

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC (WP(C)) No.119 of 2023

Ref:- WP(C) No. 158 of 2023

The Shija Academy of Health Services, of Health Village,
Langol through its Director, P.O. & P.S. Lamphel, Imphal
West District, Manipur -795004.

-Applicant/Respondent No. 4.

-Versus-

1. Sh. Tomba Sharma, aged about 62 years, S/o.
(L) Sh. Dhojo Sharma of Kakwa Naorem Leikai, P.O. &
P.S. Singjamei, Imphal West District, Manipur -795008.
2. M. Zamchinthang, aged about 62 years, S/o.
(Late) Paukhokam of Paite Colony Laimanai Langol,
P.O. & P.S. Lamphel, Imphal West District, Manipur
- 795008.
3. Khundongbam Bimol Singh, aged about 57
years, S/o. (Late) Kh. Nongyai Singh of Heirok Part —
IT Bazar, Laikol Leirak, Thoubal P.O. & P.S. Thoubal,
Thoubal District, Manipur- 795138.
4. Huidrom Singhajit Singh, aged about 47 years, S/o.
H. Ibosana Singh of Langmeidong Bazar, P.O. &
P.S. Waikhong, Kakching District, Manipur- 795103.
5. Yumnam (Ongbi) Anita Leima, aged about 51 years,
W/o. Y. Senior Singh of Kwakeithel Akham Leikai, P.O.
Imphal & P.S. Singjamei, Imphal West District, Manipur
-795008.

6. Loitongbam (O) Shanti Devi aged about 42 years, W/o. L. Nilakanta Singh of Kwakeithel Konjeng Leikai, P.O. Imphal & P.S. Singjamei, Imphal West District, Manipur-795008.

7. Khomdram Shanti Devi, aged about 64 years, W/o. R.K. Somorjit Singh of Keishamthong Elangbam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur - 795001.

8. Masida Begum, aged about 43 years, W/o. Tamijur Shah of Hatta Golapati, P.O. & P.S. Porompat, Imphal East District, Manipur- 795005.

9. Khundrakpam (Ongbi) Meena Devi, aged about 41 years, W/o. Kh. Anupam of Yaikul Jamasthan, P.O. & P.S. Imphal, Imphal West District, Manipur -795001.

10. Association of Parents of 1st Batch State Quota MBBS Students in SAHS (2021-2022), through its President Shri. Sh. Tomba Sharma.

-Respondents/Petitioners.

11. The State of Manipur represented by the Addl. Chief Secretary, Health & Family Welfare Department, Government of Manipur, New Secretariat Block, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

12. The Deputy Secretary, Health & Family Welfare Department, Government of Manipur, New Secretariat Block, P.O. & P.S. Imphal, Imphal West District, Manipur -795001.

13. The State Fee Regularity Committee, through its Chairman, the Addl. Chief Secretary, Health & Family Welfare Department, Government of Manipur, New Secretariat Block, P.O. & P.S. Imphal, Imphal West District, Manipur -795001.

14. The National Medical Commission, through its Secretary, Pocket 14, Phase I, Dwarka, Sector 8, New Delhi- 110077.

- Respondents.

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Applicants	::	Mr. I. Lalitkumar, Sr. Adv Mr. I. Denning, Adv.
For the Respondents No. 1 to 10	::	Mr. N. Ibotombi, Sr. Adv.
For the Respondents No. 11 to 13	::	Mrs. Ch. Sundari,GA
For the Respondents No. 14	::	Mr. BR Sharma, Sr.PCCG
Date of Hearing and reserving Judgment & Order ::		12.06.2023
Date of Judgment & Order	::	21.06.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. I. Lalitkumar, learned senior counsel for the applicant; Mr. N. Ibotombi, learned senior counsel for the respondents 1 to 10; Mrs. Ch. Sundari Devi, learned Government Advocate for the respondents 11 to 13 and Mr. BR Sharma, learned Sr. PCCG for respondent No.14.

2. This miscellaneous case has been filed by the applicant, who is the fourth respondent in the writ petition, under Article 226(3) of the Constitution of India to vacate the interim order dated 2.3.2013 passed in the writ petition.

3. For proper adjudication, the interim order dated 2.3.2023 is extracted hereunder:

“[1] Heard Mr. N.Ibotombi, learned senior counsel for the petitioner and Mrs. Ch. Sundari, learned GA for the respondents No.1, 2 and 3 and Mr. BR Sharma, learned Sr. PCCG for the respondent No.5.

