
(2010) 09 AHC CK 0558
In the Allahabad High Court
Case No : Special Appeal No. 1212 of 2007

Subharati K.K.B. Charitable Trust and Another	APPELLANT
Vs	
Abhishek Kadian and Others	RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Constitution of India, 1950 — Article 142, 30(1)

Citation : (2010) 09 AHC CK 0558

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These two appeals have been filed by Subharati K.K.B. Charitable Trust and Subharati Medical College through its Principal challenging a common judgment of the learned Single Judge dated 14th August, 2007 *Abhishek Kodian v. State of U.P. and Ors.* deciding Writ Petition No. 12333 of 2004 and Writ Petition No. 68368 of 2006 (*Arshad Jamal and Ors. v. State of U.P. and Ors.*

2. Both the appeals have been heard together and are being disposed of by this common judgment.

3. In Special Appeal No. 995 (defective) of 2007 there is a delay of 43 days in filing the appeal. In the affidavit filed in support of the delay condonation application sufficient cause has been shown for condoning the delay. The delay of 43 days in filing the Special Appeal No. 995 (defective) of 2007 is condoned. The application for condonation of delay is allowed.

4. We have heard Sri S.P. Gupta, Senior Advocate, assisted by Sri Anurag Khanna, for the appellants, Sri S.N. Shukla, Advocate for the private respondents and Sri V.K. Singh, Additional Advocate General assisted by Sri V.K. Chandel for the State-respondents.

5. Facts giving rise to these two appeals, briefly noted, are; Writ Petition No. 12333 of 2004 was filed by Abhishek Kodian and 63 other students of Subharati Medical College, Meerut, who were admitted in M.B.B.S. course through Combined Pre Medical Test-2002. The Combined Pre Medical Test-2002 was held on 30th June, 2002 for admission in Government Medical Colleges as well as three private Medical Colleges of the State of Uttar Pradesh including Subharati Medical College, Meerut. The information brochure of 2002 in Paragraph "Cha" gave details of fee in private dental/medical colleges for M.B.B.S. course as Rs. 1,10,000/- for payment seat and as Rs. 13,000/- for free/merit seat. The State Government had issued a Government order dated 8th January, 2003 fixing Rs. 1,26,500/- for payment seat and Rs. 14,950/- for free/merit seat. On the basis of the test held on 30th June, 2002 the counselling took place on 15th April, 2003. The writ petitioners were allocated Subharati Medical College where they were admitted on 25th April, 2003 in the M.B.B.S. course 2002-03. The college got deposited fee of Rs. 1,75,000/- from the students who were admitted under free/merit seat and Rs. 3,05,000/- from the students who were admitted against the payment seat. The aforesaid fee was in addition to hostel fee, security and other expenses. On 15th July, 2003 the State Government issued a Government order providing that in private medical colleges the scheme of admission in free and payment seat is discontinued with effect from academic year 2003-04 and for academic year 2003-04 for M.B.B.S. course Rs. 1,55,000/- per annum is fixed for admission. It was further provided by the Government order that for those students who were admitted prior to academic year 2003-04, the old scheme for free/merit seat and payment seat shall continue. The State Government issued another Government order dated 14th August, 2003 directing the Director General, Medical Education and Health to publish the information for fee fixed by the State Government as Rs. 1,55,000/- for M.B.B.S. course and Rs. 1,10,000/- for B.D.S. course with instruction to the Medical Colleges/Dental Colleges not to charge higher than aforementioned fees. Abhishek Kodian along with 63 students of M.B.B.S. course 2002-03 filed Writ Petition No. 12333 of 2004 praying for a writ of mandamus directing the Subharati Medical College and Subharati K.K.B. Charitable Trust (the appellants herein) not to charge fee over and above mentioned in the information brochure. The writ petitioners stated that they are liable to pay the fee as per information brochure/as mentioned in the Government orders dated 8th January, 2003 and 14th August, 2003. This Court passed an interim order providing that in the meantime the fee in question, which is being realised, shall be treated as provisional and the same shall abide by the final judgment of the Court.

6. Writ Petition No. 68368 of 2006 was filed by Arshad Jamal and 16 other students of M.B.B.S. 2002-03 challenging the notice dated 1st December, 2006 and 22nd March, 2007 by which the students of 2002 batch were warned that unless they do not pay the fee as demanded by the college, they shall not be permitted to appear in the examination scheduled to commence from 16th December, 2006. Reference was made to the decision dated 5th September,

2006 of the Sarin Committee by which an interim order was passed by the Sarin Committee permitting the appellants to realise the same fee from the students of 2003-04 batch or earlier batch at the rate which was being charged from them earlier. The writ petitioners in the writ petition stated that the Management is charging fee exorbitantly and in breach of the Government orders dated 8th January, 2003 and 15th July, 2003. Reference of earlier Writ Petition No. 12333 of 2004 was also made. In the Writ Petition No. 68368 of 2006 following prayers were made:

i. issue a writ, order or direction in the nature of certiorari quashing the notice dated 1.12.2006 and 22.3.2007 and the order of Sarin committee dated 5.9.2006 (Annexure Nos. 13 and 12 respectively to the writ petition).

ii. issue a writ, order or direction in the nature of mandamus directing the respondents to ensure that the petitioners are not charged fee higher than the fee prescribed by the State of U.P. vide Government order dated 8.1.2003 (Annexure-2).

iii. issue a writ, order or direction in the nature of mandamus directing the respondents to adjust the fee deposited by the petitioners in excess of the fee prescribed by the State of U.P. vide Govt. Order dated 8.1.2003 (Annexure-2) against the fee payable by the petitioners for subsequent years.

iv. issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 3 and 4 to refund forthwith the excess fee realized by them in violation of the aforesaid Government order. dated 8.1.2003 along with interest @ 12% from the date of realization uptill the date, the excess amount is returned to the petitioners and the Respondents No. 1 and 7 be directed to take necessary action against the Respondents No. 3 and 4 in terms of the directions contained in the decision of Hon'ble Apex Court in case of Islamic Academy of Education and Another Vs. State of Karnataka and Others,

7. In both the writ petitions, counter affidavits were filed by the College. The Medical Council of India also filed counter affidavits in the writ petitions. The learned Single Judge by its judgment dated 14th August, 2007 allowed both the writ petitions directing the appellants to charge the tuition fee of payment seats of the students admitted in 2002-03 academic session and for all subsequent years of the same batch at the rate of Rs. 1,26,000/- as fixed by the Government order dated 8th January, 2003. Direction was also issued to the College to refund the entire excess amount collected from all the 64 students admitted on the payment seats of 2002-03 batch and for the subsequent years from the same batch. The petitioners of Writ Petition No. 68368 of 2006 were permitted to appear in the 4th semester by adjusting the excess amount and by making payment of difference only at the rate of Rs. 1,26,500/- per annum. The judgment was confined only to the students admitted on payments seats in the academic session 2002-03 and in subsequent years for the same batch. The judgment of the learned Single Judge has been challenged by filing Special

Appeal No. 1212 of 2007. Subsequently another special appeal being Special Appeal No. 995 (defective) of 2007 has been filed separately challenging the order of learned Single Judge passed in Writ Petition No. 68368 of 2006.

