

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : January 31, 2012*
Judgment Pronounced on: April 10, 2012

+ LPA 274/2011

PAWAN KUMAR & ORS. Appellants

Represented by: Mr. Akhil Sibal, Advocate with
Mr. Sanjay Dubey, Advocate and
Mr. Salim Inamdar, Advocate.

versus

GOVT. OF NCT DELHI & ORS. Respondents

Represented by: Mr. Rajiv Nanda, Advocate for R-1.
Ms. Jyoti Singh, Senior Advocate
instructed by Ms. Tinu Bajwa,
Advocate for R-3 & R-4.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. In the year 2007, Government of National Capital Territory of Delhi (respondent No.1) enacted the 'Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007' (hereinafter referred to as 'the Act'). The Preamble of the Act reads as under:-

"An Act to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically

backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto.”

2. Being relevant for the present decision, the applicable provisions of Section 6 of the Act may also be noted. They read as under:-

“6. (1) The Government, by notification in the Official Gazette, shall constitute a Fee Regulatory Committee, for determination of the fee for pursuing course in an institution, consisting of the following members, namely:-

.....

(2) The Fee Regulatory Committee shall adopt its own procedure for the conduct of its business:

Provided that the Fee Regulatory Committee shall give a reasonable opportunity of being heard to an institution before determining the fee to be fixed for a course of study of such institution and recommending the fee for such institution in each course of study, to the Government.

(3) The Government, after receipt of the recommendations under sub-section (2) and subject to its satisfaction, shall notify the fee determined by the Fee Regulatory Committee:

Provided that the Government may refer back the matter to the Fee Regulatory Committee along with its observations for re-consideration and during the intervening period, the institution shall charge the fee as determined by the Fee Regulatory Committee.

....

(13) The fee notified by the Government shall be valid for three years:

Provided that the Government may extend the validity of such fee for a further period as may be notified.”

(Emphasis Supplied)

3. In exercise of power conferred by Section 6(1) of the Act, vide notification dated 04.04.2008, the respondent No.1

constituted the 'State Fee Regulatory Committee' to fix the fee for courses in Educational Institutions.

4. The Army College of Medical Sciences, appellant No.4, (hereinafter referred to as 'ACMS') was established by Army Welfare Educational Society, appellant No.3, (hereinafter referred to as 'AWES') in Delhi, exclusively for the wards of serving/retired Army personnel including the wards of war widows of Army personnel. Guru Gobind Singh Indraprastha University (hereinafter referred to as 'GGSIP University') granted affiliation to ACMS. The first academic session of ACMS was to commence from 01.08.2008. On 14.08.2008 the respondent No.1 issued a notification whereby the Lt.Governor of Delhi granted permission to ACMS to allocate all the 100 seats in ACMS for the wards of serving/retired Army personnel including the wards of war widows of Army personnel. A prospectus was issued by ACMS for admission in the College pertaining to the academic session 2008-2009, the relevant portion whereof reads as under:-

"

36. Documents Required in Original (and a set of attested photocopy of each) at the Time of Counselling/Admission.

.....

(h) Willingness Certificate (Appendix 'A' of ACMS Prospectus).

.....

Fee And Other Charges

38. The details of fee and other charges are given below:-

	Details of Fee	Fee Per Annum (Amount in Rs.)
I	Non-Refundable Fee (i) College Tuition Fee & other instructional Support & Development Fee per year	1,70,000.00

	(ii) University Fee	10,000.00
II	Refundable (After 5 Years) Interest Fee Security Deposit	
	(i) College Security Deposit	1,00,000.00
	(ii) Hostel Security Deposit	10,000.00
	Total Fee Payable at the time of Admission	2,90,000.00

.....

41. Revision of Fee Structure and Hostel Charges:

The fee structure and hostel charges quoted above are approximate. The College reserves the right to change the fee structure without notice based on unforeseen increase in cost of conduct of MBBS Course.

.....

Appendix 'A'

(Refer to Para 36 (h) of prospectus)

WILLINGNESS CERTIFICATE

1. I Son/daughter of
..... declare that:-

.....

