contended that, by virtue of these agreements, the petitioners had also agreed to adhere to the fees fixed by the Government from time to time as also to the conditions prescribed in the prospectus for each year and hence they could not now challenge the fixation of fees by the State Government. It is further pointed out that the petitioner institutions, having commenced their courses pursuant to No-objection certificates and Letters of Permission given by the State Government that contained, inter alia, conditions with regard to fixation of fees by Government, it was not open to them to challenge the said conditions after having taken the benefit conferred by the Letters of Permission. The locus standi of an Association to impugn the Government order fixing fees as also that of the institutions to allege violation of Art. 19(1)(g) of the Constitution, is questioned in the counter affidavit of the State Government.

5. It was, apparently, taking into account the objections pointed out by the State Government in its counter affidavit in the earlier case, that W.P.(C). No. 20438/2013 was filed by arraigning individual members of the managing bodies of the respective institutions also as petitioners in the Writ Petition. The Writ Petition was later amended by producing therein all the Government orders, Letters of Permission and agreements that had a bearing on the issue of admission of students to the para-medical courses offered by the said institutions and collection of fees therefore. A challenge against the Letters of Permission granted by the Government to the petitioner institutions, to the extent they contained a stipulation therein enabling the Government to fix the fees, was also incorporated through the amendment. A similar amendment was also carried out in respect of W.P.(C). No. 19203/2013.

6. The issues that arise for consideration in these cases are as follows:

- * To what extent can the State Government regulate the conduct of para-medical courses in the State by private self-financing institutions?

- * Can the actions of the self-financing institutions, in accepting the No objection certificates and letters of permission issued to them by the State Government, and commencing the para-medical courses pursuant thereto, affect their right to challenge the conditions in the said documents as violative of their fundamental rights under Art. 19(1)(g) or Art. 30(1) of the Constitution of India?

- * Was there any such willful suppression of material facts, by the petitioners in the instant cases, as would disentitle them to the benefit of the discretionary jurisdiction of this Court under Art. 226 of the Constitution of India?

7. We have heard extensive arguments by learned counsel on these issues. Adv. Sri Babu Karukapadath addressed arguments on behalf of the petitioners and the learned Senior Government Pleader Sri. Roshan Alexander did so on behalf of the State Government. The contentions put forth by the learned counsel for the petitioners can be summarised as follows:

* The legal position with regard to the extent of regulation that could be exercised by the State Government over the establishment and administration of self-financing institutions by private entities was well settled through the decisions of the Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, and *P.A. Inamdar and Others Vs. State of Maharashtra and Others*.

* The decisions of the Supreme Court in the aforesaid cases clearly recognise the right of self-financing institutions to fix their own fee structure without involving in profiteering and charging capitation fee and to evolve their own admission procedure subject to it satisfying the requirement of being merit based, fair, transparent and non-exploitative.

* The right of the petitioners, other than the institutions and corporate bodies among them, to administer the self-financing institutions, was an integral part of their fundamental right under Art. 19(1)(g) of the Constitution. The rights of some of the petitioners were also traceable to Art. 30(1) of the Constitution. These rights could not be treated as waived merely because the petitioners had accepted the No-objection certificates and Letters of permission granted by the State Government and had commenced para-medical courses pursuant thereto. It was settled law, by virtue of the decisions of the Supreme Court in *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, and *Dr. Subramanian Swamy Vs. State of Tamil Nadu and Others*, that the fundamental rights of a person or citizen cannot be waived. It followed, therefore, that any condition, in the said no-objection certificates and letters of permission granted to the petitioners, that violated the fundamental right of the petitioners had, necessarily, to be struck down and rendered inoperative.

* Even after the grant of no-objection certificates and letters of permission to the petitioners, the State Government was not fixing any fee structure in respect of the para-medical courses conducted by the petitioner institutions except through separate consensual agreements that were entered into in respect of each academic year. This conduct of the State Government clearly indicated that they had waived their right to insist on a fixation of fee structure for the self-financing institutions and had chosen, instead, to enter into agreements with the institutions for the said purpose and for the purpose of seat sharing.

* The challenge in the Writ Petitions against the fixation of fees by the State Government was necessitated in the wake of the rejection, by the State Government, of the recommendations of the expert committee that was constituted by it for the very purpose of determining the fee that could be charged by self-financing institutions conducting para-medical courses in the State. As against the recommendations of the expert committee, the State

Government could not, by itself and by disregarding the said recommendations, fix a fee structure that was not based on any material and hence both arbitrary and unreasonable. It is pointed out that the institutions cannot function with the fee structure that is now thrust upon them.

* On the issue of suppression of material facts, he would contend that the challenge in the Writ Petitions was against the very fixation of fees, in respect of self-financing institutions, by the State Government. What was questioned therein was the legality of the power exercised by the State Government. In this view of the matter, it was not necessary for the petitioners to rely on, or bring on record, the documents such as the no-objection certificates, letters of permission or the agreements entered into with the State Government which contained clauses inserted through exercise of that power. At any rate, the said documents were produced through an amendment of the Writ Petitions and well before the hearing of the matter and hence there was no prejudice caused to the State Government as a party in the litigation. It is also pointed out that, insofar as there was no consensual agreement, between the petitioners and the State Government, for fixation of fees for the academic year 2013-14, the relevant clauses in the letters of permission granted to the petitioner institutions had not been given effect to in the said academic year. The non-production of the no-objection certificates and letters of permission or the absence of a challenge against the same, could not, therefore, have been fatal to the case of the petitioners. These factors would not deprive the petitioners of the benefit of the discretionary jurisdiction of this Court under Art. 226 of the Constitution, more so when the petitioners have approached this Court alleging violation of their fundamental rights. It is also pointed out that, at any rate, there was no "law" on the basis of which the State Government was acting while imposing the unreasonable conditions on the petitioner and that executive orders cannot be treated as "law" for the purposes of restricting the fundamental rights of the petitioners under Art. 19 of the Constitution.