8. Sri S.P. Gupta, Senior Advocate, appearing for the appellants, in support of the appeals, made following submissions:

i. The fee prescribed in the brochure, which was issued for admission in M.B.B.S. course 2002-03 on the basis of Combined Pre Medical Test-2002 as well as the fee fixed by the Government order dated 8th January, 2003 became non-est and unenforceable after judgment of the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, in which it was held by the Apex Court that fee to be charged must be left to the private professional educational institutions subject to rider that there should not be capitation fee or profiteering.

ii. The Government order dated 8th January, 2003 was issued in pursuance of the interim order dated 9th August, 1996 passed in the case of T.M.A. Pai Foundation and others Vs. State of Karnataka and others, revising the fee which was fixed under the Government order dated 27th September, 1997, which in turn was based on the scheme framed by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., came to an end after delivery of final judgment in T.M.A. Pai's case (supra) on 31st October, 2002. The scheme framed by the Apex Court in Unni Krishnan's case (supra) having been held as unconstitutional by judgment in T.M.A. Pai's case, the State Government had no jurisdiction to fix the fee.

iii. According to judgment of the T.M.A. Pai's case (supra), the fee fixed by the private unaided educational institutions can be challenged only on the ground that it is a capitation fee or lead to profiteering. There being no specific pleading in the writ petition that fee fixed by the college for the year 2002-03 is either capitation fee or lead to profiteering, the challenge to fee fixed by the college ought to have been rejected.

iv. The college having been granted permission by the Government of India Ministry of Health and Family Welfare by order dated 13th March, 2003 to admit 100 students in M.B.B.S. course for the academic year 2002-03, the brochure issued in March, 2002 for conducting the Combined Pre Medical Test on 30th June, 2002 as well as the Government order dated 8th January, 2003 cannot be applied for the admission which was taken thereafter.

v. The Sarin Committee constituted by the State Government by Government order dated 22nd February, 2004 in pursuance of the judgment of the Apex Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, approved the fee structure of the college for the year 2002-03 while considering the fee structure as claimed by the college for the academic year 2003-04 since it took into consideration the figures of 2002-03. The Sarin Committee did not pass any order for the fee fixation for the year 2002-03.

vi. The writ petitioners made payment of fee at the time of admission on 25th April, 2003 without any objection and the students and guardians of the students also filed an undertaking affidavit at the time of admission to abide by fee of the college, hence now the writ petitioners are estopped from challenging the fee fixed by the college. In the advertisement issued by the Director General, Medical Education dated 10th April, 2003 the students were advised to seek information regarding fee to be charged from the college for the year 2002-03 and at the time of counselling college issued leaflets mentioning the fee to be charged by it.

9. Sri S.N. Shukla, learned Counsel appearing for the writ petitioners (respondents), refuting the submissions of Sri Gupta, submitted that the judgment in T.M.A. Pai's case (supra), could be implemented only after the judgment in Islamic Academy's case (supra) and in the relevant year, i.e. 2002-03 there being no mechanism devised by the State to ensure that no capitation fee is charged and there is no profiteering, the Government order dated 8th January, 2003 and the subsequent Government order dated 15th July, 2003 were fully applicable.

10. Sri Shukla further submitted that the Sarin Committee, for consideration of fee structure of the private professional college, was constituted by the State Government by Government order dated 22nd February, 2004, hence the committee could not have examined the fee structure for the year 2002-03. The judgment in T.M.A. Pai's case could be implemented after the judgment of the Apex Court in Islamic Adacemy's case (supra), hence the fee fixed in the brochure-2002 and the Government order dated 8th January, 2003 did not automatic come to an end. There being no mechanism prevalent during the relevant period, the earlier fee structure continued. The fact that fee for payment seat and for free/merit seat was discontinued from the academic year 2003-04 clearly proves that the judgment could not have been implemented for the academic year 2002-03. It is further submitted that the fact that the appellants themselves have fixed fee for payment seat and free/merit seat separately for the year 2002-03, indicates that the fee structure, as was continuing earlier, was also continued in the academic year 2002-03.

11. Sri Shukla further submitted that the Government orders dated 8th January, 2003 and 15th July, 2003 were not challenged by the appellants and they have no right to challenge the Government orders in these proceedings. It is true that scheme framed in Unni Krishnan's case (supra) was disapproved in T.M.A. Pai's case (supra) but for interregnum period , i.e. till the new methodology is adopted for fixation of fee, the continuation of the existing fee structure could not have been discarded, moreso when in the T.M.A. Pai's case the regulations and statutes regulating the fee structure in different colleges were not under challenge nor any view was expressed with regard to existing regulations and statutes which were accepted by the Apex Court in T.M.A. Pai's case (supra). The writ petitioners have pleaded in the writ petition that college is charging exorbitant fee, which was apparent from the figures given in the writ petition

with regard to fee fixed in the brochure and by the Government order dated 8th January, 2003 and the fee which was realised by the college for the year 2002-03. The college had no freedom to fix fee without undergoing with any regulatory control by the State authorities.

12. Sri Shukla also submitted that the submission of the appellants that the college was granted permission by the Government of India on 13th March, 2003 to admit 100 students, hence the Government order dated 8th January, 2003 shall not be applicable, is misconceived. The name of the appellants' college was mentioned in the brochure to whom the seats were to be allocated on the basis of the Combined Pre Medical Test-2002. The college was also running two earlier batches of 100 students and was an approved college. The inclusion of the college for Combined Pre Medical Test-2002 was never challenged by the college and it accepted the students on the basis of exam held on 30th June, 2002, hence it was not open for the college to say that it is not covered by the brochure-2002 and the Government order dated 8th January, 2003.

13. The Sarin Committee had no jurisdiction to fix/approve the fee structure for the year 2002-03 it having been constituted under the Government order dated 22nd February, 2004. According to Islamic Academy's case (supra) colleges were required to give their proposed fee structure in advance before the committee, hence the Sarin Committee could have examined the fee structure only for subsequent years for which the fee structure and details of fee were submitted by the college. The Sarin Committee, in fact, considered the claim of the college for fixation of fee for the year 2002-03 but it rejected the claim of the college, which is recorded in its proceedings dated 19th December, 2006, and the same is on the record. The Sarin Committee has rightly held that it has no jurisdiction to fix the fee structure for the year 2002-03.

14. Replying the last submission of the appellants, Sri Shukla submitted that writ petitioners were aware of the fee structure as given in the brochure and by the Government order dated 8th January, 2003. The brochure-2002 contemplated that with regard to fee, other than tuition fee, the students were required to obtain information from the college and the advertisement of the Director General, Medical Education 10th April, 2003 at best related to the other fees like hostel fee, mess fee etc. No fees of the appellants' college was intimated to the students at the time of counselling nor any leaflet was distributed as claimed. The deposit of fee on 25th April, 2003 at the time of admission by the students and filing undertaking affidavit by the guardians was done by the students and their parents, they having no option since had they not taken admission by depositing the fee as demanded by the college, they would have denied admission which was secured after being successful in Combined Pre Medical Test-2002. The writ petitioners filed the writ petition before the fee for second year could be realised by the college and it was due to the fact that no interim order was granted in Writ Petition No. 1233 of 2004, the students had to pay the fee as demanded by the college. However, an order was passed in the said writ

petition that any deposit by the students shall abide by the result of the writ petition. It is submitted that the students having challenged the claim of demand of fee, there is no question of applicability of principles of estoppel against the writ petitioners. Further the college is not entitled to charge fee as against law and no estoppel can be pressed against law.

15. Sri V.K. Singh, learned Additional Advocate General appearing for the State-respondents submitted that although the private medical colleges are free to device their own fee structure but the said fee structure is to be scrutinised by the appropriate mechanism as devised by the State Government and the Committee constituted under the orders of the Apex Court in *Islamic Academy's* case (supra). The State Government is fully empowered to scrutinise the fee structure to ensure that it is not capitation fee or lead to profiteering, hence the State control over the fee structure fixed by the college cannot be denied. It is submitted that appropriate mechanism having not been laid down till the admission of the students for the academic year 2002-03, the State had every jurisdiction to issue Government orders dated 8th January, 2003 and 15th April, 2003 fixing the fee.

16. Learned Counsel for the respective parties in support of their submissions, have relied on various judgments of High Courts as well as the Apex Court, which shall be considered while considering their submissions in detail.

17. Before we proceed to enter on the rival submissions of the counsel for the parties, it is relevant to have a look on the issue of fee structure as applicable in private medical colleges in the State of Uttar Pradesh prior to the judgment of the Apex Court in *T.M.A. Pai's* case (supra).

