(2014) 03 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6420 of 2011 (O and M)

Sukhmani Kaur Brar and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14 142 19
Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 — Section 7

Citation : (2014) 2 SCT 439

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : G.K. Chatrath, Ms. Anu Chatrath and Mr. Rakesh Sobti, for the Appellant; Gautam Pathania, Advocate for Mr. Anupam Gupta, Advocate for Respondent No. 3/BFUHS in CWP-6420-2011 and CWP-7140-2012, Mr. B.B.S. Sobti, S.S. Saini, Advocates for Respondent No. 4/DMCH, Mr. Ashok Aggarwal, Advocate General Punjab and Mr. H.S. Sidhu, Additional Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The dispute pertains to the admission of foreign Indian students (NRIs) at the Baba Farid University of Health Sciences, Faridkot. These five petitions raise identical questions of law. Hence, we propose to dispose them of by this common judgment.

2. The prospectus in question for the Post-Graduate Entrance Test (PGET-2011) was issued by the University which, inter alia, provided for 15 per cent NRI seats. The relevant clause of the prospectus is as under:

37. In private Colleges NRI Seats shall be 15% of the total seats in order of preference as under:-

Category I: NRIs who originally belonged to the State of Punjab

Category II: NRIs who originally belonged to an Indian state other than Punjab.

CWP-6420-2011, etc.

(a) If sufficient number of candidates under first category are eligible and available then they will be admitted first even if students under subsequent category are higher in merit.

b) The NRI students will have to give a bank guarantee/surety bond for the balance of fee, if they opt to pay the fee in installments on annual basis proportionately.

(c) Any seats remaining vacant under NRI/Sports quota two days before to the last date of admission in State Colleges shall go to general pool and in the Private colleges shall go to the special management/minority quota.

(d) It will be obligatory on the part of University to provide registration number to all candidates once duly admitted.

(e) Merit should be the priority for NRI seats too and the counseling for NRI seats should not be more than twice in a session.

(f) Any misrepresentation, false information, fake documentation and impersonation for securing admission shall be punishable under the relevant provisions of Indian Penal Code along-with cancellation of admission.

3. It is the case of the petitioners, who fall under this category, that an unrealistic high fee has been provided for NRI candidates as a ruse to discourage the genuine NRI candidates so that the seats are shifted to the Special Management Quota as a method of capitation fee recovery.

4. The fee for the NRI students in terms of a notification dated 21.1.2011 was sought to be raised from $ 55,000/- to $ 1,25,000/- for the full course for 2011-12. This is stated to amount to jump from approximately Rs. 33 lacs to Rs. 75 lacs taking into account the prevalent exchange rate of dollar. In the prospectus, in Clause 26(a), it has been provided that the fee for NRI candidates and the leftover seats of NRI candidates, which go to the Special Management Category, will be the same. This is stated to be the objective, it is alleged, as to put the fee of genuine NRI candidates so high that the seats are left over and then carried to the Special Management Quota where the Management can recover the same fee which they would have recovered from NRI candidates by admitting non-meritorious candidates on account of this high capitation fee.

5. The case set up by the petitioners, as canvassed by learned senior counsel, was that what was sought to be done by the respondents was contrary to the clear mandate of the Hon''ble Supreme Court in various judicial pronouncements through which he took us in extenso. In order to appreciate as to what principles would apply in matters of fixation of fee, it is necessary to deal with these judgments.