8. Per contra, the submissions of the learned Senior Government Pleader, briefly put, are as follows;

* The decisions of the Supreme Court in the case of T.M.A. Pai Foundation, Islamic Academy and P.A. Inamdar, (supra), while recognizing the right of private entities to administer self-financing institutions, made it abundantly clear that it was well within the powers of the State Government to regulate the activities of the said institutions with a view to ensuring the maintenance of high standards in the field of education as also to ensure that admissions to the said institutions complied with the requirements of merit, transparency, fairness and the fees charged was non-exploitative.

* It was in exercise of the said power of regulation that the State Government had, in the absence of any central regulations governing the field, formulated a scheme laying out the requirements and pre-conditions for commencing para-medical courses in the State. The said scheme envisaged, inter alia, the setting

up of a para-medical council, the requirement of obtaining a Letter of Intent/No-objection certificate from the State Government and thereafter, a Letter of Permission to commence the course. The letters of permission granted to the petitioner institutions, contained clauses therein that were designed to ensure that there would be a sharing, between the State Government and the institution, of the seats allotted to the institution for the course in question and further, that the fees collected from students pursuing the said courses were not exploitative in nature. The said letters of permission constituted the basis for the commencement of courses by the petitioner institutions.

* Insofar as the petitioner institutions had, willingly and with full knowledge of the consequences ensuing therefrom, applied for and obtained the letters of permission from the State Government and even entered into seat sharing agreements with the said Government, they could not now turn around and contend that the State Government had no power to stipulate the fee structure in accordance with the condition in the letters of permission. The State Government was acting well within its powers while insisting on a fee structure that was non-exploitative in nature, as a condition for the grant of letters of permission.

* The contention of the petitioners that the State Government had waived its right to fix the fee structure by not entering into consensual agreements with them is vehemently denied. It is pointed out that the petitioners cannot, by refusing to enter into consensual agreements with the State Government, defeat the requirement of charging only reasonable and non-exploitative fees that is a condition in the letters of permission granted to them. Further, by insisting on such a condition, the State Government has not violated any of the fundamental rights of the petitioners.

* Insofar as the petitioners had voluntarily applied for and obtained letters of permission from the State Government and agreed to abide by its terms, their remedy against an erroneous fixation of fee structure lay in arbitration proceedings that were provided for in the agreements entered into with the State Government. Further, since the fundamental rights of the petitioners were subject to the reasonable restrictions that were imposed by the State Government through the regulatory regime formulated by the State Government, it was incumbent upon the petitioners to have produced the no-objection certificates and letters of permission as well as the agreements entered into with the Government, which conditioned their rights, while approaching this Court under Art. 226 of the Constitution. Their inaction spells in the realm of suppression of material facts thereby disentitling them from seeking any discretionary relief. Reliance is placed on the decision in *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, .

* Reliance is also placed by the Government on the decision of this Court in *Pournamy Mohan v. State of Kerala* (2012 (1) KLT 686) to contend that an Association cannot maintain a Writ Petition.

9. We have considered the submissions made by Counsel for the parties. Firstly, we must turn to the contention of the State Government as regards suppression of material facts by the petitioners. It is the specific contention of the learned Government Pleader that, insofar as the petitioners were complaining of State action being violative of their fundamental rights, it was incumbent upon them to have brought on record the entire material that would show the basis of their relationship with the Government in the matter of administration of their institutions and the conduct of para-medical courses therein. In Ext. R1(m) Government Order, the Government have examined and are pleased to issue Letter of Intent/No Objection Certificate to the institutions specified in the Annexure attached therein, which is inter alia stated as follows:

2. The institutions shall agree to the condition that in the case of Diploma courses 50% seat will be filled up from merit list to be prepared by the Director of Medical Education and for Diploma in Health Inspector course 50% seats will be filled up from the merit list to be prepared by the Director of Health Services and fee to those seats will be on the rates fixed by Government from time to time. In the instant cases, although the petitioners were actually aggrieved by the restrictions imposed by the State Government on their fundamental rights under Art. 19(1)(g) or Art. 30, as the case may be, the said restrictions were contained in the no-objection certificates and letters of permission issued to them, none of which were produced at the time of filing the Writ Petitions. The said documents were produced only subsequently, after the State Government alerted the Court of these facts through its counter affidavit. It is the specific contention of the learned Government Pleader that the conduct of the petitioners effectively disentitled them to the benefit of the discretionary jurisdiction of this Court. In this regard he drew our attention to the decision of the Apex Court in *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, , where the court inter alia held as follows:

"A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses any material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of the writ courts and exercise would become impossible. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in

order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

Also in *Bhaskar Laxman Jadhav and Others Vs. Karamveer Kakasaheb Wagh Education Society and Others*, , the court inter alia held as follows:

"It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the court. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come up-front and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision."