18. The issue of fee chargeable by private professional medical/engineering college has been engaging attention of the courts including the Apex Court for the last several decades. Need for establishing more and more professional educational institutions arose from time to time with object to cope with the increasing demand and requirement of qualified professionals. There has been extreme need to increase establishment of medical colleges to cope with the growing need of the society to have more and more efficient doctors to treat them. The State having limited resources, was unable to provide education to large number of meritorious students which resulted in private entrepreneurs to come up by establishing professional educational institutions. The issue as to whether such private colleges can charge fee as per their own assessment or there has to be State control over the fee structure was elaborately considered by the Constitution Bench of the Apex Court in *Unni Krishnan's* case (supra). The Apex Court in the said case held that professional colleges are not entitled to charge any capitation fee and a scheme was framed by the Apex Court in the said judgment directing for constituting a committee to fix a ceiling on the fee chargeable by the professional colleges. The scheme contemplated that as far as medical colleges are concerned, there are two categories of seats, i.e. payment seat and free/merit seat with intend to fulfil the financial requirement of the

colleges to develop its infrastructure through the fee received from the payment seats. Even after the order passed by the Apex Court in Unni Krishnan's case (supra), appropriate steps were not taken although the Apex Court passed orders with regard to academic year 1994-95 and subsequent years including providing for fee structure. The scheme framed in Unni Krishnan's case (supra) came for consideration by the Apex Court in T.M.A. Pai's case (supra) and various interim orders were passed including the interim order dated 9th August, 1996. While passing the interim order dated 9th August, 1996, following was observed by the Apex Court in paragraph 5:

5. We must express our distress at the inaction of the authorities pursuant to para 6 of the Scheme aforementioned. Though a period of more than three years have passed by since the decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., the authorities mentioned in the said paragraph have not come forward with a workable, realistic and just fee structure, with the result that year after year, this Court is practically being forced to fix the fee on a tentative basis. Fixing the fees is not the function of this Court. It is the function of the Government, the affiliating universities and the statutory professional bodies like, University Grants Commission, Indian Medical Council and All India Council for Technical Education. At least now, we expect the authorities concerned to move in the matter with promptitude and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the Orders made by this Court from time to time relating to fee structure. It shall be open to them to evolve such fee structure as they think appropriate, in such terms, and subject to such conditions as they feel are in the interests of the student community, the private professional colleges as also in public and national interest. We hope and trust that the fee structure to be evolved by them would take into consideration the ground realities and would be realistic and practical from the point of view of all concerned. In particular, we request the Central Government, including the Ministry of Education (Ministry of Human Resource Development), to take immediate steps to convene a meeting of all the authorities concerned as contemplated by para 6 of the Scheme and ensure that a proper fee structure is evolved for the medical, dental and engineering colleges throughout the country. It shall be open to the authorities to fix separate fee structure for each of the States, if such a course is warranted. It may also be open to the authorities to fix different fee structure having regard to the location of the colleges, to wit, a college in the city of Bombay may be allowed a different level of fees than a similar college (with similar facilities) situated in a rural area. To reiterate, the Central Government and the authorities concerned shall be free to evolve the fee structure in such appropriate manner as they think just and equitable to all concerned. We hope and trust that this would be done within a period of three months from today and the matter brought to the notice of this Court forthwith. We wish to make it clear that with effect from the Academic Year 1997-98, it shall be the responsibility of the authorities aforesaid to prescribe the fee payable in these colleges.

19. In pursuance of the directions issued by the Apex Court by interim order in T.M.A. Pai's case (supra), the Central Government issued direction to the State Governments for fixing fee structure of free/merit and payment seat in the private medical colleges and engineering colleges. In pursuance of the order of the Government of India dated 15th May, 1997 and 16th May, 1997, the State of U.P. issued Government order dated 27th September, 1997 by which amount of Rs. 1,10,000/- was fixed for payment seat and amount of Rs. 13,000/- was fixed for free/merit seat for M.B.B.S. course. The said Government order was issued in consequence to the recommendation of the Committee headed by the Vice Chancellor of Dr. Ram Manohar Lohia Vishwavidyalaya, Faizabad. The admission in private medical colleges in M.B.B.S./B.D.S. courses were held as per the aforesaid Government orders in the State of Uttar Pradesh. The admission in Government/private medical colleges in the M.B.B.S. course is being done through a Combined Pre Medical Test. In the academic year 2002-03 information brochure was issued by the Bundelkhand Vishwavidyalaya, Jhansi which was entrusted to conduct C.P.M.T.-2002. The date for written examination of Combined Pre Medical Test-2002 was fixed as 30th June, 2002. In information brochure there were detail information including information of fee structure in paragraph "Cha".

20. It is further to be noted that in the information brochure the names of private medical colleges for whom the Combined Pre Medical Test was to held, were also mentioned in paragraph 3.7 in which the name of Subharati Medical College was included as approved college with two earlier batches running.

21. The judgment of the 11 Judges in T.M.A. Pai's case (supra) was delivered on 31st October, 2002. The Apex Court in T.M.A. Pai's case (supra) held that decision in Unni Krishanan's case (supra) insofar as it framed the scheme relating to grant of admission and fixing the fee was not correct and to that extent the said decision and the consequent directions were overruled. The Apex Court in T.M.A. Pai's case (supra) has framed 11 questions to be answered. Apart from considering the right of establishing educational institutions by minority, the Apex Court also considered the right of establishment of institutions by non minorities, both private unaided non minority educational institutions/private unaided professional colleges. The majority judgment in the said case was delivered by B.N. Kripal, C.J. In paragraphs 67 to 70 the Apex Court considered private unaided professional colleges. Following was laid down in paragraph 69 of the judgment:

69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is

permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

22. The question No. 9, which was as to whether the decision of the Apex Court in Unni Krishnan's case require reconsideration. The question No. 9 and answer thereto are quoted below:

Q.9 Whether the decision of this Court in Unni Krishnan J.P. v. State of A.P. (except where it holds that primary education is a fundamental right) and the scheme framed thereunder required reconsideration/modification and if yes, what?

A. The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

23. Shyed Shah Mohammed Quadri, J. gave a concurring opinion on the above subject while considering the question of fee. Following was laid down in paragraph 261:

261. ... The most damaging allegation against non-government educational institutions is charging of capitation fee which has become the talk of the town throughout the length and breadth of the country. So much so that the term "capitation fee" has become synonymous with crime. The concept of capitation has its origin in taxation; earlier there used to be capitation tax per person. Educational institutions, it is stated, oblige guardians/students to pay, in addition to the notified fees, varying amounts depending upon the courses in which admission is sought; such amounts are nothing but per capita collection for admission to a given course in an educational institution and can properly be termed as capitation fee. This is reprehensible and cannot be tolerated. Now, in view of the majority judgment different institutions may notify different fees for the same course and the same institution may notify different fee structure for different courses. If the evil of collection of capitation fee is done away with by the private educational institutions (both non-minority and minority), much of the controversy about intervention by the State and complaints by citizens could be avoided. Collection of capitation fee being the worst part of maladministration can properly be the subject-matter of regulatory control of State. Receiving donations by an educational institution, unconnected with admission of students, could not obviously be treated as an equivalent of collection of capitation fee.

24. S.N. Variava, J also gave separate opinion on the question whether the judgment of the Apex Court in Unni Krishnan's case (supra) requires reconsideration. Following was laid down in paragraph 392 and 393 of the judgment in T.M.A. Pai's case (supra):

392. We are in agreement with the reasoning and conclusion of the learned Chief Justice on categories 1 and 4. In respect of category 2 we agree with the learned Chief Justice that the cost incurred on educating a student in an unaided professional college was more than the total fee which is realized on the basis of the formula fixed in the scheme. This had resulted in revenue shortfalls. As pointed out by the learned Chief Justice even though by a subsequence decision (to Unni Krishnan's) this Court had permitted some percentage of seats within the payment seats to be allotted to Non-Resident Indians, against payment of a higher amount as determined by the authorities, sufficient funds were still not available for the development of those educational institutions. As pointed out by the learned Chief Justice experience has shown that most of the "free seats" were occupied by students from affluent families, while students from less affluent families were required to pay much more to secure admission to "payment seats". As pointed out by the learned Chief Justice the reason for this was that students from affluent families had had better school education and the benefit of professional coaching facilities and were, therefore, able to secure higher merit positions in the common entrance test, and thereby secured the free seats. The education of these more affluent students was in a way being cross-subsidized by the financially poorer students who, because of their lower position in the merit list, could secure only "Payment seats". Thus we agree with the conclusion of the learned Chief Justice that the scheme cannot be considered to be a reasonable restriction and requires reconsideration and that the regulations must be minimum. However we cannot lose sight of the ground realities in our country. The majority of our population come from the poorer section of our society. They cannot and will not be able to afford the fees which will now be fixed pursuant to the judgment. There must therefore be an attempt, not just on the part of the Government and the State, but also by the educational institutions to ensure that students from the poorer section of society get admission. One method would be by making available scholarships or free seats. If the educational institution is willing to provide free seats then the costs of such free seats could also be partly covered by the fees which are now to be fixed. There should be no harm in the rich subsidising the poor.