[2] Learned counsels for the respondents seeks time for filing counter affidavit.

[3] Therefore, post the matters on 11.4.2023.

[4] Till such time, there shall be an order of interim stay staying the Notice dated 06.02.2022 (Annexure-A/7).

[5] Petitioner is directed to take steps to the respondent No.4 returnable by 11.04.2023.”

4. The respondents 1 to 10/writ petitioners have filed the writ petition with the following prayers:

- (i) to admit this writ petition;*
- (ii) to issue a rule nisi;*
- (iii) to issue a writ in the nature of Certiorari for quashing the Fees Structures for Undergoing MBBS Course for the year 2021-2022 fixed by the Shija Academy of Health Sciences, Langol as the same is against the Office Memorandum dated 03/02/2022 issued by the National Medical Commission and also the letter dated 20/10/2022 issued by the Deputy Secretary (Health & Family Welfare), Government of Manipur.*
- (iv) to issue a writ in the nature of Certiorari for quashing the notice dated 06/02/2022 issued by the Respondent No.4 Academy as the same was issue din complete violation of the Office Memorandum dated 03/02/2022 issued by the National Medical Commission and also the letter dated 20/10/2022 issued by the Deputy*

*Secretary (Health & Family Welfare),
Government of Manipur.*

- (v) to issue a writ in the nature of Mandamus directing the Respondents to fix the Fee Structure for Undergoing MBBS Course in Shija Academy of Health Sciences, Langol for the Academic Session 2021-2022 at par with the Fee Structures of MBBS Course at Shija Academy of Health Sciences, Langol for the Academic Session 2022-2023 and Office Memorandum dated 03/02/2022 issued by the National Medical Commission of India and also the letter dated 20/10/2022 issued by the Deputy Secretary (Health & Family Welfare), Government of Manipur.*
- (vi) in the interim, to pass an order either for staying the Notice dated 06/02/2022 (Annexure-A/7) or to allow the students of 2021-2022 batch to pay their tuition fees at par with the tuition fees of the students of 2022-2023 batch till the disposal of the case.”*

5. The impugned notice dated 06.02.2022 issued by the applicant college reads thus:

“NOTICE

6th February, 2022

*No.SAHS/Acad-001/23-90: It is hereby
informed to all the MBBS students of Shija*

*Academy of Health Sciences, Langol, Imphal
(2021-22 batches) to clear 2nd Year's tuition,
hostel and mess fees (for 1st semester) on or
before 15th March, 2023.*

Available Mode of Payment:

1. NEFT/RTGS
2. Cheque
3. Demand Draft
4. Bank Deposit

Bank Details:

A/C No.120000537573

*A/C Name – SHIJA ACADEMY OF HEALTH
SCIENCES*

IFSC – CNRB0003955

*CANARA BANK, IMPHAL BRANCH,
THANGAL BAZAR*

*N.B. Any other mode of payment other than
above mentioned will summarily be rejected.*

*(Dr. M.Amuba Singh)
DIRECTOR
Shija Academy of Health
Sciences,
Langol, Imphal-795004”*

6. Aggrieved by the interim order dated 2.3.2023 passed by this Court staying the notice dated 6.2.2022, the applicant College has filed the present miscellaneous case to vacate the said interim order contending that without giving an

opportunity of being heard, the interim order was passed on 2.3.2023 against the applicant *ex parte* and the same needs to be re-considered and re-examined by this Court to protect the rule of law so as to enable to survive and maintain the newly established medical college for the best interest of all concerned.

7. Mr. I. Lalitkuma, the learned senior counsel for the applicant submitted that the applicant college is the first home grown private medical college in the North Eastern India at Manipur in the year 2021 with the permission and approval of the concerned authorities of the State of Manipur. Accordingly, the first session for the first batch of 150 students started from 14.2.2022 and the State Fee Fixation Committee, Manipur, allotted 63 seats for the State Government quota and fixed the annual tuition fee at Rs.8 lakh for the academic session 2021-2022, for which the authorities of the State Government had issued an order relating to seat sharing percentage and the fee structure for the academic year 2021-2022. The learned senior counsel would submit that such fee structure fixed by the Government of Manipur was accepted by all concerned, including the respondents 1 to 10 without any complaint and dispute for first batch was almost

completed and the first batch is now undergoing the second year MBBS course.