The contention of the petitioners on the other hand is as follows:

In W.P.(C). No. 19203/2013, he points out the following pleadings:

"However, in the decisions mentioned above, the Hon"ble Supreme Court has made it clear that the institutions are entitled to enter into consensual agreements with the Government in the matter of sharing of seats and fixation of fee structure. Accordingly, in the previous years, the 1st petitioner, under certain compelling circumstances, were constrained to enter into agreement with the government in the matter of sharing of seats and the fixation of fee structure with respect to its member institutions. The fees accordingly fixed were not at all reasonable and were low compared to the expenditure incurred by the institutions. It is submitted that, under such compelling circumstances, the institutions were running the courses on loss, even affecting the capital of the institutions. It is submitted that, while accordingly fixing the fee structure last year, it was agreed by the government that, the government would appoint an expert committee for analyzing the expenditures for various courses and for recommending the fee structure for para - medical courses in Self Financing Colleges."

We also notice the following averments in the reply affidavit:

"The petitioners or any of the members of the 1st petitioner have never agreed, by way of a consensual agreement or otherwise to abide by the rigid fee structure fixed by the Government for ever. There is no agreement between the petitioners or the members of the 1st petitioner to abide by the fee structure fixed by the government. It is submitted that, there cannot be any such agreement as that would go against the fundamental rights and other rights of the petitioners and other members of the 1st petitioner. Even if there is any such condition, it cannot stand the scrutiny of law as there cannot be any waiver of fundamental right guaranteed by the Constitution of India. The government has

no authority to fix a fee structure affecting, the right, authority and power of the managements of the institutions in the matter of administration of the institutions, including the fixation of fee structure. Any such condition imposed in any manner is totally illegal and none of the management, including the 2nd and 3rd petitioners, have agreed for the same and they are also not bound by the same."

In regard to Ext. R1(m) relied on by the Government Pleader, it is contended that statement in paragraph 2 therein is to be understood, as meaning that the condition as to fixation of fees does not attach to the courses offered by the petitioner. At any rate it is contended that that was the understanding and there was no willful suppression of material facts.

10. To appreciate the contention of the State regarding suppression of material facts, we have to first examine the issue of whether the facts that are alleged to have been suppressed by the petitioners were in fact material for the purposes of granting the reliefs prayed for in the Writ Petition. It must be noticed that the relief sought for by the petitioners in the Writ Petitions was against the arbitrary fixation by the State Government of a fee structure that was lower than that arrived at by the expert committee appointed by the Government itself. It is their case that while in earlier years they had been entering in the consensual agreement and consenting to the fee structure fixed by the Government, they were not agreeable to the unreasonably low fee structure fixed by the Government for the current academic year. No doubt, the petitioners do have a case, as already noted earlier, that those agreements were entered into in compelling circumstances. This however is of no relevance when the petitioners, by their own conduct, appear to have accepted the same without demur. In other words, their grievance with respect to a particular fee structure and not with regard to the usual arrangement whereby the Government fixed the fee structure on the basis of consensual agreements entered into with the petitioners. The contention of the State Government that the No objection certificates and the letters of permission that were granted to the petitioner were documents that had a bearing on the issue to be decided in the instant case, namely, the propriety of the actions of the Government in fixing the fee structure, has to be examined in the light of the above facts. On such examination, it is apparent that the significance of the No objection certificates and the letters of permission would only be in respect of the restriction, if any, which the clauses in those documents sought to impose on the rights urged by the petitioners in respect of the fixation of fee structure. In other words, the State Government could only rely on the No objection certificates and the letters of permission to contend that, by virtue of the clauses in the said documents, the petitioners had by accepting the said documents waived any right that they had in respect of the fixation of the fee structure to the para-medical courses conducted by them. While the contentions of the State Government would have appealed to us in a situation where the rights urged by the petitioners were either statutory or contractual in nature, we find it difficult to apply the same yardstick in the

instant case where the right urged by the petitioners in the matter of fixation of fee structure is one that is comprised within the scope of their fundamental rights under Art. 19(1)(g) of the Constitution. It is well settled that the fundamental rights available to a citizen under Art. 19(1)(g) as also the fundamental rights to persons under Art. 30(1) of the Constitution cannot be waived. In this view of the matter, therefore, any documents that is relied upon by the State Government for the purposes of establishing a waiver on the part of the petitioners cannot be seen as material to decide the issue of violation of fundamental rights of the petitioner. Thus, when the relief sought for by the petitioners in the Writ Petitions is essentially against the arbitrary fixation by the State Government of an unreasonably low fee structure, the only document that is material for the purposes of considering the relief to be granted to the petitioner is the document whereby the Government has chosen to fix an unreasonable low fee structure. The non-production of the letters of permission or the No objection certificates issued to the petitioners cannot be viewed as a suppression of material facts for the purposes of deciding the relief claimed by the petitioner in the Writ Petitions.

While on the subject, we might note that the writ jurisdiction is a discretionary jurisdiction. The insistence by the court on the applicants taking a court into confidence about the facts in a case is with a view to preserve the majesty of the court and to ensure that there is no abuse of the process of the court. While it is invariably the court which will decide as to whether any particular fact is material or not for the purposes of the lis before it, it is only when there is a finding with regard to suppression of material facts that the court may refuse the discretionary relief to the applicant. Essentially, what is frowned upon by the courts is the conduct of a party that is intended to distort the facts whereby the court is led to take a wrong decision. We do not see such a factual situation in the instant cases. We may at once notice that in the instant cases, while the rights granted to the petitioners, whether under Art. 19 or Art. 30 of the Constitution, envisages a freedom to the petitioners to enter into consensual agreements with the Government with the view to effectuate their rights, it is the same guarantee that comes to their aid in the event of the Government transgressing its limits in the matter of fee fixation.