393. The learned Chief Justice has repeatedly emphasised that capitation fees cannot be charged and that there must be no profiteering. We clarify that the concerned authorities will always be entitled to prevent by enactment or by regulations the charging of exorbitant fees or capitation fees. There are many such enactments already in force. We have not gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this judgment. Of course now by virtue of this judgment the fee structure fixed under any regulation or enactment will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats.

25. The ratio of the above judgment insofar as private non aided professional colleges are concerned, can be found out in paragraph 69, which is, ".... A rational fee structure should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible....".

26. Although the Apex Court in T.M.A. Pai's case (supra) contemplated for appropriate machinery to ensure that no capitation fee is charged and there is no profiteering but most of the State Governments and the Central Government could not devise any mechanism and the colleges, students and the State Governments interpreted the judgment in T.M.A. Pai's case in a manner which suit their point of view, which led to filing of various cases in the High Courts and the Apex Court. A Constitution Bench of five Judges was constituted so that doubts/anomalies, if any, in the judgment of the T.M.A. Pai's case could be clarified. The Constitution Bench delivered its judgment in Islamic Academy's case (supra). In paragraph 1 of the judgment, following was noted:

1. After the Judgment was delivered, on 31st October 2002, the Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. Interim orders passed therein have been assailed before this Court.

When these matters came up before a Bench of this Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that this Bench has been constituted so that doubts/anomalies, if any, could be clarified.

27. Four questions were framed for consideration by the Apex Court in Islamic Academy's case (supra), which were set-out in paragraph-6, are as under:

1. whether the educational institutions are entitled to fix their own fee structure;
2. whether minority and non minority educational institutions stand on the same footing and have the same rights;
3. whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not to what extent; and
4. whether private unaided professional colleges are entitled to admit students by evolving their own method of admission.

28. Answer of question No. 1 was given in paragraph 7, which is to the following effect:

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 aid 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, there are statutes/regulations which govern the fixation of fees and as this Court has 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 5. 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.

29. In paragraph 13 of the judgment in Islamic Academy's case (supra), the Apex Court laid down that majority judgment in T.M.A. Pai's case (supra) makes a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. In paragraph 20 of the judgment the Apex Court observed, "direction for setting up two sets of committees in the State has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament. In paragraph 21 of the Judgment it was observed that so far as the year 2003-04 is concerned, time is running out as the outer time limit for admission is fast approaching or has gone. To meet the petitions/applications, we direct that the seats be filled up by the institution and the State Governments in the ratio 50:50."

30. In Islamic Academy's case ((supra)), S.B. Sinha, J. gave a concurring opinion after examining the issues in detail. While examining the fee structure and mechanism to regulate such fee structure, following was laid down in paragraphs 154, 155 and 159:

154. The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in paragraph 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and

smooth functioning of the Committee.

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 their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.

31. It is to be noted that in pursuance of the directions of the Apex Court in Islamic Academy's case (supra), the State Government issued a Government order dated 20th February, 2004 providing for constitution of two committees headed by a retired Judge of the High Court. The Government order dated 20th February, 2004 contemplated that in accordance with the direction of the Apex Court dated 14th August, 2003 in Islamic Academy's case (supra) the private institutions in engineering/medical field shall submit their proposed fee structure including all relevant documents.

32. One more judgment in this continuation is necessary to be noted, i.e., the judgment of the Apex Court in the case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors. reported in (2005)6 S.C.C. 537. After the Constitution Bench judgment in Islamic Academy's case (supra) clarifying the eleven Judges Bench judgment in T.M.A. Pai's case (supra), several questions remained unsettled. Again a Bench of seven Judges was constituted, which has been noticed in paragraph 4 of the judgment in P.A. Inamdar's case (supra):

4. The events following Islamic Academy judgment show that some of the main questions have remained unsettled even after the exercise undertaken by the Constitution Bench in Islamic Academy in clarification of the 11-Judge Bench decision in Pai Foundation. A few of those unsettled questions as also some aspects of clarification are before us calling for settlement by this Bench of 7 Judges which we hopefully propose to do.

33. In P.A. Inamdar's case (supra), the Apex Court observed that the Bench has been constituted to cull out the ratio decidendi of T.M.A. Pai's case and to examine if the explanation or clarification given in Islamic Academy runs counter to T.M.A. Pai's case and if so, to what extent. In P.A. Inamdar's case four questions were formulated to be answered. The questions have been noted in paragraph 27, which are to the following effect:

1. To what extent the State can regulate the admissions made by unaided (minority or nonminority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

2. Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether direction made in Islamic Academy for compulsorily holding entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such

institutions, can be sustained in light of the law laid down in *Pai Foundation*?

3. Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

4. Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?

34. Both the parties made submissions before the seven Judges Bench in *P.A. Inamdar*'s case (*supra*). In paragraph 35 of the judgment, the submission which is pressed in this appeal was also raised before the Apex Court. The said submission is clearly noted in paragraphs 35 and 41 of the judgment, which are in following words:

35. Learned Counsel further argues that schemes framed relating to grant of admission and fixing of fees in *Unni Krishnan* has been held to be unconstitutional by the 11-Judge Bench in *Pai Foundation*. [Reference is made to paragraph 45 of the judgment in *Pai Foundation*] It is submitted that the directions to set up committees for regulation of admission and fee structure in Islamic Academy virtually do the same exercise as was done in *Unni Krishnan* and disapproved in the larger Bench decision in *Pai Foundation*. The submission in substance made is that *Unni Krishnan* was disapproved in *Pai Foundation* and has wrongly been re-introduced in Islamic Academy.

41. According to learned Counsel, the State control in unaided private professional colleges can only be to the extent of monitoring or overseeing its working so that they do not indulge in profiteering by charging capitation fees and sacrifice merit. According to the learned Counsel, in the directions contained in Islamic Academy, the main ratio of *Pai Foundation* that the unaided institutions should have autonomy in the matter of admission and fees structure has been totally forgotten. The learned Counsel raised very serious objections to the manner in which the various permanent committees set up in several States on the directions of Islamic Academy are conducting themselves and forcing their decisions on private institutions. The proposed fee structure is required to be placed before the Committee in advance of the academic year by the institute. It is the Committee which has to decide whether the fees proposed by the institute are justified and do not amount to profiteering or charging of capitation fees. The Committee has been given liberty to approve the fee structure of the institute or to propose a different fee structure. The fee fixed by the Committee is binding for a period of three years and at the end of the said period the institute would be at liberty to apply for revision. Learned Counsel gave in writing certain illustrations of decisions of the Fee Committee in few unaided colleges in the State of Karnataka and pointed out that without proper financial expertise and without studying the relevant documents and accounts, the Committee determined the fee structure by only taking into account the affordability of the parents of the students with no regard whatsoever to the viability of the institute on the basis of finances so generated. It is argued as to why private professional

institutes should not be allowed to modernize its facilities and provide better professional education than government institutes. It is pointed out that in the case of non-minority unaided M.S. Ramaiaya Medical College, Bangalore, the Fee Committee initially fixed annual fee at Rs. 2.55 lacs for MBBS course as against the justification shown by the institute for demanding Rs. 3.90 lacs. The decision of the Fee Committee led to the filing of writ petition by the institute in the High Court of Karnataka and agitation and demonstrations by the students' union. The Committee under the pressure of the student community reduced the annual fee to Rs. 1.6 lacs which was re-affirmed after the High Court directed that the management of the unaided college should be heard before reducing the annual fee.