(h) I undertake and bind myself to pay such fees, charges etc, which ACMS may levy from time to time and in the event of failure on my part and/or on the part of my son/daughter in this regard, the Management of the ACMS may take such legal action as deemed fit."

(Emphasis Supplied)

5. Vide its letter dated 05.08.2008, the State Fee Regulatory Committee forwarded its 2nd report for regulating fee structure of privately managed institutions offering different courses in the National Capital Territory of Delhi to the respondent No.1, wherein it was recommended that a fee of ₹1,50,000/- per annum be charged from the students admitted in ACMS for the academic session 2008-09 and that the said fee structure may be reviewed by the State Fee Regulatory Committee in the next academic session. On 18.08.2008, the respondent No.1 issued a circular informing that the Chief Minister of Delhi, being the

competent authority for implementing fee structure in privately managed self-financed institutions affiliated to GGSIP University, has fixed fee in sum of ₹1,00,000/- per annum for ACMS for the academic sessions 2008-09 and 2009-10.

6. In the meantime, a number of writ petitions under Article 226 of the Constitution of India came to be filed in the Delhi High Court and were listed before a learned Single Judge of this Court, challenging the allocation of all the 100 seats in ACMS for the wards of Army personnel. Vide judgment dated 26.09.2008, the learned Single Judge decided the said batch of petitions. It was held by the learned Single Judge that 79 out of 100 seats in ACMS be reserved for the wards of Army personnel and war widows and that remaining 21 seats be filled from out of the general category candidates on the basis of their merit obtained at the Common Entrance Test - 2008. It would be apposite to note the following portion of the judgment of the learned Single Judge:-

“44. The submission of learned counsel for the ACMS is that the AWES is investing its regimental funds and the army is providing the facility of its Base Hospital. These contributions have been made by the AWES, the Government and the Army for the wards of defence personnel, and not for subsidizing medical education for the general category students. It being a welfare measure, the respondent institute is not charging fee like other private institutes from its students. In my view, the general category candidates, who may be granted admission to ACMS, are not entitled to any concessional fee that ACMS may recover from other candidates, who are wards of army/ex-army personnel and war widows. Such students should be required to pay the fee that may be fixed by ACMS/AWES in accordance with the provisions of the Delhi Act No.80 of 2007.”

(Emphasis Supplied)

7. The decision was challenged by way of an intra court appeal and vide judgment dated 25.02.2009, the Division Bench set aside the judgment dated 26.09.2008 of the learned Single Judge and held that the action of ACMS to reserve all the 100 seats in ACMS for the wards of the Army personnel is valid. However, the general category students admitted in ACMS pursuant to the orders passed by the learned Single Judge were allowed to continue their studies and complete the MBBS course. The aforesaid judgment of the Division Bench was challenged before the Supreme Court. Vide decision reported as Indian Medical Association v Union of India (2011) 7 SCC 179 it was held by the Supreme Court that ACMS cannot be permitted to reserve all 100 seats in ACMS for the wards of army personnel.

8. On 30.12.2008, ACMS wrote a letter to the Chairman of the State Fee Regulatory Committee regarding the revision of the fee structure of ACMS, the relevant portion whereof reads as under:-

“REVISION OF FEE STRUCTURE: ARMY COLLEGE OF MEDICAL SCIENCES

1. Reference Govt of NCT of Delhi letter No.DHE-4(45)/2007-08/1692 dated 18 Aug 2008 (copy attached) on the fee structure for Army College of Medical Sciences, Delhi Cantt. vide which the tuition fee for Army College of Medical Sciences has been fixed for Rs.1,00,000/- per candidate per annum plus other charges as per norms of GGSIP University which is applicable for next two years.

2. There is an urgency to reconsider this decision of the Tuition Fee for the very survival of the Army College of Medical Sciences due to the following reasons:

(a) The actual tuition fees works out to **Rs.4.73 lakhs per student per year** while the fee committee has been fixed **Rs 1 lakhs per student per year** for next two years.