6. The first of these is Islamic Academy of Education and Another Vs. State of Karnataka and Others, . It is the say of the petitioners that this judgment played a fundamental role in matters of fixation of fee, as relevant principle was laid down therein. A committee was, thus, required to be set up to give effect to the judgment in Justice K.P. Mohapatra Vs. Sri Ram Chandra Nayak and Others, by each State headed by a retired High Court Judge, to be nominated by the Chief Justice of that State. This was in the context of observations that there could be no fixing of the proposed fee structure by the Government and each institute must have the freedom to fix its own fee structure taking into consideration the need to generate the funds to run the institution and to provide facilities necessary for benefits of the students. The other members to be nominated by the Judge were also specified - Chartered Accountant of repute; representative of the Medical Council of India or All India Council for Technical Education, depending on the type of the institution; Secretary of the State Government in-charge of medical education or technical education and an independent person of repute. The total number of members of the Committee was not to exceed five. Each educational institution was to place before this Committee its proposed fee structure well in advance along with the relevant documents and books of account. The Committee had to thereafter opine whether the fee proposed by the institute was justified and was not profiteering or charging capitation fee. The fee so fixed by the Committee was to remain binding for a period of three years at the end of which the institute was at liberty to apply for revision and the institute was prohibited from charging fee contrary to the mandate of the Committee.

7. While observing so, as aforesaid, the other material aspects observed, which are also germane for the controversy in the present case, were observations to the effect that the Government/appropriate authority should consider framing appropriate regulations, if not already framed, whereunder, if it is found that an institution is charging capitation fee of profiteering, the institution can be appropriately penalized or made to face the prospects of losing its recognition/ affiliation.

8. In the elaborate discussion in Islamic Academy of Education and another case (supra), the aspect of fee structure has also been discussed in extenso. It would be useful to reproduce some of the relevant paragraphs as under:-

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 para 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.

156. While this Court has not laid down any fixed guidelines as regard fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

157. The institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course.

158. Profiteering has been defined in Black''s Law Dictionary, Fifth edition as:

Taking advantage of unusual or exceptional circumstances to make excessive profits;

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.

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

On the aspect of constitution of Committee, it was observed as under:-

187. There cannot, however, be any gainsaying that the appropriate statutory authority on a deeper consideration of the matter may prescribe a suitable method for the purpose of determining the merit as also the fair and transparent manner in which such examinations can be conducted. Such a power exists under the UGC Act, the MCI Act and the AICTE Act. The relevant enactments wherein these statutory authorities have been created provide for such law. However, assuming such a machinery is not evolved, the State may constitute a body which may be headed by a person who has been a Judge of a High Court to be nominated by the Chief Justice thereof. Standard of education at no cost shall

be given a go by.

9. In the context of the aforesaid judgment, the plea of the petitioners is that the various parameters set out in para-155 aforesaid have to be factored in by the Committee in the matter of fee fixation. The mandate of the Hon''ble Supreme Court was binding in view of Article 142 of the Constitution of India.

10. It may be relevant to add herein that the State of Punjab enacted ''The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (hereinafter after referred to as ''the 2006 Act''). The validity of this Act has been dealt with in extenso and upheld in a Full Bench judgment of this Court in Navdeep Kaur Gill and Others Vs. State of Punjab and Others . The plea of learned senior counsel for the petitioners is predicated on the absence of any provisions qua composition of the Committee in that statute and, thus, in that context, it was canvassed that the directions contained in Islamic Academy of Education and another case (supra) would continue to apply and, thus, a Committee formed incongruous to the observations made therein would be per se invalid. Thus, the reference to "Committee" in Section 7 of the 2006 Act is sought to be propounded as a reference to the Committee as was composed in terms of directions in Islamic Academy of Education and another case (supra).

11. The next judgment, which is required to be examined, is in P.A. Inamdar and Others Vs. State of Maharashtra and Others, . The aspect of NRI seats has been dealt with in para-131 as under:-

NRI seats

131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians (''NRI'', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term ''NRI'' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the

management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate.

It has, however, been clarified in para-141 that though every institution would be free to devise its own fee structure, but the same can be regulated in the interest of preventing profiteering and no capitation fee can be charged. The absence of legislation was noticed in para-155 as under:-

155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. Such a legislation is long awaited. The States must act towards this direction. The judicial wing of the State is called upon to act when the other two wings, the Legislature and the Executive, do not act. The earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint a competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction.

12. The emphasis of the learned senior counsel for the petitioners has been on the observations relating to the appointment of a competent authority which is in consonance with the observations made in the judgment.