8. The learned senior counsel further submitted that running a newly established private medical college would be largely dependent upon the fees of the students for quality education and infrastructure and the college management is still trying to cater to the needs of the MBBS students in the college wherever it is necessary as per the norms and guidelines of the Medical Council of India, which is now substituted by the National Medical Commission, 2019 with the approval of the State Government as well as the other authority applicable in this regard. The applicant college is continuing with its available minimum infrastructure after the issuance of the Government letter dated 13.12.2021. Exercising power under Section 10(1)(i) of the National Commission Act, 2019, an Office Memorandum dated 3.2.2022 was issued by the National Medical Commission, which resulted in issuing the letter dated 20.10.2022 by the Deputy Director (Health and Family Welfare), Government of Manipur, to the Director of Health Services, Manipur, without superseding the fee structures fixed vide Government letter dated 13.12.2021.

9. The learned senior counsel next submitted that the applicant college is the first private unaided medical college having very highly reputed hospital in the North East Region of India and since the college management requires financial support from the Government as their nominees/students have taken 63/64 seats of each alternate years, the Chairman/Managing Director of the college has submitted a representation dated 17.1.2022 to the Additional Chief Secretary, Health and Family Welfare, Government of Manipur requesting to provide necessary financial support and despite receipt of the said representation, the same has not been considered till date. Thus, the learned senior counsel submitted that the *ex parte* interim order passed by this Court is causing hardship to the applicant college and, therefore, the same is liable to be vacated.

10. Per contra, Mr. N. Ibotombi, the learned senior counsel appearing for the respondents 1 to 10/writ petitioners submitted that the fee structure fixed by the State Government for the academic year 2021-2022 in respect of the State Government quota was on the basis of the proposal made by the applicant college. He would submit that on the recommendation of the State Fee Regulatory Committee and

in compliance with the Office Memorandum dated 3.2.2022, the State Government had fixed Rs.45,700/- as fee of the State Government quota for admission to the applicant college for the academic session 2022-2023 subject to the outcome of the writ petition now pending before the Hon'ble Apex Court.

11. The learned senior counsel for the respondents 1 to 10 urged that in the case of the students who were admitted in the State Government quota for the academic session 2021-2022, the authority can fix the fee structure at par with the fee structure of the students of 2022-2023 subject to the outcome of the writ petition pending before the Hon'ble Apex Court. According to the learned senior counsel, the fee structure for Government nominated students in the private medical college in other States are lower than the fee fixed by the applicant college. In fact, for admission to the AIIMS, a sum of Rs.5,856/- has been fixed as fee and for the admission to Armed Force Medical College, Pune, the fee fixed is about Rs.30,000/-.

12. The learned senior counsel further submitted that the fee structure for students under the Government quota for academic session 2021-2022 in respect of the applicant college was fixed as tuition fee at Rs.8 lakh per year excluding

one-time admission fee at Rs.75,000/- and caution deposit at Rs.25,000/- and at Rs.4 lakh payable per semester from third semester onwards upto the completion of the course. The applicant college has not taken into account the Office Memorandum dated 3.2.2022 issued by the National Medical Commission and also the letter dated 20.10.2022 issued by the Deputy Secretary (Health & Family Welfare), Government of Manipur. Arguing so, the learned senior counsel for the respondents 1 to 10 prays for dismissal of the miscellaneous case with a direction on the applicant college to collect the fee from the students of the year 2021-2022 batch at par with the fees paid by the students of 2022-2023 batch.

13. This Court also heard the submissions of the learned Government Advocate and the panel counsel for the National Medical Commission.

14. Considered the rival submissions and also perused the materials available on record.

15. It is not in dispute that the applicant college was established in the year 2021 with the approval of the competent authorities of the State and Central Governments and the first session for the first batch of 150 students was started from 14.2.2022. The State Fee Fixation Committee,

Manipur, allotted 63 seats for the State Government quota fixing the annual tuition fee at Rs.8 lakh for the academic session 2021-2022. In this regard, the Deputy Secretary of the Health and Family Welfare, Government of Manipur, addressed a letter to the Director of Health Services and the applicant college qua seat sharing and the fee structure for the academic year 2021-2022.