11. Further, while the consent of the petitioners to a fixation of fee by the Government will not, ipso facto, tantamount to a waiver by the petitioners of their rights, a transgression by the Government of its powers will certainly affect the fundamental rights of the petitioners. This is how we must understand the interplay of the rights available to the petitioners, on the one hand, and the power vested in the Government on the other. The petitioners right to fix a fee structure is subject to the power of the Government to ensure that the fee structure so fixed is not exploitative. The mechanism of fixation of fee structure can assume the form either of the petitioners fixing the fee structure first, subject to approval by the Government or the Government fixing the fee structure first and the petitioners agreeing to the same. Both the modes of

fixation of fee structure are governed by the same legal framework and it is only when one of the parties exceeds the limits of its rights or powers that Courts have to step in to restore legality. Viewed from this angle also, we cannot hold the petitioners guilty of any suppression of material facts. This is because the disclosure of the fact of having obtained a no-objection certificate or letter of permission, with a condition obliging acceptance of the fee structure fixed by the Government, was not material when the essence of the grievance in the Writ Petitions was against the transgression of the powers of the Government through a particular fee fixation. In the said no-objection certificates and letters of permission there is no clause that indicates that the petitioners were agreeable to any fixation of fee by the Government, even an arbitrary and unreasonable one.

12. We now turn to the merits of the case in the Writ Petition. The extent of regulation that is possible by State Governments in the matter of conduct of professional courses by self-financed educational institutions is now settled through the decisions of the Supreme Court in *T.M.A. Pai Foundation*, *Islamic Academy* and *P.A. Inamdar*, (*supra*). The following principles, with regard to the issues under consideration in the instant cases, can be culled out from the said decisions:

* The expression "education" in the Constitution takes within its fold education at all levels from the primary school level up to the post-graduate level and it would include professional education. The expression "educational institution" would therefore take in institutions imparting professional education.

* The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Art. 19(1)(g) and 26, subject to the provisions of Articles 19(6) and 26(a) respectively. The right is also guaranteed to minorities specifically under Art. 30.

* In the case of minority institutions, the right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Art. 30 of the Constitution, the State Government may not be entitled to interfere with that right, so long as the admission to the unaided educational institution is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

* A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit. The procedure adopted and selection made should not tantamount to maladministration. Even an unaided minority institution ought not to ignore merit of the students for admission, while exercising its right to admit

students to the said colleges, as in that event, the institution will fail to achieve excellence.

* A minority institution is entitled to have its own fee structure, subject to the condition that there can be no profiteering and, capitation fee cannot be charged. A provision for reasonable surplus should be made. The relevant factors that should be taken into consideration for the fee structure would be infrastructure and facilities available, the investments made, salaries paid to the teachers and staff and future plans for expansion and betterment of the institution.

* The fixation of a fee structure is a fundamental right. The fee has to be decided by the institutions themselves and such right of the institutions cannot be abrogated by the State. The fee charged has to be non-exploitative in nature and capitation fees cannot be charged.

13. It must, at once, be noticed that the right of private persons to establish and administer self-financing institutions has been held to be a facet of the fundamental rights available to a person under Art. 19(1)(g) of the Constitution. In the case of an institution managed by a minority community, the right has also been traced to the fundamental right available to such communities under Art. 30(1) of the Constitution. Any regulation or control over these rights, when sought to be enforced by the State Government must satisfy the requirement of being a restriction that is either envisaged or permissible under the Constitution. No doubt, regulations that apply generally to all persons carrying on the particular occupation can be made applicable to the establishment and administration of self-financing institutions also. The important aspect, however, is that in the context of a fundamental right under Art. 19(1)(g) of the Constitution, a regulation that seeks to restrict the rights enjoyed by a person, must be one that is imposed in public interest and through a law that is made by the State. The word "Law", for the purposes of Art. 19(6), has been held to mean Statute Law and not mere executive orders of the State Government. Similarly when it comes to the rights under Art. 30(1) of the Constitution, it has been held that, although unlike Art. 19 the right conferred on the minorities is absolute, unfettered and unconditional, this does not mean that this right gives a free licence for maladministration so as to defeat the avowed object of the article namely to advance excellence and perfection in the field of education. Thus, while the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It is bearing in mind these principles that we must proceed to examine the legality of the regulatory regime that is sought to be enforced against the petitioners in the instant cases.

14. As already noted from the facts, the activity that is sought to be regulated by the State Government in the instant cases is the conduct of para-medical courses within the State. To regulate the conduct of professional courses in the field of medicine, the State Legislature has already enacted the Kerala Professional

Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of non-exploitative fee and other measures to ensure equity and excellence in Professional Education) Act, 2006 (hereinafter referred to as "KPCI Act"). The said Act has not, however, been made applicable to para-medical courses in the State and it is thus that the State Government chose to regulate the field through executive orders issued from time to time. The counter affidavit filed by the State Government would indicate that the first step towards regulation in this field was the setting up of a para-medical council to prescribe the fees that could be charged by institutions conducting para-medical courses. That was through Ext. R1(a) G.O. dated 21.03.2002. Thereafter, through Ext. R1(b) G.O. dated 30.04.2008, the State Government streamlined the procedure for conduct of para-medical courses in the State. The said G.O. is extracted hereunder:

GOVERNMENT OF KERALA ABSTRACT

Health & Family Welfare Department-Paramedical Council-Procedure for submitting application for Paramedical courses-Guidelines revised-Orders Issued