35. The submissions made on behalf of the private unaided colleges in P.A. Inamdar's case (supra) were refuted on behalf of the State with regard to regulation of fee structure. The submissions made before the Apex Court by the State, have been noticed in paragraph 75, which are to the following effect:

75. So far as the regulation of fee structure is concerned, it is submitted that in paragraph 69 in *Pai Foundation* there is a mention of "appropriate machinery to be devised by the State or University to ensure that no capitation fee is charged and profiteering is checked." The judgment in *Islamic Academy* merely implements the legal position explained by *Pai Foundation* by providing a fee determination committee. In reply to the argument that post-fixation audit may be permitted to check profiteering and capitation, the learned Counsel answers that if the role of the Committee is limited to supervisory post fixation audit, it would amount to denying credible restriction to the charging of capitation fee. It is chimerical to suggest that the student should first pay the exorbitant fee fixed by the institution and later on complain about it to the post audit machinery to recover the excess through court of law. The controlling of the fee fixing machinery is necessarily to be done before it is charged otherwise it is meaningless to the benefit of the students for whom it is suggested in paragraph 69. The general principle for scrutinizing the fee structure is two-fold; (1) that education is a charity, (2) that educational institutions cannot charge such fee as is not required for the purpose of fulfilling that object which means cost plus reasonable surplus for expansion and growth of the institution. These are the parameters before the Committee whose decisions, in any case, are subject to judicial review.

36. The question No. 3 i.e. "Fee; regulation of", was considered by the Apex Court in P.A. Inamdar's case in paragraphs 139, 140 and 141, which are quoted below:

Q.3 Fee, regulation of

139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in *Pai Foundation*.

Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (Paras 56 to 58 and

161 [Answer to Q.5(c)] of *Pai Foundation* are relevant in this regard).

Capitation Fees "140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. "Profession" has to be distinguished from "business" or a mere "occupation". While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to the society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

141. Our answer to Question-3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.

37. The Apex Court in *P.A. Inamdar's* case (supra) further laid down that two committees for monitoring admission brochure and determining the fee structure in the judgment of *Islamic Academy's* case (supra) 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.

38. After noticing the ratio decidendi of the aforesaid pronouncements of the Apex Court, now we proceed to examine the respective submissions raised by the learned Counsel for the parties.

39. The first five submissions of Sri S.P. Gupta, learned Senior Advocate, appearing for the appellants, being interrelated, are taken together.

40. From the facts, as noted above, it is clear that the fee structure, as applicable in the private medical colleges in the State of Uttar Pradesh, were being regulated under the Government order dated 27th September, 1997 issued by the State Government in obedience of the orders issued by the Government of India dated 15th May, 1997 and 16th May, 1997, which were issued in pursuance of the interim order passed by the Apex Court in *T.M.A. Pai's* case (supra). The Government of India informed the State Governments that fee in the medical/

dental colleges be fixed on the basis of the recommendations of the Committee constituted in the State. The State Government on recommendation of the committee headed by the Vice Chancellor, Dr. Ram Manohar Lohia Viswavidyalaya, Faizabad fixed the fee of M.B.B.S. as Rs. 13,000/- for free/merit seat and as Rs. 1,10,000/- for payment seat, which were to be applicable for three years from academic session 1997-98. The Combined Pre Medical Test-2002 was conducted by the Bundelkhand University, Jhansi in which details of fee in the private medical colleges has been mentioned in the brochure in paragraph "Cha", which is to the following effect:

LN? futh {ks= ds dkWystksa esa yh tkus okyh Qhl dk fooj.k

Hkkjr ljdkj ds funsZ?kkuqlkj futh {ks= ds MsUVy@esfMdy dkWystksa dh V~;q?ku Qhl dk fu/kkZj.k fd;k x;k Fkk ftldk iqujh{k.k yfEcr gSA

,e-ch-ch-,l- ikB~;dze ch-Mh-,l- ikB~;dze isesUV lhV% 1]10]000@& izfro"kZ isesUV lhV % 75]000@& izfro"kZ Qzh@esfjV lhV % 13]000@& izfro"kZ Qzh@esfjV lhV % 8]000@& izfro"kZ blds vfrfjDr laLFkku }kjk Nk=kokl rFkk Hkkstu dk "kqYd L50 gtkj rd?] dkWyst ds fofo/k "kqYd tks vf/kdre 88 gtkj rFkk dkW?ku euh ds :i esa dkWyst L50&75 gtkj? vkSj Nk=kokl L10&15 gtkj? ds fy, vyx&vyx /kujkf?k ns; gSA dkWystks ds fo"k; esa foLr`r tkudkj] ns; "kqYd] Nk=kokl dh lqfo/k ,oa vfuok;Zrk rFkk vU; vko?;d fooj.k Nk=ksa }kjk Lo;a dkWyst izcU/ku ls izkIr fd;k tkuk visf{kr gSA dkmaflfyax ds le; miyC/k lwpuk uksfVI cksMZ ij iznf?kZr dh tk;sxh rFkk dkWystksa ds bl gsrq izfrfuf/k Hkh vkeaf=r fd, tk;saxsA vH;fFkZ;ksa ls visf{kr gS fd os dkWystksa ls vko?;d lwpuk,Wa izkIr dj vius vius vfHkHkkodksa ls bl IEca/k esa ppkZ dj dkWystksa dh Qhl bR;kfn dks /;ku esa j[krs gq, isesUV lhV ij vkoaVu fy, tkus vFkok u fy, tkus dk fu.kZ; rFkk dkWyst dh ohj;rk de iwoZ esa gh fu/kkZfjr dj ysaA

41. The Combined Pre Medical Test-2002 was held on 30th June, 2002 but admission was delayed which could be held only in April, 2003. Before the admission could be taken in pursuance of the test held on 30th June, 2002, the State Government issued Government order dated 8th January, 2003 by which Government order, on the recommendation of the committee headed by the Vice Chancellor of the Lucknow University, the State Government revised the fee which was earlier fixed by fixing Rs. 14,950/- for free/merit seat and Rs. 1,26,500/- for payment seat. There cannot be any dispute that the Apex Court in T.M.A. Pai's case (supra) had held that professional unaided private colleges are entitled to lay down their own fee structure but the colleges are not entitled to charge capitation fee. As noticed above, in paragraph 69 of the judgment it was laid down, "Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible".

42. The submission, which has been much pressed by Sri S.P. Gupta, is that in view of the pronouncement of the Apex Court in T.M.A. Pai's case (supra) on 31st October, 2002, the college was free to fix its fee structure, hence the fee

fixed for the year 2002-03 by the college cannot be faulted. As noticed above, after the judgment of the Apex Court in T.M.A. Pai's case (supra) a series of litigations came to be filed in the High Courts and the Apex Court and a five Judges Constitution Bench was constituted in Islamic Academy's case (supra) to clarify the doubts/anomalies, if any, in the judgment of T.M.A. Pai's case (supra). In Islamic Academy's case the Apex Court noticed that there are statute/regulations which governed the fixation of fee and the Apex Court had not yet considered the validity of these statutes/regulations. The Apex Court directed, in the order to give effect to the judgment in T.M.A. Pai's case (supra), that respective State Governments/authority concerned shall set-up in each State a committee headed by retired Judge of the High Court to decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The mechanism to implement the judgment in T.M.A. Pai's case was laid down by the Constitution Bench in Islamic Academy's case. It was laid down that direction for setting up of committee has been issued in exercise of jurisdiction under Article 142 of the Constitution of India, which shall remain in force till appropriate legislation is enacted by Parliament. In paragraph 21 of the Judgment it was observed that so far as the year 2003-04 is concerned, time is running out as the outer time limit for admission is fast approaching or has gone. In Islamic Academy's case concurring judgment was given by S.B. Sinha, J. where it was emphasised that State must evolve a detail procedure for constitution and smooth functioning of the committee.

43. Paragraph 159 of the judgment in Islamic Academy's case (supra) indicates that it shall be open to the statutory authority and in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf. The judgment in Islamic Academy's case was delivered on 14th August, 2003 by that time the academic year 2002-03 had already come to an end and in view of the observation of the Apex Court in T.M.A. Pai's case (supra), the mechanism as laid down in the judgment could at best be applied from the academic year 2003-04 or in subsequent years. The State has constituted a committee headed by retired High Court Judge by Government order dated 22nd February, 2004. Thus at the relevant time, i.e., during the academic year 2002-03 there was no committee as contemplated by the Apex Court in Islamic Academy's case (supra). It is true that private unaided professional colleges were free to fix their fee structure but unless the said fee structure is approved by the regulatory mechanism, as contemplated by the Apex Court in Islamic Academy's case (supra), it cannot be said that college was free to charge fee as claimed by it. No committee having been constituted as per the judgment in Islamic Academy's case (supra), the fee fixed by the Government order dated 8th January, 2003 on the recommendation of a committee headed by Vice Chancellor of the Lucknow University cannot be said to be impermissible. The judgment in T.M.A. Pai's case (supra) itself contemplated that fixation of fee by the unaided private professional college shall be subject to regulation by appropriate machinery to ensure that no capitation

fee is charged and there is no profiteering (paragraph 69 of the judgment). Thus the regulatory control by appropriate machinery from the State Government was not something which was disapproved even in T.M.A. Pai's case (supra). The fee structure as fixed by the appellant for the year 2002-03 did not pass through any such mechanism.