13. Learned senior counsel for the petitioners emphasised that the Hon''ble Supreme Court has noticed the trend of unequivocal practices in Rohilkhand Medical College and Hospital, Bareilly Vs. Medical Council of India and Another, wherein it is observed in para-24 as under:-

24. We may notice with concern the unprecedented growth of the Technical and Medical Institutions in this country which has resulted in widespread prevalence of various unethical practices. Collection of large amount by way of capitation fee running into crores of rupees for MBBS and Post-Graduate seats, exorbitant fee, donation, etc. by many of such self financing institutions has kept the meritorious financially poor students away from those institutions. Pressure, it is also seen, is being extended by various institutions, for the additional intake of

students, not always for the benefit of the student community and thereby serve the community, but for their own betterment.

In the aforesaid context, the necessity of legislation was emphasised in para-42 by observing:

42. We, therefore, emphasise the extreme necessity of a Parliamentary Legislation for curbing these unfair practices, which is the demand of our society. "The Prohibition of Unfair Practices in Technical Educational Institution, Medical Educational Institutions and University Bill, 2010" has already been presented to both the Houses of parliament. It is reported that the States have welcomed such a legislation, but no further follow up action has been taken. We are confident, earnest efforts would be made to bring in proper legislation, so that unethical and unfair practices prevalent in higher technical and medical institutions can be effectively curbed in the larger public interest.

14. Now turning to the Act of 2006 and the aspect of fee fixation, Section 7, as originally notified on 27.3.2006, states as under:

7. (1) The State Government shall determine fee, to be charged by a private health sciences educational institution, located in the State, having regard to the following factors, namely:-

(a) the location of the institution;

(b) the nature of the curriculum;

(c) the cost of land and building;

(d) the available infrastructure and equipment;

(e) the expenditure incurred or being incurred on faculty, administration and maintenance;

(f) the reasonable profit, required for the growth and development of institution; and

(g) any other relevant factor, which the State Government deems just and appropriate for the determination of fee.

(2) Before determining fee under sub-section(1), the State Government shall give concerned private health sciences educational institutions and the representatives of the students already studying in such institutions and the representatives of the students, who intend to seek admission in those institutions, a reasonable opportunity to express their view points in writing with respect to the fee determination.

(3) Notwithstanding anything contained in sub-section(1) and (2), the State Government may in public interest, determine a provisional fee:

Provided that the State Government shall fix fee in accordance with the provisions of sub-section(1) and sub-section(2) within a period of ninety days from the fixation of such provisional fee.

The first amendment in the 2006 Act was effected vide ''The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making for Reservation) Amendment Ordinance, 2006'' and Section 7 was substituted in the following terms:-

7(1) The State Government shall determine or cause to be determined the fee to be charged by the private health sciences educational institutions, having regard to the minimum norms of infrastructure and facilities as laid down by the concerned Council.

(2) Notwithstanding anything contained in subsection (1), the State Government may, in public interest, determine a provisional fee:

Provided that the State Government shall determine fee in accordance with the provisions of sub-section(1) within a period of ninety days from the date of fixation of such provisional fee.

Thereafter, the Act of 2006 has undergone amendments twice, latest being amended up to 28th February, 2007, however, Section 7 has remained unchanged after the first amendment.

15. We may notice, at this stage, that the Full Bench in Navdeep Kaur Gill and others case (supra) has dealt with the aspect of Fee Fixation Committee constituted by the State of Punjab and the plea advanced is that the same must be in conformity with the judgment in Islamic Academy of Education and another case (supra) as reiterated in P.A. Inamdar and others case (supra).