16. For proper adjudication, the letter dated 13.12.2021 is quoted hereunder for ready reference:

*"MED-506/31/2021-HS-HEALTH
GOVERNMENT OF MANIPUR
SECRETARIAT : HEALTH DEPARTMENT
Imphal, the 13th of December, 2021*

*1. Director of Health Services, Manipur.
2. Chairman & Managing Director, Shija
Hospitals and Research Institute, Langol.*

*Subject: Seat sharing percentage for MBBS
seats – Regarding.*

Sir,

*In inviting a reference to letter
no.SAHS/006/2021, dated 04.12.2021 and in
partial modification of this Government letter of
even number dated 30/11/2021 on the above*

subject, I am directed to convey approval of the Government of the following in respect of Shija Academy of Health Sciences:

1. Seat Sharing Arrangement:

Sharing of MBBS seats between the State Government and the Management shall be 50% of the total number of seats available after deducting 15% NRI Quota. Thus, the seat sharing for the Academic year 2021-22 shall be as under:

Sl. No.	Category	Share (%)	Number of Seats
1	State Government quota	42	63
2	Management quota	43	64
3	NRI quota	15	23
Total		100	150

Further, number of seats between State Government Quota and Management Quota shall be alternately 63 and 64 seats for each Academic year.

2. Fee Structure: The fee structure for various categories of seats proposed by Shija Academy of Health Sciences are approved as under:

Sl. No.	Category	Tuition fee (Annual)	Admission fee (one time)	Caution fee (one time)	Full Course Fee for NRI
1	State Government quota	Rs.8,00,000	Rs.75,000	Rs.25,000	-

2	Management quota	Rs.19,00,000	Rs.75,000	Rs.25,000	-
3	NRI quota				\$ 2,00,000 (for full course)

3. Reservation Policy:

Reservation policy notified by the State Government shall be adopted for seats available under State Government quota. However, Management of Shija Academy of Health Sciences shall adopt the guidelines of NMC/MCI or any other applicable guidelines for the reservation of seats falling under the category of Management Quota and NRI Quota.

*Yours faithfully,
(Dr. Yumnam Suraj Singh)
Deputy Director (Health &
FW)
Government of Manipur"*

17. From the above said letter, it is clear that the fee structure for various categories of seats proposed by the applicant college was approved by the Deputy Director (Health and Family Welfare), Government of Manipur, as also the seat sharing for the academic year 2021-2022. Accepting such fee structure, the students allotted for the State Government quota, including the sons/daughters of the respondents 1 to 10/writ petitioners, who are the then first batch, have paid the fee without any objection and/or protest.

18. It appears that the National Medical Commission had issued guidelines through the Office Memorandum dated 3.2.2022 of the Secretary, National Medical Commission, wherein, it has been, *inter alia*, stated as under:

“4. It is also anticipated that in newly established medical colleges the overheads like interest, depreciation and salary would be very high in comparison to old established medical colleges. There may be a case where no audited balance sheet would be available with the college (being its first year). In such a case, the determination of fee for a newly established college should be made on an ad-hoc basis, based on the fee structure of the most recently established medical college in the State, whose audited balance sheets were available.

6. The fees can be fixed for a block of three years or on a year-to-year basis. The fee fixed for a student joining a college in a particular year should remain the same for the entire duration of his study in the college, subject to inflation adjustment, as considered appropriate by the State Fee Regulatory Authority, which could for example be at the rate of 5% or on the basis of Consumer Price Index (CPI), on a whichever is higher basis.

8. ... However, if a hospital is running at a loss in the initial days of a newly established college, it may need to be supported for a few years so that it can turn the corner. If the hospital shuts down suddenly for lack of funds, the future of the already enrolled students may be jeopardised. This cannot, however, be a blank cheque to burden the students of a college indefinitely. Thus, a time limit of say 5-7 years could be put for absorbing, the losses of a hospital by the students by way of increased fees. In the alternative, if the State Fee Regulatory Authority judges that a hospital cannot be run on a self/sustaining basis for a much longer term, especially if it is located in a poor and backward part of the State, up to 20% of the costs of the hospital could be added to the operating costs of the medical college for a limited number of years. In earlier case, the State Regulatory Authorities would need to satisfy themselves fully from the segmented accounts submitted by an institution and the final decision should be left to them.