44. At this juncture, it is relevant to note the submission of learned Counsel for the appellants that fees structure for the academic year 2002-03 of the appellants had tacit approval by the Sarin Committee since while fixing the fee structure for the academic year 2003-04, the figures of the academic year 2002-03 were taken into consideration.

45. Three proceedings of the Sarin Committee dated 14th February, 2006, 5th September, 2006 and 19th December, 2006 have been brought on the record. The meeting dated 14th February, 2006 of the Committee considered the proposal of the private medical colleges including the appellants for the year 2003-04. The Committee in its meeting dated 14th February, 2006 took the view that the Committee has been constituted under the Government order dated 20th February, 2004 and according to Islamic Academy's case the college was to submit its proposed fee structure. The Committee was of the view that fee structure for the year 2003-04 could not have been considered by the Committee. A writ petition being Writ Petition No. 42148 of 2006 raising a dispute with regard to fee structure for the year 2003-04 was filed. It was claimed in the writ petition that representation dated 20th February, 2006 has been submitted, which has not been considered. A learned Single Judge of this Court by order dated 21st August, 2006 disposed of the writ petition relegating the matter to the Committee. The Committee after the order dated 21st August, 2006 again considered the matter in its meeting dated 5th September, 2006 and passed an interim order to the effect that in the academic year 2003-04 the college shall charge the same fee, which was being taken earlier. Subsequently the Committee finally decided the matter on 19th December, 2006. The college also made a prayer before the Committee that the fee which has been finalised for the year 2003-04 be also applied for the year 2002-03. The said prayer was specifically rejected by the Committee. The Committee finalised the fee for the year 2003-04 as Rs. 2,97,000/-, however, while finally deciding the matter the Committee vacated the interim order dated 5th September, 2006.

46. The submission of learned Counsel for the appellants that since the figures of 2002-03 were taken into consideration by the Committee for considering the fee structure of the year 2003-04, the fee realised by the appellants for the year 2002-03 stood tacitly approved, cannot be accepted. The Committee had already taken a decision that it shall not consider the fee structure of the year 2002-03, hence the said fixation of fee for the year 2003-04 could not be applied for the year 2002-03.

47. In above context, it is relevant to note that Committee has been constituted in accordance with the judgment in Islamic Academy's case (supra) decided on

14th August, 2003 and the judgment of the Apex Court contemplated that the colleges have to submit their fee structure well in advance. The Apex Court observed following in paragraph 7 of the judgment, "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.". The above judgment of the Apex Court cannot be read to mean that the Committee constituted in pursuance of the judgment in Islamic Academy's case was also to consider the fee structure of the year 2002-03. Thus the submission of learned Counsel for the appellants that Committee shall be treated to have tacitly approved the fee structure of 2002-03 cannot be accepted. The proceedings dated 19th December, 2006 clearly lays down that the Committee is not considering or approving the fee structure for the year 2002-03.

48. A Division Bench of Madhya Pradesh High Court had occasion to consider the similar issue in the case of Ku. Priyanka and Others Vs. State of M.P. and Others, Before the Madhya Pradesh High Court writ petitions were filed by the students admitted to free seats in M.B.B.S. course in private medical college during the academic year 2003-04. They were admitted on the basis of common entrance examination. The Government of Madhya Pradesh issued order dated 3rd July, 2003 fixing the fee for free seat, payment seat and NRI seat in private medical and dental colleges. Rs. 38,500/- was fixed for free seat, Rs. 1,65,00/- was fixed for payment seat and \$12,000/- was fixed for NRI seat. The students were allocated seat in private medical colleges. The management of the private medical college on the other hand claimed that they were entitled to fix the fee for students admitted to their college as per the law declared by the Apex Court in T.M.A. Pai's case (supra). The dispute arose regarding the fees payable by the students in free seat in private medical colleges. Considering the above controversy, following was laid down by the Division Bench of Madhya Pradesh High Court in paragraphs 19, 21, 22 and 23:

19. As we have already discussed, the Supreme Court held in T.M.A. Pai Foundation (supra), that a private unaided educational institution must have the right to fix the scale of fee that it can charge from the students, but the Supreme Court also made it clear that this right of a private unaided educational institution was not absolute and the Government could make regulation or devise appropriate machinery to ensure that no capitation fee was charged and that the management of the institution did not indulge in profiteering. Thus, the judgment

of the Supreme Court in T.M.A. Pai Foundation (supra), could be given effect to, only after the Government made a regulation or devised appropriate machinery to ensure that the fee proposed to be charged by a private unaided educational institution was rational and there was no charging of capitation fees and no profiteering. In Madhya Pradesh, the State Government neither made any regulation nor devised an appropriate machinery for ensuring that the fee proposed to be charged by a private unaided educational institution was rational and there was no charging of capitation fees or profiteering."

21. Pursuant to the directions in the order dated 14-8-2003 of the Supreme Court in Islamic Academy of Education (supra), the State Government constituted Fees Fixation Committee headed by Justice Shacheendra Dwivedi (retired). Since this Committee was constituted after the academic year 2003-2004 had already commenced, it had no jurisdiction to decide the fee payable by the students admitted in the MBBS and BDS courses in the private Medical and Dental Colleges in the State of Madhya Pradesh in the academic year 2003-2004 because students seeking admission must know before admission to a course, the fees they will have to pay for the course and cannot be asked in the middle of the course to pay a higher fee which they cannot afford. The Fees Fixation Committee itself in its final order dated 9-3-2005, has taken the view that it had jurisdiction to fix the fees for the academic years 2004-2005, 2005-2006 and 2006-2007 and had no jurisdiction to fix the fees for the academic year 2003-2004. Relevant extracts from the final order dated 9-3-2005 of the Fees Fixation Committee are quoted hereinbelow:

The fee structure for the year 2003-2004 was in fact to be decided by the State Government. However, the State Government had also not at all placed on record any decision taken otherwise by it. In view of the above, it would be clear that this Committee was constituted under the directions of Hon"ble Supreme Court for a specific purpose that the Committee shall decide the fee structure for medical and technical institutions for 3 years, i.e., 2004-05 to 2006-07. As such, the Committee was not bound to decide or apply its fees fixation order to academic year 2003-04. It would also be clear that for considering the fees of educational year 2003-04, this Committee was not even in existence at that time.

In view of the above, it would be clear that this Committee was constituted under the directions of Hon"ble Supreme Court for a specific purpose that the Committee shall decide the fee structure for medical and technical institutions for 3 years, i.e., 2004-05 to 2006-07. As such, the Committee was not bound to decide or apply its fees fixation order to academic year 2003-04. It would also be clear that for considering the fees of educational year 2003-04, this Committee was not even in existence at that time.

The Committee had no jurisdiction under the order of Hon"ble Supreme Court for fixing the differential fees for academic year 2003-2004. In fact, the Committee had come into existence only when that academic years was nearing completion.

22. Much after the completion of academic year 2003-2004, the Supreme Court delivered the judgment in P.A. Inamdar (supra), on 12-8-2005, and observed in Paragraph 154 at Page 609 as reported in SCC that the law laid down by the Supreme Court shall be given effect to from the academic year commencing next after the pronouncement of the judgment. Hence the judgment of P.A. Inamdar (supra), will not strictly apply to the fixation of fee for the academic year 2003-2004. Nonetheless in Paragraphs 139 and 140 of the judgment of P.A. Inamdar as reported in SCC, R.C. Lahoti, the then CJ., reiterated the law declared in T.M.A. Pai Foundation (supra), that every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no charging of capitation fee directly or indirectly or in any form and also observed that it is permissible to regulate the fee structure for ensuring that there is no profiteering and no charging of capitation fee. The relevant portion of Paragraph 140 of the judgment of R.C. Lahoti, CJ, in P.A. Inamdar (supra), is quoted hereinbelow:

The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

23. From the aforesaid analysis, it will be clear that even after the judgment of the Supreme Court was delivered in T.M.A. Pai Foundation (supra), on 31-10-2002, no regulation had been framed by the State Government of Madhya Pradesh nor any machinery devised to determine whether the fee proposed by a private Medical/Dental College in the State of Madhya Pradesh was rational and did not amount to profiteering or charging of capitation fee and in absence of such regulation made by the State Government or machinery devised to determine whether the fee proposed by a private Medical/Dental College in the State of Madhya Pradesh for MBBS/BDS courses was rational and did not amount to profiteering or charging of capitation fee, the judgment of the Supreme Court in T.M.A. Pai Foundation (supra), could not be given effect to during the academic year 2003-2004, and the fees payable by the students had to be determined in accordance with the scheme in Unni Krishnan (supra), which was in force for almost a decade.