_____ HEALTH AND FAMILY WELFARE (K) DEPARTMENT

G.O. (Rt) No. 1598/2008/H & FWD

Dated, Thiruvananthapuram:30.4.2008

_____ Read: 1. GO(MS) No. 73/2002/H & FWD dated: 21.03.2002.

2. Minutes of the Paramedical Council meeting held on 24.1.08 and 4.4.08.

ORDER

As per the Government order read above Paramedical Council was constituted for the administration of Paramedical institutions and to ensure quality of Paramedical courses in Self Financing Sector. A technical committee to prescribe minimum standards for starting Paramedical courses and a District Inspection team were also constituted. Government have been considering to streamline the procedural formalities for approval of new Paramedical courses and to prescribe uniform application format for applications for new courses. The Paramedical Council in its meeting held on 24.1.2008 and 4.4.2008 recommended Government to issue orders on uniform application format, time schedule for submitting application, application fee, District Inspection Team, starting of new Diploma in Health Inspector Course (DHIC) in Government sector, annual examination system and syllabus for Diploma in Health Inspector Course (DHIC).

2. Government have examined the case in detail and are pleased to issue the following orders in respect of the Paramedical courses being conducted by Director of Medical Education and Director of Health Services in Self-Financing Sector.

1. Application for new courses

The following schedule of time is prescribed for submitting application for new courses in Self-Financing sector.

1. Notification
2. Last date of submission of Application
3. Verification of application
4. Inspection Report from DME/DHS
5. Meeting of Paramedical Council and recommendation to Government
6. Letter of intent by Government
7. Construction and Infrastructural facilities by institutions
8. Inspection by Technical team
9. Letter of Permission by Government
10. Prospectus
11. Admission Notification
12. Last Date of Application
13. Publication of Rank List
14. Counselling for Admission
15. Starting of classes

The model application and minimum standards shall be downloaded from the website "www.arogyakeralam.goy.in" till website for Paramedical Council is made operative. The application shall be accompanied by a Demand Draft for Rs. 50,000/- (Rupees Fifty Thousand Only) per course towards non-refundable application fee, drawn in favour of the Secretary, Paramedical council, payable in the BT Main branch, Thiruvananthapuram. On receipt of valid application the District Inspection team with the following members will visit the institution.

- 1) District Medical Officer (Health)/Deputy District Medical Officer (Health)
- 2) District Programme Manager, NRHM
- 3) One Subject expert from DME/DHS

The team will submit report to the Paramedical council. The Paramedical council will recommend to Government for considering Letter of intent/NOC.

2. Annual Inspection Fee. An annual inspection fee of Rs. 10,000/- (Rupees Ten Thousand Only) per course will be charged from the self financing institutions from the year 2008-09 for conducting annual inspection by the team of Director

of Medical Education/Director of Health Services. The amount shall be remitted as Demand Draft drawn in favour of Secretary, Paramedical Council, payable at SBT, Main branch, Thiruvananthapuram.

3. Collection charge for Syllabus. The new syllabus for the courses conducted by Director of Medical Education/Director of Health Services, will be supplied for Rs. 50/- (Rupees Fifty Only) per course on production of Demand Draft drawn as mentioned above. The old syllabus will be supplied free of cost.

4. Starting of DHIC in Public Health Training Centre, Thiruvananthapuram. From the year 2008-09, the Diploma in Health Inspector Course (DHIC) will be conducted in the Public Health Training Centre, Thiruvananthapuram by Director of Health Services, utilising the available infrastructural facilities and without creation of new posts. The existing syllabus for Diploma in Health Inspector Course (DHIC) will be modified including the subjects viz. Biomedical waste management, geriatric health cancer detection, palliative care, non-communicable diseases, prevention of food adulteration, adolescent health etc. The semester examination system for Diploma in Health Inspector Course (DHIC) will be dispensed with, from 2008-09 admission batch and annual exam will be conducted as in the case of diploma courses conducted by the Director of Medical Education.

5. The Director of Medical Education/Director of Health Services will take further action.

(By Order of the Governor) T.E. MERCY BAI Deputy Secretary

15. It was on the applications preferred by the petitioners in terms of the above G.O. that they were granted the necessary no-objection certificates and letters of permission for commencing para-medical courses in their respective institutions. Ext. R. 1(m) is a no-objection certificate issued, inter alia, in favour of the 2nd petitioner and it is extracted hereunder;

GOVERNMENT OF KERALA ABSTRACT

Health & Family Welfare Department-Paramedical Council-Procedure for submitting application for Paramedical courses-Guidelines revised-Orders Issued

HEALTH AND FAMILY WELFARE (K) DEPARTMENT

G.O.(MS) No. 338/2008/H & FWD.

Dated, Thiruvananthapuram: 5.7.2008.

Read:

1. Application dated 29.11.04 from SNGM Educational & Cultural Trust, Thuravoor, Alappuzha.

2. Application dated 19.01.05 from RCM Hospital, Thripunithura.

3. Application dated 19.04.05 from Elamkulam Charitable Trust, Nilambur.
4. Application dated 14.10.05 from MES Medical College, Malaparamba.
5. Application dated 29.11.05 from K. Velayudhan Memorial Trust, Cherthala.
6. Application dated 09.12.05 from Alleppey Educational Society, Alleppey.
7. Application dated 23.12.05 from Manjeri Eye Hospital Pvt. Limited.
8. Application dated 28.12.05 from Moulana Hospital, Perinthalmanna.
9. Application dated 11.1.06 from Pattom Thanupillai Memorial Institute of Para Medical Sciences, Thiruvananthapuram.
10. Application dated 12.1.06 from Karunya Educational Trust, Amaravila, Thiruvananthapuram District.
11. Application dated 27.1.06 from Jubilee Memorial Hospital, Thiruvananthapuram.
12. Application dated 27.1.06 from G.K. Hospital, Thiruvalla.
13. Application dated 7.2.06 from Shifa Medicare Trust, Perinthalmanna.