16. On initial presentation of the respective cases by learned counsel for the parties, it transpires that there are really two aspects which require consideration by the Court, as set out in the order dated 31.7.2013. In that context, the following order was passed:

It emerges from the submissions of the learned counsel for the parties that there are really two aspects to be examined by us:-

i) The seats from the NRI quota remaining unfilled are sought to be transferred to Special Management Quota which permitted the Colleges to fill in these seats on payment of fee as paid by the NRIs. These, thus, effectively become capitation fee seats. It is the plea of the petitioners that deliberately the fee for the NRI category has been kept at high level so that NRI students are not able to join these seats and, thus, transferred to the Special Management Quota, which is then filled in from the local candidates on payment of similar fee. We may add that the candidates in the Special Management Quota have to take the competitive examination, though their selection is not based on merits;

Learned Additional Advocate General, Punjab has drawn our attention to the corrigendum issued on 9.6.2011 in terms whereof this Special Management

Quota has been withdrawn. However, the withdrawal is in compliance of the interim orders passed by this Court and not as a policy decision.

We, thus, call upon the State of Punjab to take a stand as to whether the seats are to continue with the Special Management Quota and test the validity of the same in the present proceedings or as per their decision making process for withdrawing this quota.

(ii) The second issue which arises for consideration is as to whether the fixation of fee for the NRI candidates is as per Section 7 of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006.

Learned Additional Advocate General, Punjab has prayed for and is granted ten days time to file an affidavit answering the first query and also annexing the material in support of the fee for NRI candidates being determined as per the parameters of Section 7 of the aforesaid Act. The records relating to such fee fixation be also kept available for perusal of this Court duly flagged and an officer of sufficient seniority, familiar with the record, should remain present to assist the Court.

17. On learned counsels for the parties advancing submissions, keeping in mind the aforesaid aspects, an order was passed on 25.10.2013 as under:-

Learned senior counsel for the petitioners has concluded his submissions. Two material aspects, which emerge from the submissions, are:-

(1) The composition of the Fee Regulation Committee has to be as per the judgments of the Supreme Court as no specific composition has been provided in the legislation.

(2) The parameters for fixation of fee have to be laid down in terms of the Supreme Court judgments which, in turn, require calling for the relevant material from the private institutions.

Learned counsel for the State Government would make submissions keeping in mind these two principal arguments and also produce the records to say as to what material did the Committee call for to determine the fee structure of the private colleges. Naturally, he would also have to justify as to how the Committee was composed.

18. The writ petitions have been strongly resisted by the State of Punjab and the Director, Research and Medical Education, Punjab, being respondents No. 1 and 2. The basic substratum of the plea is that the controversy qua all aspects of the 2006 Act has been put to rest in view of the judgment of the Full Bench in Navdeep Kaur Gill and others case (supra). It has, thus, been emphasised that the colleges have a right to fix fee and to make admissions as governed mainly under the Indian Medicine Central Council Act, 1970, but that the provisions of the 2006 Act are not in conflict with the same in any manner. The Full Bench

relied upon the judgments of the Supreme Court referred to aforesaid to emphasise that the term ''NRI'' in relation to admission is a misnomer where quota is given by charging a higher amount of fee.

19. In fact, often neither the students, who get admission under the said category, nor their parents are NRIs and the reality is that less meritorious students but who can afford to bring more money get admission. However, the money brought by such students enables the educational institutions to strengthen their level of education and enlarge their educational activities. It has also been emphasised that the 2006 Act was, in fact, so enacted in pursuance to the opinion expressed by the Supreme Court that such legislation was long awaited and the Committee formed by the Supreme Court for regulating admission procedure and fee structure was to continue to exist only as a temporary measure and an inevitable passing phase until suitable mechanism was devised and competent authority appointed in consonance with the observations made therein.

20. The Full Bench dealt in extenso with the issue of validity of the provisions of the 2006 Act in the context of the judgments of the Supreme Court. Qua the objection of students of colleges against quantum of revision of fee, it was observed that the same could not be accepted for the same reason as there was no need to interfere with the fee fixed by the Fee Fixation Committee. By its very concept, revision was called for and the Court could not substitute itself for the fee fixation authority in the absence of perversity or patent error. Thus, overall cost of the institution could not be ignored in determining the fee and objective was to check exploitation and commercialisation (Para-40). The Act has been held to be a valid regulatory measure and the judicial directions passed by the Supreme Court in the absence of any law would stand substituted by the secondary mechanism brought in force by the 2006 Act. Thus, an unaided educational institution could fix its own fee structure subject to the same being not exploitative.