49. The Division Bench of the Madhya Pradesh High Court approved the Government order issued by the State of Madhya Pradesh on 3rd July, 2003 fixing fee for merit seat and payment seats since no machinery by that time was evolved as laid down by the Apex Court in T.M.A. Pai's case (supra). The said judgment of the Madhya Pradesh High Court fully supports the contentions raised

by the counsel for the respondents in the present case.

50. It is also relevant to refer to the Division Bench judgment of this Court dated 28th May, 2009 in Special Appeal No. 664 of 2008 (Parents Association for Welfare of Students v. ERA's Lucknow Medical College and Hospital and Ors.) and Special Appeal No. 589 of 2008 (ERA's Lucknow Medical College and Hospitals v. Parents Association for Welfare of Students and Ors.. Writ Petition No. 6100 (M/S) of 2007 Parent Association for Welfare of Students v. ERA's Lucknow Medical College and Hospitals and Ors. was filed challenging the Government order dated 24th August, 2007 by which fee for medical college was determined as Rs. 2.96 lacs per student for the year 2003-04. The Division Bench took the view that Sarin Committee did not err in considering the fee structure for the year 2003-04 and the State Government in passing the order fixing the fee of Rs. 2.96 lacs for the year 2003-04. The Division Bench also noticed that earlier decision of the Committee dated 14th February, 2006 refusing to consider the fee for the year 2003-04 was quashed and it was commanded to consider the issue again. Thus the aforesaid Division Bench judgment is relevant for the fee fixation for the students admitted in academic year 2003-04 and has no bearing with the issues raised in the present appeals.

51. For the submission raised by the appellants' counsel that since the Government of India, Ministry of Health and Family Welfare by order dated 13th March, 2003 granted permission to admit 100 students in the academic year 2002-03, the brochure issued in March, 2002 as well as the Government order dated 8th January, 2003 are not applicable, suffice it to say that the name of the appellants' college was included in the brochure issued for Combined Pre Medical Test to be held on 30th June, 2002. The appellants' institution was an approved institutions and earlier two batches of 100 students were already running in the college. The institution was included and the mere fact that formal approval for the third batch could be granted on 13th March, 2003 cannot be made basis for contending that the college is not covered for admission for the academic 2002-03. Admittedly the students who qualified in the Combined Pre Medical Test on 30th June, 2002, appeared for counselling and on that basis admissions have undertaken. Thus on this ground the appellants cannot claim that they are not covered by the brochure and the Government order dated 8th January, 2003. It is also relevant to note that the State Government issued a Government order dated 15th July, 2003, which Government order was issued to implement the judgment of the Apex Court in T.M.A. Pai's case (supra). The Government order provided that from the academic sessions 2003-04 the scheme for admission in free/merit seat and payment seat is discontinued. It provided that in private medical colleges in the State of U.P. 75% seat be filled by Combined Pre Medical Test and 25% seat by the management which shall be on the basis of a transparent admission procedure adopted by the management. The Government order further provided in paragraph 5 that for the students who were admitted prior to academic year 2003-04, the earlier arrangements shall continue and their payment shall be made according to old fee for free/payment seat. It is

relevant to refer to paragraph 5 of the said Government order dated 15.7.2003, which is to the following effect:

5. mDr fu/kkZfjr@ijkef?kZr "kqYd mu Nk=ksa ls fy;k tk;sxk tks f?k{k.k l= 2003&04 esa izos?k ysaxsA f?k{k.k l= 2003&04 ls iwoZ ds Nk=ksa ij iqjkuh O;oLFkk ykxw jgsxh vFkkZr ftu Nk=ksa us f?k{k.k l= 2002&03 esa ;k mlls iwoZ futh esfMdy@MsUVy dkystksa esa izos?k fy;k Fkk mu ij iqjkuh Qh@ises.V lhV dh O;oLFkk tSlh Hkh gks vkxs Hkh ykxw jgsxhA

52. On the basis of the Government order dated 15th July, 2003, the State Government had issued another Government order on 14th August, 2003. The Government order dated 15th July, 2003 insofar as it provided that for the students admitted prior to sessions 2003-04 the old payment scheme shall continue, still holds good and has neither been set-aside nor under challenge before us.

53. It is to be noted that the appellants had not challenged the Government orders dated 8th January, 2003 and 15th July, 2003 at any stage on any ground. Their submission that in view of the judgment of the Apex Court in T.M.A. Pai's case dated 31.10.2002, the Government orders dated 8.1.2003 and 15.7.2002 shall be treated to have automatically set-aside cannot be accepted for the reasons indicated above. It is further to be noted that the fee claimed by the appellants for the year 2002-03 was never submitted for consideration of the State Government. The appellant has not even brought on record the decision taken by it for fixing the fee of 2002-03. Furthermore, fixation of fee both for payment seat and free seat for the year 2002-03 by the appellant itself indicated that earlier prevailing system was continued and in the fee fixation for 2002-03 the appellants themselves have not followed the T.M.A. Pai's case. The Government orders dated 8th January, 2003 and 15th July, 2003 were admittedly issued after the judgment in T.M.A. Pai's and the State Government shall be presumed to have been aware of the judgment of the Apex Court. No mechanism to implement the judgment having been invented or prescribed by that time, the Government order fixing the fee structure after receipt of a report by the Vice Chancellor of the University shall be deemed to have taken into consideration the relevant criteria of non profiteering and capitation.

54. In view of the foregoing discussions, the submission of the appellants that the fee indicated in the brochure and the fee as indicated in the Government order dated 8th January, 2003 have no application on the appellants' college cannot be accepted. The fee, as claimed by the appellants' college having not received any scrutiny by the State or any competent committee and the Government order dated 8th January, 2003, which revised the fee earlier fixed, having held the field, we do not find any error in the judgment of learned Single Judge.

55. The submission of Sri S.P. Gupta is that Government order dated 8th January, 2003 was issued in pursuance of the impugned order passed in T.M.A.

Pai's case (supra) and the interim order having merged in the final judgment, the said order could not continue. Reliance has been placed by Sri Gupta on the judgment of the Apex Court in the case of Jaipur Municipal Corporation Vs. C.L. Mishra, where the Apex Court has held that once a contempt petition was dismissed as withdrawn, the earlier order passed in the said petition whereby one month's time was given to comply with the order, ceased to be operative as all interim orders passed in a case ultimately get merged with the final order. There cannot be any dispute to the above proposition. The present is a case of fee structure to be applicable for an academic course. The judgment in T.M.A. Pai's case (supra) cannot be interpreted to mean that all fee structure existing and current on the relevant date came to be abolished. The fixation of fee structure were governed by regulations and statutes and the Apex Court in Islamic Academy's case (supra) has laid down following, "As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has 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.". Thus the automatic consequence of the judgment in T.M.A. Pai's case (supra) was not to abolish all the fee structure existing. Till the fee structure passes through the regulatory mechanism as contemplated in T.M.A. Pai's case (supra) and Islamic Academy's case (supra), the management cannot claim that they are entitled to charge fee as fixed by them. Although the above observation was made in Islamic Academy's case (supra) but even in T.M.A. Pai's case in the opinion given by S.N. Variava, J. concurring with the opinion of B.N. Kripal, CJ. with regard to fee structure following was laid down in paragraph 393, "... We clarify that the concerned authorities will always be entitled to prevent by enactment or by regulations the charging of exorbitant fees or capitation fees. There are many such enactments already in force. We have not gone with the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this judgment... ..".