9. Salaries of the teaching, staff and other non-teaching staff should be taken into account for the purpose of determination of fees for medical education. ...”

12. Interest cost on the loan(s) taken for meeting the capital expenditure in respect of a medical college could be taken into account only if the loans are taken from scheduled commercial banks and not from the promoters or private parties. Similarly, interest costs of a loan taken from a scheduled bank for meeting the working capital requirements may also be taken into account for the purpose of computation of fees.

13. In order to consider interest cost for fee fixation, only a loan which is directly attributable to a medical college and/or the hospital, should be taken into consideration while calculating fees.

21. Hostel, mess, transport, library, and examination fees etc., could be arrived at broadly based on the actual expenses incurred for providing these services and the number of students availing these facilities. Expenses which are common and not directly identifiable should be apportioned on equitable basis to different activities for arriving at the cost of providing different facilities. Utilising the hostel, mess and transport facilities by students is entirely optional and students who do not utilise

these facilities are not to be charged for them.

25. The State FRC may required the private medical colleges and deemed to be Universities to publish on their website a prospectus containing the annual audited accounts along with the schedules forming part of the accounts, details in respect of names of the teaching, faculty (full time, part time, guest faculty etc. as well as their qualifications) and other details relating to the hospital, hostel, mess, transport and library expenses.”

19. Assailing Section 10(1)(i) of the National Medical Commission Act, 2019 and the Office Memorandum dated 3.2.2022, a batch of writ petitions were filed before the Madras High Court in W.P.No.10088 of 2022 etc. By a common order dated 9.9.2022, a Division Bench of the Madras High Court held as under:

“48. Learned Additional Solicitor General submitted that the purpose of bringing Section 10(1)(i) of the Act of 2019 is to regulate the fee of 50% of the seats of the management quota, as otherwise the fee of the first 50% of seats is to be at par with the fee of the students in the government

medical colleges. The fees would be regulated in the same manner as was obtaining before bringing the Act of 2019 and thereby it was submitted that the Office Memorandum is basically to regulate the fee of 50% of the management quota seats.

49. We do not find a clarification of that nature in the Office Memorandum and otherwise it rigidly talks about the fee for first 50% of seats at par with the fee in the government medical colleges. A perusal of the fee structure of different States given in the report of the Expert Committee would show a meagre fee charged in the government medical colleges for the reason that it is subsidized by the government out of the money of the tax payer. The government is not subsidizing it for the private medical colleges and by virtue of it, if the Office Memorandum would operate, the 50% of the students would pay fee at par with the fee in the government medical colleges, which even as per the report of the Expert Committee would be one-sixth or one-tenth of the fee charged from the students taking admission against the management quota seats. The result of the aforesaid would be nothing but cross-subsidizing of the fee by one set of students for another set, which

was the position obtaining after the case of Unni Krishnan J.P. and others, supra. The Apex Court in the subsequent judgments in the cases of T.M.A.Pai Foundation and others, Islamic Academy of Education and another, and P.A.Inamdar, supra, did not approve the aforesaid. In the recent judgment in the case of Modern Dental College and Research Centre and others, supra, while the National Medical Commission is allowed to bring the regulation, it was not to cross-subsidize the fee of one set of students by another.

50. In view of the above, there is a need for the National Medical Commission to give a re-look to the Office Memorandum under challenge, when it would be operating not in one State, but in all the States of the country having different seat matrix arrangement as well as fee structure for government quota and management quota seats. The aforesaid has been elaborately referred by the Expert Committee in its report. In few States, the management quota seats are limited to 15% and the government quota seats are at 85% and in variation, in few States, the government quota seats were 30% and the remaining were management quota seats, apart from NRI quota, etc. The intention

behind bringing Section 10(1)(i) of the Act of 2019 is to determine the fee of the management quota seats, which was earlier determined by the Committee headed by the Retired High Court Judge.

51. In view of the foregoing discussion, we find reason to direct the National Medical Commission to re-visit the Office Memorandum dated 3.2.2022 in the light of the observations made by us and if the intention of the Parliament was to make provision for determining the fee structure for all the seats in the medical colleges, then to amend Section 10(1)(i) of the Act of 2019 appropriately. However, the provision now operating and held to be constitutionally valid allows the National Medical Commission to regulate fee of 50% of seats and if such regulation of fee is permitted in regard to the management quota seats, then the Office Memorandum under challenge can operate, but the question would be for determination of fee for the remaining 50% seats to be at par with the fee in the government medical colleges. To avoid confusion of any nature, it would be appropriate for the respondents to take a decision on it at the earliest so that a proper fee structure is determined for the

students, which may not result in cross subsidization of fees.