21. The Full Bench has opined that fixing of fee equal to minimum needs of infrastructure cannot be held to be beyond the legislative power under Article 19 of the Constitution of India and the restriction can be held to be reasonable if the same is to advance directive principles and is not otherwise arbitrary or excessive - the balance, thus, is to be maintained.

22. In view of the aforesaid elaborate discussion by the Full Bench, the stand of the Government of Punjab is that it adopted a due procedure for fixation of fee under the 2006 Act as per Section 7 and a Committee was constituted under the chairmanship of the Chief Secretary, Punjab. The Committee is stated to have held its meeting on 21.10.2010 and heard the associations of the concerned institutions. This was followed by a Public Notice on 10.11.2010 inviting objections from prospective students and public, but no suggestions were received. The basis of factors, such as, revised pay scales of teaching faculty, increase in infrastructure costs, fee of PG course prevalent in neighbouring

States and fee structure of PG seats in private unaided colleges was rationalised providing for a fee of US Dollar 1,25,000/- for a period of three years. The revision had itself taken place after a gap of four years. The fee for NRI candidates for MBBS course was rationalised vide a notification dated 20.7.2010 at US Dollar one lac for five years.

23. It has also been clarified in the affidavit filed before us that no admissions have been made under Special Management Quota as per the report received from the respondent No. 3 as the State had issued the relevant clarificatory notification in pursuance to the order dated 25.5.2011 in CWP No. 5989 of 2011 i.e. NRI quota could be filled up only by genuine NRIs and if no NRI was available, the seats in the said quota could not be filled up by charging NRI fee.

24. In an affidavit affirmed on behalf of respondents No. 1 and 2 on 23.9.2013, it has been averred that there is no Special Management Quota seats in the notification for 2013 and no such admissions have been made since the year 2011. The leftover NRI seats are transferred to Management Quota and the relevant fee of Management Quota is charged. Insofar as the composition of the Committee is concerned, it is stated to be of the Chief Secretary; Secretary, Medical Education and Research, Punjab; Vice Chancellor of respondent No. 3-University and Director, Research and Medical Education, Punjab. One of the documents filed with this affidavit is a representation received from Shri Guru Ram Das, Charitable Hospital Trust, Sri Amritsar, dated 24.8.2010 complaining about the low fee structure for MD and MS Courses in private medical colleges of State of Punjab where a comparative chart has been given. It will be appropriate to reproduce the contents of the said letter:

With due respect I want to inform you that the fees structure for MD/MS courses in the private medical colleges of State of Punjab is very low in comparison to that of other states. Comparative statement of the fees structure of the other states is as detailed below:

Further, it is to bring to your kind notice that as per the Central Govt./MCI notification the institute of bound to pay heavy amount (i.e. Approx. 4 lac, per student per year) in the form of stipend equal to that of State Govt. whereas the present tuition fees is only Rs. 3 lacs per student per year.

It is to further clarify that with the present fee structure it is becoming impossible for the private unaided medical colleges to meet the expenses for imparting high standard of teaching and training to produce good quality of specialist doctors.

To engage highly qualified staff for better training of the specialist doctors, the medical colleges are compelled to employ the experienced doctors on payment of salary equivalent to sixth pay commission. These expenses could be met only from the Tuition fees of these MD/MS students.

Thus further to highlight that average expenditure on teaching & training of each

MD/MS student comes out to be Rs. 11 lacs per year.