ORDER

As per the applications read above, Self-Financing institutions have requested Government to grant Letter of Intent/No Objection Certificate for starting various Paramedical courses. Government have examined the case and are pleased to issue Letter of Intent/No Objection Certificate to the thirteen Self Financing institutions (Annexure) for starting Paramedical courses mentioned against each, subject to fulfilling all the basic infrastructural facilities including construction of building and teaching faculty for running the course.

2. The institutions shall agree to the condition that in the case of Diploma courses 50% seat will be filled up from merit list to be prepared by the Director of Medical Education and for Diploma in Health Inspector course 50% seats will be filled up from the merit list to be prepared by the Director of Health Services and fee to those seats will be on the rates fixed by Government from time to time.

3. For Degree course the institutions shall agree to admit students on 50% merit and 50% management seat basis. The merit seat students shall be admitted from the state merit list prepared by the Commissioner of Entrance Examination and 50% seat by Management, subject to the conditions in the prospectus for each year. The institutions shall obtain affiliation from the concerned University.

4. On completion of all infrastructural facilities, the institutions shall report to Government, for considering Letter of Permission and the course will be started only after getting Letter of Permission from Government. The NOC will be valid for a period of one year.

5. The list of institutions is given in Annexure.

(By Order of the Governor) DR. VISHWAS MEHTA Secretary

16. Similarly, Ext. R1(c) is the letter of permission issued in respect of the 2nd petitioner in W.P.(C). No. 19203/2013. The said letter of permission is extracted hereunder:

GOVERNMENT OF KERALA ABSTRACT

Health and Family Welfare Department - Letter of Permission to MES Institute of Paramedical Sciences, Perinthalmanna, Malappuram for starting Diploma in Medical Laboratory Technology (DMLT) course - Granted - Orders issued

HEALTH AND FAMILY WELFARE (K) DEPARTMENT

G.O.(MS) No. 542/2011/H & FWD.

Dated, Thiruvananthapuram: 10.11.2011.

Read:

1. G.O.(Ms) No. 338/2008/H & FWD dated 5.7.08
2. G.O.(Ms) No. 430/2011/H & FWD dated 18.7.11
3. Letter No. MES/IPS/ADMN/GNRL dated 27.10.2011 from the Course Director, MES Institute of Paramedical Sciences, Palachode P.O., Perinthalmanna, Malappuram.
4. Letter No. B3/21342/2011/DME dated 10.10.2011 from the director of Medical Education, Thiruvananthapuram

ORDER

As per Government Order read as first paper above, No Objection Certificate with validity period of one year was granted to MES Institute of Paramedical Sciences, Perinthalmanna, Malappuram for starting B.Sc in Medical Laboratory Technology (B.Sc. MLT), Diploma in Medical Laboratory Technology (DMLT) and Diploma in Operation Theater Technology & Anesthesia Technology (DOTT) (renamed as Diploma in Operation Theater & Anesthesia Technology) (DOTAT) courses. Later on, Letter of Permission was granted to start B.Sc. MLT course vide order read as second paper above. Now the institution (as per paper read as third paper above) has expressed their willingness to share 50% of seats and adopt fees prescribed by Government and requested to grant Letter of Permission to start Diploma in Medical Laboratory Technology course from 2011-12 academic year. The Director of Medical Education vide paper read as fourth paper above has recommended to grant the same with an intake of 30 students as the institution have requisite infrastructure, equipments and faculty for conducting the course.

2. Government examined the matter in detail and are pleased issue orders as follows:

i. The validity of No Objection Certificate granted to MES Institute of Paramedical Sciences, Perinthalmanna, Malappuram for starting Diploma in Medical Laboratory Technology (DMLT) course is extended up to 05.11.2012.

ii. Letter of Permission is granted for starting Diploma in Medical Laboratory Technology (DMLT) course from the academic year 2011-12 with an annual intake of 30 (thirty) students subject to the conditions that the institution:

a) Shall agree to admit students on 50% merit and 50% management basis and the merit seat students shall be admitted from the respective State merit list prepared by the Director of Medical Education/Director, LBS Centre and 50% seats by Management based on merit, at the rate of fee fixed by Government from time to time, subject to the other conditions in the prospectus issued by the director of Medical Education for each year.

b) Shall execute an Agreement with the Health and Family Welfare (K) Department in respect of fees and admissions and shall adhere to all conditions contained in that Agreement and the course will be started only after executing the Agreement.

c) Shall produce a bank Guarantee for Rs. 5,00,000/- (Rupees Five Lakhs only)

d) Letter of Permission will be withdrawn if any of the above conditions is violated.

3. The Director of Medical Education, Thiruvananthapuram/Director LBS Centre, Thiruvananthapuram shall include the institution in the Prospectus for admission to Paramedical Diploma courses for 2011-12 and allot students to 50% of the Government merit seats of the total seats in the institution from the State merit list prepared for the year 2011-12 as and when Government intimate them that the institution has fulfilled all the conditions prescribed in the Letter of Permission.