....

(c) On the directions of Hon'ble High Court of Delhi, 23 civil candidates have been admitted for which the shortfall of fees cannot be met from army welfare funds of army personnel. The judgment of the Hon'ble High Court of Delhi too supports this approach of charging non-subsidized fee to civilian candidates.

....

3. In light of above and in order to make this medical college financially viable, self sustainable and prevent it from closure, it is humbly requested that the proposed fee of Rs.4.73 lakhs and Rs.2.75 lakhs to be charged annually respectively from each 23 civilian student and from the wards of army personnel including ex-servicemen and war widows of army be approved.

....”

9. On the very next day i.e. 01.01.2009, AWES wrote a letter to the Secretary Higher Education, Directorate of Higher Education, Government of NCT of Delhi regarding the revision of the fee structure at ACMS, the relevant portion whereof reads as under:-

“REVISION OF FEE STRUCTURE: ARMY COLLEGE OF MEDICAL SCIENCES

1. Reference Govt of NCT of Delhi letter No.DHE-4(45)/2007-08/1692 dated 18 Aug 2008 (copy attached) on the fee structure for Army College of Medical Sciences, Delhi Cantt. vide which the tuition fee for Army College of Medical Sciences has been fixed for Rs.1,00,000/- per candidate per annum plus other charges as per norms of GGSIP University which is applicable for next two years, while the prospectus of ACMS lays down tuition fee of Rs.1.70 lacs and refundable security of 1 lac.

2. Annual fee of just Rs one lac per annum fixed by the Govt. of NCT of Delhi vide their ibid letter, being the same as for Verdhman Medical College (VMC), a government college, has made ACMS financially non viable.

....

4. It is submitted that fee structure of Govt. College or Govt Aided Colleges cannot be applied to Private

Unaided Colleges, especially ACMS for the following reasons:-

....

6. In view of the above and for the financial reasons, there is an urgency to reconsider Tuition Fee for the very financial survival of ACMS:-

(a) The actual tuition fee works out to **Rs.4.73 lakhs per student per annum**. This does NOT include opportunity cost of Rs 140 Crores investment that amounts to be more than 3 lacs per annum per student as an inbuilt revenue subsidy.

(b) Government orders for implementing VI Pay Commission's recommendations, will increase the costs of running the Medical Colleges by more than 40 to 50 per cent.

(c) Total expenditure to be incurred on staff salary and other operational cost for the academic year 2008-2009 & 2009-2010 is Rs 6.73 lacs and Rs 9.47 Crores respectively. **With the existing fee structure there would be shortfall of Rs 6.16 Crores and Rs 7.88 Crores for the academic session 2008-2009 & 2009-2010, respectively.**

.....

8. In the light of above and in order to make this medical college financially viable, self sustainable and prevent it from closure, it is humbly submitted that the proposed fee be approved as under from academic year 2009-2010:-

(a) Army wards upto 3 lacs per annum. Depending on the directors of Board of Governors, Army wards may be subsidized through merit cum means scholarship apart from bank loans to enable them to pay for the cost of education.

(b) Civilian students upto 4.7 lacs per annum (in case admission granted based on Court orders)

(c) University/examination fees, charges for hostel, security deposits and messing etc will be separate.

9. For the academic year 2008-09 fee, be approved as under, as already given in the ACMS prospectus:-

(a) Tuition fee Rs. 1.70 lac (Civilian students to pay Rs. 3.00 lacs). Court orders permit non subsidized fee structure.

(b) University fee Rs.10,000/- (actual).

(c) Security deposits (Refundable):-

(i) College Security – one lac.

(ii) Hostel Security – 10,000/-.

....”

10. On 02.04.2009, the respondent No.1 issued a circular in respect of fixation of fees for ACMS, the relevant portion whereof reads as under:-

“Sub: - 2nd Report of the State Fee Regulatory Committee for regulating the fee structure.