Therefore you are requested for hike in MD/MS fee as per detail given below:

25. The other aspect emphasised by the said respondents is that there is no equity in favour of NRI candidates. These candidates took admissions and then raised the issue about the fee they had to pay. The admission of these candidates is not based on overall merit and in that behalf our attention has been invited to the judgment of Cochin University of Science and Technology and Another Vs. Thomas P. John and Others, where, in para-19, it was observed as under:

In the present case, we find that the NRI students took admission on certain specific conditions and the University has a right to insist that those conditions are observed. To our mind, therefore, it would not be open to the students to contend that notwithstanding that they had been admitted on a certain fee structure they were entitled to claim as a matter of right, a reduction in fee to bring them on par with students admitted later under a lower fee structure. The argument of estoppel in such a case would, thus, be available to an educational institution. The High Court was influenced by the fact that estoppel was a plea in equity and as the right of the NRI students under Article 14 appeared to have been violated, this plea was not available to the University. We do not agree with this submission for several reasons, firstly the NRI students have not been granted admission on their over all merit but on the basis of the 10% reservation in their favour and as such any claim based on equity would be suspect and secondly, each set of admissions made year wise cannot be said to overlap the admissions made earlier or later. We have also considered Mr. Rao''s submission that the fee had the trappings of a capitation fee. We find no merit in this assertion, as the fee is being levied year wise for the course....

26. In the rebuttal arguments, learned senior counsel for the petitioners once again emphasised that the constitution of Fee Fixation Committee was not in conformity with the mandate of the Hon''ble Supreme Court and ought to have been headed by a retired Judge, to be so appointed by the Chief Justice of this Court. The absence of any member of the MCI or a Chartered Accountant to check the books of account has been emphasised. It was vehemently contended that the management was not required to put forth their account-books, strength of teachers and pay scales but the fee has been fixed merely as proposed by the Management.

27. It has again been emphasised that in pursuance to the orders passed by this Court on 31.7.2013, there is lack of absolute clarification as the aspect of Special Management Quota was dealt with only in pursuance to interim orders passed by this Court.

28. Learned counsel sought to explain the rationale for providing NRI quota to be an endeavour of persons residing abroad to bring their children and wards to their own country to not only get education but also get reunited with the Indian

cultural ethos. It is further submitted that factors which weighed for fixation of fee in 2007 for NRIs cannot once again be re-examined and the revision of fee is to be based only on additional costs on salary of staff.

29. It has further been pointed out that students doing their MD/MS simultaneously work as Medical Officers for 12 hours a day and save salaries which would be paid to the Medical Officers required to be so appointed. The basic argument qua composition of Fee Fixation Committee remains, i.e., in the absence of any specific provisions under the 2006 Act, it has to be as opined in Islamic Academy of Education and another case (supra) reiterated in P.A. Inamdar and others case (supra). The principles, thus, to be kept in mind have been enumerated as arising from these judgments and set out in the reply dated 26.10.2013 as under:-

(i) Rational fee structure to be adopted without charging capitation fee and there being absence of profiteering;

(ii) Safeguard to be provided so that professional institutions do not become auction houses for purpose of selling seats;

(iii) The Committee can take into account salary and remuneration paid to Members of Faculty, investment made, infrastructure provided and future development varying from 6 to 15 per cent - based on account-books and additional expenditure, rise in salary and stipend minus services rendered by the students and medical officers;

(iv) Future plans for expansion and betterment of institution can be taken into account;

(v) The twin principles of education and charity and educational institutions cannot charge such fee as is not required for purposes of fulfilling costs plus reasonable surplus for expansion and growth of institution to be kept in mind;

(vi) Enhancement of fee cannot be claimed merely because other States are charging higher fee and there can be no precedent in this behalf.

30. We have examined the records and the submissions of learned counsels for the parties which have been set out in extenso aforesaid. The judgments actually referred to have been dealt with as the compilation consisted of many more judgments. We now proceed to pen down our opinion.