52. The aforesaid is required even for the reason that if there would be a huge difference of the fee structure between two sets of students, then it may even result in sacrificing the merit of the candidates in view of the fact that after filling of first 50% of seats of government quota at par with the fee of the government medical colleges, the remaining would be offered to the next meritorious candidate and if the next meritorious candidate is not in a position to bear the burden of high fee, he/she would be unable to take admission in the medical college and then the seat would go to the next meritorious candidate, who may be below the caliber of the candidate who could not afford to pay high fee. This would ultimately result in sacrificing the merit and the worst scenario would be when no candidate down in the merit list is ready to take the burden of paying high fee and the seat remains vacant, which would be a loss to the institution and the nation.

53. The aforesaid aspects have not been taken into consideration by the Expert Committee while making recommendation, though it has undertaken extensive work not

only for collection of data from different States, but even considering the suggestions and objections from the medical colleges. The Expert Committee while making recommendation, however, could not visualize that if there would be huge different in the fee structure between two sets of students, it may result in sacrificing the merit.

54. In the result, the writ petitions are disposed of with the direction that in the light of the observations and finding recorded in the preceding paragraphs, the National Medical Commission should at the earliest come out with a fresh Office Memorandum after giving a re-look to the Office Memorandum under challenge. Till the exercise aforesaid is undertaken, the fee structure may be governed by the present system.”

20. The provision of Section 10(1)(i) of the National Commission Act and the Office Memorandum dated 3.2.2022 were also assailed before the Kerala High Court in W.P.(C) No.24112 of 2022 etc. batch and, by the order dated 19.8.2022, the learned Single Judge of the Kerala High Court held as under:

“30. As I have already said above, the sole quandary in the "OM", as far as Kerala is concerned, is with respect to the fixing of fees in 50% seats in the Private Medical Colleges and Deemed Universities, to be "on par" with that fixed by the Government for the seats in the Government Medical Colleges. If the "OM" is directed to be enforced in such manner, it will indubitably lead to a piquant predicament where the fees for the balance 50% seats in the said colleges will have to be escalated because, otherwise, the institutions cannot sustain, especially since, even as on today, the AFRC is fixing the minimum requisite fee for all students taking into account infrastructural investments, future prospects and such other criteria as are statutorily mandated, but ensuring that there is absolutely no leeway for profiteering in any manner.

31. Ironically, viewed from the correct perspective, the implementation of the afore mandate of the "OM" would be highly iniquitous in Kerala, because it expects the benefits of subsidisation to flow to the students in the "Government quota", presumably under the often presumed impression that such students are more meritorious; but on our State there is no such

quota and every student allotted to a Private Institution or Deemed University is "on par" with those allotted to the Government Colleges and all such allotments are made by the Commissioner of Entrance Examinations alone. Hence it would also be an impossibility in our state to enforce the "OM" to the aforementioned extent since all students in the Colleges and Deemed Universities are identically placed, it being even if possible - being arbitrary and discriminatory.

32. I am certain that the "NMC" never intended that their "OM" should be used to either cross-subsidise education -- which is expressly proscribed by the Hon'ble Supreme Court; or to burden one section of students at the cost of the other, though they are all similarly, if not identically, situated and placed in Kerala, after the year 2017, when the "Kerala Medical Education Act" came into being.

In the afore circumstances,

(a) W.P.(C).No.5851 of 2022 and W.P.(C).No.24112 of 2022 are ordered, directing the AFRC to implicitly abide by all the "guidelines" postulated by the NMC in their Office Memorandum dated 03.02.2022, while fixing the fees for all seats in all Private

Medical Colleges and Deemed-to-be Universities in Kerala except the stipulation therein for fixing the fee of 50% of the seats in the Private Medical Colleges or Deemed Universities on par with the seats in the Government Medical Colleges.

(b) Consequential to the declarations above, which I reiteratingly clarify are in the context of the State of Kerala alone, W.P(C).No.5503 of 2022 will also stand ordered, but to the afore extent.