Sir,

In continuation to this office letter of even number dated 18.08.2008, I am directed to inform you that Hon’ble Chief Minister, being competent Authority for implementing of fee structure for privately managed self-financed institutions, has approved the following fee structure on the recommendation of the Fee Regulatory Committee for the academic year 2008-09:-

1. Army College of Medical Sciences - Rs. 1,50,000/- (MBBS)
Delhi Cantt., New Delhi.

.....”

11. On 15.04.2009, ACMS again wrote a letter to the Chairman of the Fee Regulatory Committee regarding the revision of the fee structure of the ACMS for the academic year 2008-2009, the relevant portion whereof reads as under:-

“REVISION OF FEE STRUCTURE: ARMY COLLEGE OF MEDICAL SCIENCES

1. Reference Govt of NCT of Delhi letter No DHE-4(45)/2007-08/22-24 dated 02.04.2009 (**copy attached**) on the fee structure of Army College of Medical Sciences, Delhi Cantt., vide which the fee structure of Rs.1,50,000/- has been approved for Army College of Medical Sciences which is a privately managed self financed medical college.

2. There is an urgency to reconsider this decision of the Fee of the Army College of Medical Sciences due to the following reasons:-

(a) The above decision of same fees for both army and general category candidates is in contradiction to the Hon'ble High Court of Delhi judgment dt 26 Sep 2008 (**copy attached**) where in it has been stated that the general category candidates that have been granted admission to ACMS are not entitled any concessional fees and the ACMS can recover the full fees. The approved fee structure of Rs. 1.5 lacs is in variance with the projected concessional tuition fees of Rs 1.70 Lacs for wards of army pers and Rs 3 Lacs (non concessional) for the civilian candidates.

.....

4. In light of above and in order to make this medical college financially viable, self sustainable and prevent it from closure, it is humbly submitted that the Tuition Fees of Rs 3 lacs for general category medical students and Rs 1.7 Lacs for the wards of army personnel be approved, at this stage, for the year 2008-2009 (period Aug 2008 to Jul 2009). At the end Aug 2009, the fees can be subsequently adjusted according to the actual expenditure made for year 2008-09 which is likely to be Rs 6.73 Crores ie Rs 12 Lacs per person on apportioning this amongst 56 students.

....”

12. On 17.04.2009, a meeting of the State Fee Regulatory Committee was held wherein the Committee recommended that fee for the students belonging to general category and wards of Army Personnel admitted in ACMS be fixed as ₹3,00,000/- and ₹1,50,000/- per annum respectively with effect from the academic session 2008-2009. The relevant portion of the minutes of the meeting dated 17.04.2009 of the State Fee Regulatory Committee reads as under:-

“

The Army College of Medical Sciences submitted vide their letter dated 30.12.2008 that the actual tuition fee work out to Rs 4.73 lakhs per student per year. They have also submitted a copy of the judgment of

Hon'ble High Court of Delhi in WP (c) 2763/2008 in which the Hon'ble Court delivered the following judgment:-

"The AWES is investing its regimental funds and the army is providing the facility of its Base Hospital. These contributions have been made by the AWES, the Government and the Army for the wards of defence personnel, and not for subsidizing medical education for the general category students. It being a welfare measure, the respondent institute is not charging fee like other private institutes from its students. In my view, the general category candidates, who may be granted admission to ACMS, are not entitled to any concessional fee that ACMS may recover from other candidates, who are wards of army/ex-army personnel and war widows. Such students should be required to pay the fee that may be fixed by ACMS/AWES in accordance with the provisions of the Delhi Act No.80 of 2007."

The Committee has fixed the fee for General category candidates granted admission to ACMS is Rs. 3 Lakhs per student per annum w.e.f. the academic year 2008-09, where as the fee fixed for the wards of Defence Personnel, War Widows is Rs 1.5 lakhs per student per annum w.e.f. the academic year 2008-09.
...."