31. The fundamental strain of the argument advanced on behalf of the petitioners was predicated on a plea of an improper benefit to the institutions by converting the NRI seats into management quota seats and, thus, the objective being to discourage NRI candidates from seeking admission by imposing high fee facilitating enlargement of the management quota. It is in the aforesaid context that on 31.7.2013 this was emphasised as the first aspect advanced by learned senior counsel for the petitioners. It was, however, conceded that this aspect did not prevail for the time being at least, as the corrigendum issued on 9.6.2011

had withdrawn the Special Management Quota but, on that aspect, the plea of the petitioners was that the same was only in deference to interim orders passed by this Court and not as a policy decision.

32. The aforesaid appears to be an unnecessary apprehension especially in view of the subsequent affidavit affirmed by respondents No. 1 and 2 on 23.9.2013 where it has been averred that there is no Special Management Quota seats in the notification for 2013 and no such admissions have been made since the year 2011. The left over NRI seats are transferred to the management quota and the relevant fee of the management quota is charged. Thus, the plea that this mode is being used as a form of capitation fee does not hold good.

33. In order to put the controversy at rest, we clarify that this would be a procedure which would continue to be followed even for the future admissions so that there is no ambiguity in the matter.

34. We may also add here that the other controversy emanating from the plea of the respondents that NRI seats are occupied by persons of not great merit but, really speaking, by persons who can afford to pay the fee, also does not subsist as a complete procedure has been devised to verify that NRI quota can be filled only by genuine NRI candidates and it is not open to fill the seats in this quota by merely charging NRI fee. This is also in pursuance to the order of this Court dated 25/05/2011 in CWP No. 5989 of 2011 titled as Nehpreet vs. State of Punjab, etc. and other connected matters.

35. We, however, cannot lose sight that the management quota is de hors the normal merit. It is not as if these candidates have competed with other candidates to seek admission but a specific quota has been carved out separately, the circumstances of which have been explained in judicial pronouncements, referred to aforesaid. We are, thus, not able to accept the plea of learned counsel for the petitioners to raise the NRI quota to a higher pedestal for some larger social objective. The judgment in P.A. Inamdar and others case (supra), in para-131, deals in extenso with the NRI seats. While directing that such seats should be utilized bone fide for NRIs only and for their children or wards and that merit inter se them should be maintained, the money collected from the NRIs was opined to be appropriate to be utilised for benefiting students such as from economically weaker sections of society and for subsidizing the payment of their fee.

36. In the context of the fee fixation for NRI candidates, it has been elucidated in Cochin University of Science & Technology v. Thomas P. John case (supra) that where NRI students took admission on certain specific conditions, the University had a right to insist on those conditions to be observed. These students could not, thus, be permitted to contend that they are entitled to reduction in fee to bring them at par with students admitted under lower fee structure. The aspect that NRI students have not been granted admission on their overall merit but on the basis of 10% reservation in their favour and, thus, the claim based on equity

would be suspect, has been emphasised rejecting that such a fee would have trappings of capitation fee.

37. In our view, the aforesaid observations in the two judgments should put a quietus to the issue of the fixation of fee for NRI candidates.

38. The other aspect noticed in our order dated 31.7.2013 was the issue of fixation of fee for NRI candidates as per Section 7 of the 2006 Act. In this context, the subsequent order dated 25.10.2013 elucidated issues arising at the conclusion of the submissions of the learned counsel for the petitioners, i.e., (i) the composition of Fee Regulation Committee to be in conformity with the judgments of the Supreme Court as no specific composition has been provided in the legislation and (ii) the parameters for fixation of fee to be in terms laid down in the judgments of the Supreme Court.

39. In analysis of the aforesaid issue, we are faced with Full Bench judgment of this Court in Navdeep Kaur Gill and others vs. State of Punjab and others case (supra) holding the provisions of the 2006 Act including the right of the colleges to have their fee fixed. The circumstances under which the 2006 Act was enacted were elucidated in the said judgment - the expression of opinion by the Supreme Court itself that the legislation was long awaited and the Committee formed by the Supreme Court for regulating admission procedure and fee structure was to continue to exist only as a temporary measure and an inevitable passing phase until suitable mechanism was devised and the competent authority appointed in consonance with the observations made therein. No need was felt to interfere with the fee fixed by the Fee Fixation Committee after an elaborate discussion of the very judgment cited before us while clarifying that the judicial directions passed by the Supreme Court in the absence of any law would stand substituted by secondary mechanism brought in force by the 2006 Act. Thus, the unaided educational institutions were held competent to fix their own fee structure subject to the same being not exploitative.