(By Order of the Governor) ELPHAGE TAJAN J. Under Secretary

17. After obtaining the letters of permission, and commencing the para-medical courses contemplated therein, the petitioners enter into consensual agreements with the State Government for the purposes of seat sharing so that sufficient seats, in the course carried on by the institute concerned, are made available to the State Government for filling up under the State merit quota. Ext. R1(f) is a typical seat sharing agreement entered into between the 2nd petitioner in W.P. (C). No. 19203/2013 and the State Government. Ext. R1(g) is an affidavit that is submitted by the same petitioner before the State Government in connection with Ext. R1(f) agreement.

18. It will be apparent, from a perusal of Exts. R1(b), R1(m), R1(c), R1(f) and R1(g), that the conduct of para-medical courses in the State is regulated by executive orders issued by the State Government and that the prescription regarding the fixation of a fee structure, as approved by the State Government,

serves to qualify or condition the right that is obtained by the institution in question. In other words, the very permission that is obtained by an institution is subject to a condition that the institution concerned shall not charge fees that do not have the approval of the State Government. The consensual agreements that are entered into between the various institutions and the State Government deal primarily with the aspect of seat sharing. Although some of these agreements may also, incidentally, refer to the fees approved by the State Government, the obligation of the institution in question to charge only such fees as are approved by the State Government is one that stems from the executive order granting the no-objection certificate/letter of permission and not to the consensual agreement subsequently entered into with the State Government. In other words", the obligation to charge the fee approved by the State Government is not contractual in nature but one that is mandated by a regulation. We have thought it fit to clarify this aspect only because the petitioners have a contention that the right to admit students to para-medical courses at a fee decided by them is an integral part of their fundamental right, under Art. 19(1)(g) or Art. 30(1) as the case may be, and that any consensual agreement with the State Government that takes away this right must be ignored on the settled principle that fundamental rights cannot be waived.

19. The question then arises as to whether the stipulation as regards the fee structure, traceable to the no-objection certificates/letters of permission issued to the petitioners, can be said to be a fetter on the fundamental rights available to the petitioners. As already noted above, the decisions of the Supreme Court in *T.M.A. Pai Foundation*, *Islamic Academy* and *PA. Inamdar* (supra), clearly recognise the existence of a power in the State Government to take regulatory measures to promote the efficiency and excellence of educational standards. Factually, however, one cannot discount the possibility of the State Government imposing conditions, including fee structures that are so unreasonable as to effectively deprive the institutions of their constitutional rights or render their fundamental rights nugatory. In such cases, this Court would have to examine the rationale for the conditions or the manner in which the fee structure was arrived at by the State Government, so as to ensure conformity with the requirement of reasonableness. An additional requirement that has to be ensured, in cases where the right sought to be protected is a fundamental right under Art. 19 of the Constitution, is that the regulation imposed by the State Government is through enacted legislation and not through executive orders.

20. It may not be out of place to notice, at this stage, a division bench decision of this Court in *Lisie Medical & Educational Institutions v. State of Kerala* ((2007 (1) KLT 409) wherein this Court had occasion to consider the Constitutional validity of the K.P.C.I. Act, 2006. The judgment gives an indication of the limits of permissible regulation by the State Government over the activities of self-financing institutions, including minority institutions, that would be countenanced by a Court entrusted with the task of protection of Constitutional rights. The issue that arose for consideration in that case was the Constitutional validity of

the various provisions in the KPCI Act that sought to regulate the admission process and collection of fees in the various self-financing educational institutions offering professional courses in the State. The court, after a detailed analysis of the provisions of the Act, held, inter alia, that S. 3 of the said Act, that dealt with the method of admissions to professional colleges or institutions and conferred vast powers on the State in that regard, was invalid and ultra vires the Constitution. The court observes at para 38 of the judgment that;

"The unaided minority or non-minority institutions have a fundamental right enshrined under Art. 19(1)(g) and 30(1) of the Constitution of India to run educational institutions. The minority institutions have an additional right, which may be called as even a protection, to establish and administer the institutions of their choice. The admissions can be regulated by legislation, but such legislation can only and surely be for ensuring the triple test of fair, transparent and non-exploitative procedure in the matter of admission."

21. Further, the Court also proceeded to read down the provisions of S. 6 of the Act, that dealt with fixation of fees by the Government, so as to confine the Government's role to merely ensuring that there was no element of profiteering in the fees fixed by the institutions and that no capitation fee was charged. In paragraph 47 of the judgment it is observed that;

"It is clear that fixation of fee structure is a fundamental right of educational institutions, more particularly of those which are unaided. It is further clear that the fee has to be decided by the institutions themselves and such right of the institutions cannot be abrogated by the State. While, however, fixing the fee structure, the institutions cannot indulge into profiteering nor can charge capitation fee, even though the element of surplus income to cater to the future needs of the institutions can be definitely taken into account while fixing the fee. The committees that may be constituted or the Law that may be made could only regulate the profiteering and charging of capitation fee. The committees would themselves have every right to modify the fee structure fixed by the institutions and debar institutions by an order and if legislation is made to that effect by law, to reduce the fee in the event of its coming to a finding that the fee structure had a component of profiteering and/or capitation fee, but nothing beyond that. The fixation of fee structure is the right of an institution particularly when unaided. The right of the committees that may be constituted, or the Government to legislate, in our considered view, cannot go beyond examining the fee structure to find out therein the element of profiteering or charging of capitation fee, be it by monitoring committees or by legislation."