(Emphasis Supplied)

13. On 12.06.2009, ACMS wrote yet another letter to the Chairman of the State Fee Regulatory Committee regarding the revision of the fee structure at ACMS for the academic year 2008-2009, the relevant portion whereof reads as under:-

"REVISION OF FEE STRUCTURE: ARMY COLLEGE OF MEDICAL SCIENCES

1. Reference our letter No 200454/ACMS/2009 dt 15 Apr 2009 (copy attached) and also refer to the proposal in Army Welfare Education Society (AWES) letter no B/45815/Gen/AWES dt 01 Jan 09 (copy attached) vide which the fee proposal has been made.

2. In the above proposal, it has been requested to approve the tuition fees as mentioned below:

(a) Year 2008-2009: The Tuition Fees of Rs 3 lacs per annum for general category medical students and Rs 1.7 lacs for the wards of army personnel be approved, for the financial year 2008-2009.

(b) Year 2009-2010: The Tuition Fees of Rs.4.73 lacs per annum for general category medical students and Rs. 3 Lacs per annum for the wards of army personnel be approved.

3. The above proposal needs to be modified as follows:

(a) Year 2008-2009: The Tuition Fees of Rs 3 lacs per annum for general category medical students and also for the wards of army personnel be approved for the financial year 2008-2009.

(b) Year 2009-2010: The Tuition Fees of Rs.4.73 lacs per annum for general category medical students and also for the wards of army personnel be approved.

4. The fees will be subsidized by the Army Welfare Education Society (AWES) for the wards of army personnel and the fees for the civilian candidates can also be reduced in case the Govt of NCT provides some scholarship for the civilian candidates.

.....”

(Emphasis Supplied)

14. On 16.06.2009 a meeting of the State Fee Regulatory Committee was held wherein the Committee again recommended that the fee for the students belonging to general category and wards of Army Personnel respectively admitted in ACMS be fixed as ₹3,00,000/- and ₹1,50,000/- per annum respectively with effect from academic session 2008-2009. The relevant portion of the minutes of the meeting dated 16.06.2009 of the State Fee Regulatory Committee reads as under:-

“

The Committee has already accorded recommendation for enhancement of fee for MBBS course for privately candidates from 150000/- to 300000/- for the year 2008-09 but the case of hike in tuition fee from 150000/- to 300000/- for private students for the academic year 2008-09 to Army College of Medical Sciences was again placed before the Committee for its justification. The Chairman opined that the institute does not get any grant-in-aid and can charge Rs.3,00,000/- from the private candidate other than the wards of the Army personnel. The institute is privately set-up for the needs of the Armed Forces personnel. Moreover, Hon'ble High court has also ordered for enhancement in the fee structure of the private candidate in the College.

....."

(Emphasis Supplied)

15. On 07.07.2009, the respondent No.1 issued another circular informing that the Chief Minister of Delhi, being the competent authority for implementation of fee structure for privately managed self-financed institutions affiliated to GGSIP University has fixed tuition fee at ₹3,00,000/- per annum for students belonging to the general category in ACMS with effect from academic session 2008-09. The circular further records that the fee in sum of ₹1,50,000/- per annum fixed for the wards of Army personnel admitted in ACMS, vide circular dated 02.04.2009, remained unchanged.

16. In view of the aforesaid circular dated 07.07.2009 issued by the respondent No.1, ACMS issued notices to the students admitted in the general category at ACMS directing them to pay tuition fees in sum of ₹3,00,000/- per annum with effect from academic session 2008-09 under pain of their names being struck off from the rolls of ACMS.

17. Aggrieved by the action(s) of respondent No.1 and ACMS fixing higher tuition fees for the students admitted in the

general category and less for wards of Army personnel, 16 general category students filed a writ petition, alleging discrimination and sought a mandate that ACMS be directed to charge same fee from all students, irrespective of the category under which they were admitted. They met with a failure and hence the appeal before us.