56. Thus fee structure as prevalent on the date when judgment in T.M.A. Pai's case was given, i.e., 31st October, 2002, shall not be automatically wiped out till the fee structure passes through the regulatory mechanism, hence the submission of the appellants' counsel that the fee fixed by the Government order dated 8th January, 2003 became non-est cannot be accepted.

57. Now comes the last submission of learned Counsel for the appellants that writ petitioners having made the payment of fee as required by the college and their guardians having submitted undertaking affidavits at the time of admission, they are estopped from challenging the fee fixed by the college. Reference to the advertisement issued by the Director General, Medical Education and Health dated 10th April, 2003 is also made.

58. The students, who were allotted the appellants' college on counselling held on 15th April, 2003, had deposited the fee on 25th April, 2003 as claimed by the institution both for free/merit seat and payment seat. The case of the respondent-students is that they having allocated seats, they had no choice since non payment of fees, as claimed by the college, would have resulted in denial of admission to the students. The students have stated that before the fee for the second year on the same rate could be realised, they filed the writ petition challenging the entitlement of the college to realise the fees as fixed by it. The question as to what fee the students were liable to pay, is a question which was dependent on the consequence of the judgment of the Apex Court. As noted above, it was dependent on interpretation of the judgment of the Apex Court and the power of the State Government to regulate the fee structure. It cannot be said that principles of estoppel may apply merely because writ petitioners made payment to secure their admission. Much emphasis has been laid on the undertaking bond executed by the parents of the students. Copy of one of the undertaking affidavit has been filed as Annexure-1 to the stay application filed in Special Appeal No. 1212 of 2009. The appellants have stated that the said affidavits were mechanically obtained from all the students taking admission on the same date, i.e. 25th April, 2003. A printed proforma of the affidavit was prepared by the college in which name of the students and their other details were filled up and students and their guardians were asked to swear such affidavit.

59. Similar question came for consideration before the Kerala High Court in the case of Sandeep Vs. State of Kerala, In the said case the students of medicine were admitted in self-financing medical college in the academic year 2003-04. After completing first year they entered into second year when the demand was raised from private self financing college to pay the amount of Rs. 1,13,000/- as fixed by the Committee for the academic year 2004-05. The students have also executed the bond promising to adhere to the fixation of fee. It was contended before the Kerala High Court that petitioners could not have wriggled out from their bond. Repelling the said submission, following was laid down by the Division Bench of Kerala High Court in paragraph 9 of the judgment:

9. At the outset, we hold that the argument relating to the bonds executed by the students cannot have any relevance as the matter has to be adjudicated not in the context of contractual obligations but only in the context of statutory enactments as interpreted by Courts. What is discernible from the statutory enactments as interpreted by the Apex Court in various judgments including the latest Islamic Foundation case is that private professional colleges cannot charge capitation fee as education is not a business and that a rational fee structure should be adopted by the management which would not be entitled to charge capitation fee and that appropriate machinery can be devised by the State of University to ensure that no capitation fee is charged and that there is no profiteering though a reasonable surplus for the furtherance of the education is permissible. As the self-financing professional colleges and the Government were

making their own interpretations of the legal principles enunciated in T.M.A. Pai Foundation case, specific guidelines were issued by the Supreme Court in Islamic Foundation case directing the appointment of two separate committees, one, to go into the fees structure and another, for holding entrance examination. Keeping in tune with the above directions by the Supreme Court, the fees was collected by the respondents/private self-financing medical colleges at the Government rates for the year 2003-04 for Government quota students. In fact, the State Government has issued G.O. Ms. No. 194 dated 12-9-2003 on the same lines and also issued a clarification in G.O. Rt. No. 7 dated 9-1-2004 that while the fees to be payable by the students of merit quota in self-financing private medical colleges is akin to that of students admitted in Government Medical Colleges, the same is applicable only for the year 2003-04, but, for the subsequent years, the fees as approved by the committee appointed pursuant to the Islamic Foundation case is payable.

60. Emphasis has also been laid by the learned Counsel for the appellants on the advertisement issued by the Director of Medical Education on 10th April, 2003. The advertisement issued by the Director, Medical Education at best can be read to mean that the students were advised to obtain the detail of other fee etc. from private college of their own. As noticed above, the Government order dated 8th January, 2003 and 15th July, 2003 provided that apart from tuition fee, details of other fee be enquired from the college. Thus the said advertisement published on 10th April, 2003 cannot be read to mean that the fee fixed by the State Government as tuition fee was not payable by the students. The writ petitioners having, after their admission in first year, filed the writ petition when the fee for the second year was demanded in which there being no interim order granted they continued to pay the fee perforce, the claim of the writ petitioners cannot be shut out on the principles of estoppel.

61. In view of the facts and circumstances of the case and observations, as made above regarding fee of 2002-03, the plea of the college that students are estopped from challenging the fee, cannot be accepted. Learned Counsel for the appellants has relied on a judgment of the Apex Court in the case of Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, In the said case in four years B. Tech. Engineering course started in the year 1995, the appellant's University had reserved 10% seats for non-resident Indians. As per the prospectus such students were required to make a deposit of US \$5000/- at the time of their admission towards "development charges" and to pay in addition a fee of Rs. 20,000/- per semester whereas all the other categories of students were required to pay a uniform fee of Rs. 20,000/- per semester. From the academic year 1996-97 the University increased the fee for non-resident Indians to US \$4000/- per annum. This practice was continued for three admission years i.e. 1996-97, 1997-98 and 1998-99 but from the year 1999-2000 the provisions made in the year 1995-96 i.e. confining the payment of fee to a one time payment of US \$5000/- and Rs. 20,000/- per semester were restored. The students who were admitted to the course in the year 1997-98 and

1998-99 filed a representation claiming that they are entitled to claim parity vis-a-vis the fee structure for NRI students as from the year 1999-2000 which was turned down. They filed two writ petitions, which were allowed. One of the questions framed was as to whether the students were estopped from challenging the impugned action. The Apex Court while considering the said issue, laid down following in paragraphs 11, 18 and 19 of the said judgment:

11. At the very outset, it must be observed that the dispute pertains only to two years and as of today there appears to be no difficulty, as the fee structure is now devised by committees set up under the orders of the Supreme Court in the aftermath of the judgment in T.M.A. Pai's case (supra). We are also of the opinion that the matter relating to the fixation of a fee is a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision. The Supreme Court has laid down several broad principles with regard to the fixation of fees and as of today, those principles are being adopted by the committees set up for the purpose.

18. It bears repetition that the University had set up the self-financing B. Tech. Course in the year 1995 and no grant in aid was available during this period or later and it had to make arrangements for its own funds. We have also examined the budget estimates, receipts and expenditure from the year 1996-97 to 1999-2000. We do find that there is a surplus in the hands of institution but in the facts that a new course was being initiated which would require huge investments, the surplus was not unconscionable so as to require interference. Moreover, the University had made its budget estimates keeping in view the proposed receipts and if the fee levied by it and accepted by the students was permitted to be cut down mid term on the premise that the University had not been able to explain each and every item to justify the levy, it would perhaps be impossible for it to function effectively.

18. We are also of the opinion that it would be well nigh impossible for an educational institution to have an effective administration and to maintain high educational standards, if a downward revision during the pendency of a course would be automatically made applicable to students admitted earlier under a different fee structure. A periodic revision is also visualized in the directions of the Supreme Court in Islamic Academy's case (supra) wherein it has been provided that the fee structure fixed by a committee headed by a retired Judge would be operable for 3 years.

62. The case before the Apex Court was a case of downward revision during pendency of a course and the Apex Court laid down that if a downward revision during pendency of a course would be automatically made applicable to students admitted earlier under a different fee structure, it shall be impossible to have effective administration and to maintain high educational standards. The Apex Court further held that a periodic revision is also visualised in the directions of the Apex Court in Islamic Academy's case. The argument of estoppel was

accepted in that case. The above case was a case where the students were admitted in a particular fee structure which got subsequently revised downward for different batch. The above case is clearly distinguishable where there was no issue of fixation of fee of relevant year when students were admitted. Since in that the students were claiming benefit of downward revision with regard to subsequent batches, they were estopped to challenge the same.

63. None of the submissions raised by the learned Counsel for the appellants are acceptable.

64. Both the special appeals are dismissed. Parties shall bear their own costs.