40. It is in the context of the aforesaid Full Bench judgment that we find force in the contention advanced on behalf of the respondents that the constitution of the Committee under the chairmanship of the Chief Secretary, Punjab, cannot be faulted.

41. In view of the authoritative pronouncement of the Full Bench, it is really not permissible for the learned counsel for the petitioners to contend that the composition of the Committee could only have been in the same format as was the temporary arrangement envisaged by the Hon''ble Supreme Court, i.e., headed by a retired Judge with a Member of MCI or a Chartered Accountant to check books of account. We are, thus, unable to accept the contention of the learned counsel for the petitioners that the earlier composition of committee must continue because there is no specific composition mentioned in the 2006 Act.

42. The second limb of this aspect arises from the mode and manner in which

the fixation of the fee was done by the Committee. The plea of the petitioners, in this behalf, has been that the Management was required to put forth their account-books, strength of teachers and pay-scales, but the fee has been fixed merely as proposed by the Management. The principles to be kept in mind as elucidated before us have been extracted in para-29 aforesaid and there can be no real quibble over the principles numbering (i) to (vi). Simultaneously, it cannot be lost sight of that this Court is not to sit as a Court of appeal over the Committee which had apart from the Chief Secretary, the Secretary Medical Education and Research and the Vice Chancellor of the respondent No. 3-University as also the Director, Research and Medical Education, Punjab, as its Members. The Committee heard the association of the concerned institutions. It gave a public notice post that on 10.11.2010 inviting objections from prospective students and public, but no suggestions were received. The revised pay-scales of teaching faculty, increase in infrastructure cost, fee of PG courses prevalent in neighbouring States and fee structure of PG seats in private unaided colleges were the factors which were utilized to rationalise the fee at US $ 1,25,000/- for a period of three years. This revision has occurred after a gap of four years. The comparative fee structure prevalent in Punjab, Haryana, Manipal, Kohlapur, in fact, forms a part of a communication from one of the institutions which has been extracted in para-24 aforesaid. It was found impossible for private unaided medical colleges to meet the expenses qua imparting high standards of teaching and training to produce good quality of specialist doctors. It is not as if the data was not produced before the Committee but, on the other hand, it is a fee structure devised on the basis of material. The fact that the fee was fixed as proposed does not itself cast a doubt on the same.

43. We may also note that the petitioners are candidates who have taken the NRI quota seats knowing fully well the fee they are liable to pay. When the fee structure was being revised, no objections were filed, but now a lot of hue and cry is being raised over this issue.

44. We cannot lose sight of the principles enunciated in Islamic Academy of Education and another vs. State of Karnataka and others case (supra) and TMA Pai Foundation and others vs. State of Karnataka and others case (supra) where a balance was sought to be maintained between providing quality education and profiteering or charging of large capitation fee. No doubt, these professional institutions cannot be permitted to become auction houses for purpose of selling of seats but, simultaneously, these institutions are also required to provide quality education. It is not as if a free hand has been given to the private institutions to fix their fee as they please but a Committee has been appointed which would scrutinize the requirement of revision of fee based on certain well established parameters so that such profiteering is avoided. It, thus, hardly lies in the mouth of candidates such as the petitioners, who are claiming a special quota in NRI quota beyond prevailing merit, to contend that despite having taken admission on a known fee parameter, they are unwilling to pay the fee. We are, thus, of the view that no fault can be found with the fixation of the fee for NRI

candidates by the Committee and the petitions being meritless are dismissed, however, leaving the parties to bear their own costs. The interim orders wherever operating are accordingly vacated.