22. The *Lisie Medical & Educational Institutions* case (supra) dealt with institutions that came within the purview of the K.P.C.I. Act, 2006. In the instant case, we are concerned with para-medical courses that do not come within the purview of the said Act. The regulation by the State, in these cases, is through executive orders although the tenor of the said orders is similar to the provisions of the KPCI Act that were struck down as unconstitutional by this Court. It is not

the contention of the State Government that it can arrogate to itself a greater power than what is clarified by the Supreme Court in *T.M.A. Pai Foundation*, *Islamic Academy* and *P.A. Inamdar*, (supra) in the matter of regulation of the admission process and fee structure to private self-financing professional institutions and minority institutions. What is contended is that the petitioners had, through an acceptance of the no-objection certificates and the letters of permission granted by the State Government, agreed to abide by the admission procedure and fee structure stipulated by the State Government. Whether the said action of the petitioners would alter the legal position is what we have to consider. For this, we have to first examine the nature of the conditions imposed by the State Government through the no-objection certificates and letters of permission granted to the petitioners.

23. As already noticed, the conditions in the no-objection certificates and the letters of permission issued to the petitioners oblige them to abide by an admission process and fee structure that is stipulated by the State Government. While the stipulation of an admission process is not objected to in the instant cases, the stipulation of a fee structure is. While the State Government had initially proposed to fix the fee structure through a committee constituted for the purpose, and the said committee had in fact suggested such a fee structure, the Government did not accept the suggestions of the committee and proceeded to fix its own fee structure. This action of the State Government is found objectionable by the petitioners since, going by the settled law on the subject, the power of the State Government in the matter of regulating the fee structure of self-financing professional institutions and minority institutions is only to the extent of ensuring that the fee structure is non-exploitative in nature and that no capitation fee is charged. The position must be the same even if the State Government chooses to regulate the fee structure through conditions imposed in no-objection certificates or letters of permission that are recognised, under a regulatory regime, as necessary for the conduct of para-medical courses in the State. We find force in the contention of the petitioners. The State cannot do indirectly, what it cannot do directly. We find that, on the one hand, there is an expert body that is constituted to go into the issue of a fee structure for para-medical courses run by the various institutions in the State. The said body has drawn up a detailed report showing the factors that it has taken into account while arriving at the fee structure that was ultimately proposed. No doubt, the State Government has a case (as stated in para 16 of the counter affidavit) that the students applying and studying for para-medical courses are generally not from affluent families and that is why the Government felt that the fee suggested by the expert committee was too higher and therefore unacceptable. We do not find any merit in the said stand of the State Government which really has but a limited role to play in the matter of fixation of fee structure of self financing institutions. This action of the State spells in the realm of arbitrariness and unreasonableness. It also ignores the mandate of the Supreme Court judgments that have clearly delineated the limits of its powers in the matter of fixation of

fee structure. In the absence of any material to justify the fee structure proposed by the State Government, the condition in the no-objection certificates/letters of permission, imposing the said fee structure on the petitioners, cannot be viewed as forming part of a valid regulation. If the State Government is of the view that a fee structure proposed by the petitioners is exploitative in nature, it has to produce materials to demonstrate that the fee structure is such. It cannot merely opine that the fee structure is exploitative and suggest an alternate fee structure without any material to support it. Since we are of the view that the fixation of fee structure by the State Government is arbitrary and unreasonable, the contention of the State Government that the petitioners had accepted the fee structure, as a condition for the issuance of no-objection certificates/letters of permission need not detain us for long. An arbitrary fixation of a fee structure by the State Government, while violative of the fundamental rights of the petitioners under Art. 14 of the Constitution of India, is also violative of their fundamental rights under Art. 19(1)(g), or Art. 30 as the case may be. The acceptance by the petitioners, either through consensual agreements or as conditions in a regulatory regime, of the said conditions, will not amount to a waiver, by the petitioners, of their fundamental rights for even if their conduct justified such an inference, it is trite that fundamental rights cannot be waived. (See: *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, and *Dr. Subramanian Swamy Vs. State of Tamil Nadu and Others*, . We must also note that, in the instant cases, the conditions with regard to the fee structure are imposed through a regulatory regime that traces its origin to executive orders issued by the State Government. If the conditions are to have legal effect as reasonable restrictions on the fundamental rights of the petitioners under Art. 19(1)(g) of the Constitution, then apart from being reasonable, they have also to trace their origin to a valid piece of legislation made by the State Government. This is admittedly not the case here. We feel, therefore, that the fixation of the fee structure by the State Government in the instant cases is illegal and unconstitutional.

In the result, the Writ Petitions are allowed as follows:

- * The impugned orders of the Government (Ext. P4 in W.P.(C). No. 19203/2013 and Ext. P28 in W.P.(C). No. 20438/2013) are quashed;
- * It is declared that the State Government has no power to fix the fee structure in respect of the para-medical courses conducted by the petitioner institutions save to the limited extent of ensuring that they are not exploitative in nature and that no capitation fee is charged.
- * It is further declared that any restriction, by the State Government, on the autonomy of the self-financing institutions in the matter of conduct of paramedical courses in the State, shall be effected only through enacted law of the State legislature and not through executive orders;

* In the absence of any material justifying a departure from the fee structure fixed by the expert committee constituted by the State Government for para-medical courses in the State for the academic year 2013-14, the said fee structure shall govern the collection of fees by the petitioner institutions for the said academic year and the current academic year.