18. On behalf of the appellants it was contended before the learned Single Judge as also before us that:- (i) once the Government of NCT Delhi had fixed tuition fee at ₹1,50,000/- for the students admitted in ACMS for the academic year 2008-09 vide its circular dated 02.04.2009, it was prohibited from revising the said fee before a period of 3 years, in view of the provisions of Section 6(13) of the Act, which stipulates that the fee notified by the Government shall be valid for a period of 3 years; and the argument was linked by urging that this when read in the light of Preamble of the Act, which provides for fixation of 'non-exploitative' fee would prohibit a fee revision; (ii) the students belonging to general category admitted in ACMS cannot be discriminated against vis-à-vis the wards of Army personnel admitted in ACMS in the matter of fee fixation. On behalf of ACMS it was argued before the learned Single Judge and also before us that having submitted willingness certificate(s) to ACMS, at the time of taking admission, whereby the writ petitioners had undertaken to pay such fee, charges etc. which may be charged by ACMS from time to time, the writ petitioners are estopped from challenging fee determined by the respondent No.1 for students admitted under the general category admitted in ACMS vide its circular dated 07.07.2009.

19. Dismissing the writ petition it has been held by the learned Single Judge that:- (i) while granting admission to the students

belonging to the general category in ACMS, vide its judgment dated 26.09.2008, the learned Single Judge had held that the said students are not entitled to any concessional fee which may be charged by ACMS from the wards of Army personnel. Having secured admission in ACMS under the cover of the judgment dated 26.09.2008 passed by a learned Single Judge, the writ petitioners are estopped from raising a grievance that ACMS cannot charge higher fees from the students belonging to the general category as compared to the fee charged from the wards of the Army personnel; and (ii) Section 6(13) of the Act has no application in the present case for the reason the fee of ACMS fixed by the government prior to its circular dated 07.07.2009 was based on the premise that all the 100 seats in ACMS were reserved for the wards of Army personnel and the fee for the students belonging to general category admitted in ACMS was first time fixed by the government vide its circular dated 07.07.2009.

20. Having noted the aforesaid conspectus of facts, we find that there has been an error in the fee fixed by the respondent No.1 vide its circular dated 07.07.2009 insofar the same governs the fee structure at ACMS.

21. ACMS was established by AWES exclusively for the wards of serving/retired Army personnel including the war widows of Army personnel. The first academic session of ACMS was to commence from 01.08.2008. The prospectus issued by the ACMS listed/informed that the students admitted in ACMS in the academic session of 2008-09 are required to pay fee in sum of ₹1,80,000/- per annum. On 05.08.2008, the State Fee Regulatory Committee recommended that fee in sum of ₹1,50,000/- per annum be charged from the students admitted

in ACMS for the academic session 2008-09. Notwithstanding the aforesaid recommendations of the State Fee Regulatory Committee, the respondent No.1 fixed fee in sum of ₹1,00,000/- per annum for the students admitted in ACMS for the academic sessions 2008-09 and 2009-10 vide circular dated 18.08.2008. Thereafter an event occurred which was not contemplated by the parties at the time of establishment of ACMS i.e. a learned Single Judge of this Court holding that 21 out of 100 seats in ACMS be filled from amongst the general category students. Pursuant to the aforesaid judgment, 21 students in the general category were admitted in ACMS. Since the aforesaid fee structure fixed by respondent No.1 was not sufficient to meet the expenditure to be incurred by ACMS for conducting MBBS course, ACMS submitted representation(s) dated 30.12.2008/01.01.2009 to the State Fee Regulatory Committee/respondent No.1 inter-alia stating therein that a higher fee be charged from the students admitted under the general category as compared to the fee charged from the wards of the Army personnel. Thereafter vide circular dated 02.04.2009 the respondent No.1 fixed fee in sum of ₹1,50,000/- per annum for the students admitted in ACMS for the academic session 2008-09. Since the aforesaid revised fee structure was still not sufficient to meet the expenditure being incurred by ACMS for running the course, ACMS again made a representation dated 15.04.2009 to the State Fee Regulatory Committee reiterating therein that higher fee be charged from the students admitted under the general category as compared to the fee charged from the wards of the Army personnel. To address the grievances of ACMS, the State Fee Regulatory Committee met on 17.04.2009 to consider the revision of the

fee structure at ACMS fixed by the respondent No.1 vide circular dated 02.04.2009, in which meeting, it was recommended that fee in sum of ₹1,50,000/- per annum be charged from the wards of Army personnel and that fee in sum of ₹3,00,000/- per annum be charged from the students belonging to the general category. It is most significant to note that the said recommendation, of charging higher fees from the students belonging to the general category as compared to the fee charged from the wards of Army personnel, was taken by the State Fee Regulatory Committee taking into account the representation dated 30.12.2008 made by ACMS. (See the relevant portion of the minutes of the meeting of State Fee Regulatory Committee held on 17.04.2009 noted in para 12 above). It is of utmost importance to note here that on 12.06.2009 a letter was written by ACMS to the State Fee Regulatory Committee wherein a proposal was mooted that same fee in sum of ₹1,50,000/- per annum be charged from the wards of Army personnel and the students belonging to the general category, if the respondent No.1 gave scholarships to the students belonging to the general category. The reason thereof appears to be that education at ACMS is subsidized from out of the regimental funds of the Indian Army and the intention is to give some kind of a relief to the Army personnel and their wards by absorbing a part of the expenditure incurred in conducting courses. Thereafter it appears that the recommendations of the State Fee Regulatory Committee pertaining to charging higher fee from the students belonging to the general category, as compared to the fee charged from the wards of Army personnel, did not find favor with the respondent No.1. A meeting of the State Fee Regulatory Committee was held on 16.06.2009 to reconsider its

recommendations of charging higher fee from the students belonging to the general category as compared to the fee charged from the wards of Army personnel. In the said meeting, the State Fee Regulatory Committee 'mechanically', again recommended that higher fee be charged from the students belonging to the general category as compared to the fee charged from the wards of Army personnel, being completely oblivious of the fact that the very basis of the said recommendations of the State Fee Regulatory Committee was the stand taken by ACMS in its representation dated 30.12.2008 i.e. justifying charging higher fee from the students belonging to the general category as compared to the fee charged from the wards of Army personnel, was changed by ACMS in its letter dated 12.06.2009, wherein a proposal of charging same fee from the students belonging to the general category and wards of Army personnel was mooted by ACMS. In the aforesaid changed scenario, it was incumbent upon the State Fee Regulatory Committee to reconsider its earlier recommendation to charge higher fee from the students belonging to the general category as compared to the fee charged from the wards of Army personnel. Thus, it is apparent that based on the above faulty recommendation of the State Fee Regulatory Committee, vide its circular dated 07.07.2009, the respondent No.1 fixed higher fee for the students belonging to the general category.

22. We highlight once again that ACMS receives grants from out of the regimental funds, corpus whereof is created by deducting a small amount from the salary of the Army personnel and the aim is to confer benefits, by utilizing said fund, upon Army personnel and their wards. Obviously, general category students cannot take benefit of said grants.

23. In view of the above, we quash the circular dated 07.07.2009 issued by respondent No.1 since the same is based upon a faulty recommendation of the State Fee Regulatory Committee. We direct the State Fee Regulatory Committee to consider the matter, of fixation of fee for ACMS, in the light of the letter dated 12.06.2009 written by ACMS. In that view of the matter, i.e. the view taken by us, we need not deal with the issues raised before the learned Single Judge, save and except the issue pertaining to discrimination, qua which we hold that general category students and wards of Army personnel admitted at ACMS form two distinct categories and thus, neither can claim parity with the other. On the issue of fee structure, since ACMS receives benefit of regimental funds, a corpus created by the Army personnel, and thus to some extent the financial burden of ACMS is mitigated due to said regimental funds being received by it, only wards of Army personnel would be entitled to the said relief being passed on to them and not the general category students. We hope and expect that while taking a decision afresh, said aspect would be considered by the Competent Authority and would be factored in the decision.

24. Needless to state, if aggrieved by the decision taken, the appellants would have a fresh cause of action to question the same on legally permissible grounds.

25. The appeal is disposed of in above terms.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 10, 2012

dk
LPA 274/2011