(c) It is reiteratingly clarified that this Court has not struck down Section 10(1)(i) of the "NMC Act"; and therefore, that all contentions with respect to the same are left open to be impelled by any person or entity, including the petitioners herein, if it becomes so warranted in future."

21. It appears that challenging the order of the Division Bench of the Madras High Court in W.P.No.10088 of 2022 etc. batch, the National Medical Commission has filed SLP (C) Nos.21002-21009 of 2022 before the Apex Court and the same are pending. From the website, it is seen that the said SLPs are likely to be listed on 04.07.2023. It also appears that several cases of similar nature were considered

by different High Courts in the country. Since the matter is under consideration of the Apex Court, this Court has not make any observation and consider the scope of Section 10(1)(i) of the National Medical Commission Act, 2019 and the Office Memorandum dated 3.2.2022.

22. Coming to the applicant college, it started functioning from 14.2.2022 and the Deputy Secretary conveyed the approval of seat sharing and fee structure in respect of the applicant college and, accordingly, they have admitted the students i.e. 63 seats allotted for State Government quota by collecting Rs.8 lakh for the academic session 2021, which was admittedly approved by the Government of Manipur. Therefore, this Court is of the *prima facie* view that no fault can be attributed against the applicant college for collecting the fee of Rs.8 lakh in respect of State Government quota for the academic year 2021-2022.

23. The argument of learned senior counsel for the applicant that the starting and running a newly established private medical college would be largely dependent upon the fees of the students for providing quality education and infrastructure, and it is the duty of the college management to cater to the needs of MBBS students studying in the college,

which are provided by the applicant college without any complaint. It is also the argument of the learned senior counsel for the applicant that it is not the case of the writ petitioners that there is lack of proper teaching and infrastructure facilities in the applicant college.

24. It is to be pointed out that securing good marks by the students who are pursuing their MBBS course is not only appreciable for the students and such efforts are the credit of the teaching staff both for theory and practical, for which the college management requires to maintain best teachers as well as necessary infrastructure facilities. When there is no complaint from any corner with regard to imparting education and infrastructure facilities available in the applicant college, it is to be presumed that the applicant college is having all facilities, including the teaching and non-teaching staff and the students of the applicant college are pursuing their MBBS courses without any complaint. Thus, it is clear that based on the letter of the Government of Manipur dated 13.12.2021, the applicant college is running with its available infrastructure facilities.

25. It is apposite to mention that the 63 seats meant for Government quota students were fully aware of the fee

structure of MBBS course at the applicant college for the batch of 2021-2022 even before counselling and admission. Those students who were in the merit list but could not afford the fees of the applicant college withdrew themselves at the time of counselling. Thus, the students were fully aware of the fees for the session 2021-2022 and admitted themselves on their own volition with full consent without raising any nature of objection.

26. The case of the writ petitioners is that the fee structure fixed by the State Government for admission of students in the State Government quota in the applicant college for the academic session 2022-2023, which was issued in consonance with the Office Memorandum dated 3.2.2022, should be made applicable to the students who were admitted in the applicant college under the State Government quota for the academic session 2021-2022. In support, the writ petitioners have relied upon the letter of the Deputy Secretary (Health and Family Welfare), Government of Manipur dated 20.10.2022.

27. For proper appreciation, the letter of the Deputy Secretary (Health and Family Welfare), Government of Manipur, dated is quoted hereunder for ready reference:

*MED-506/31/2021-HS-HEALTH
GOVERNMENT OF MANIPUR
SECRETARIAT : HEALTH DEPARTMENT
Imphal, the 20th October, 2022*

To

Director of Health Services, Manipur.

*Subject: Fee structure of MNNS course at
SAHS, Langol for the academic session
2022-23 – reg.*

Sir,

*In inviting a reference to letter
No.104/CMC/DHS/2021 (Pt I) dated
17/10/2022 on the above subject, I am
directed to convey approval of the
Government of the following in respect of
Shija Academy of Health Sciences for the
year 2022-23:*

Seat Sharing Arrangement:

<i>Sl No.</i>	<i>Category</i>	<i>Numbers of seats</i>
<i>1</i>	<i>State Government Quota</i>	<i>64</i>
<i>2</i>	<i>Management Quota</i>	<i>63</i>
<i>3</i>	<i>NRI Quota</i>	<i>23</i>
<i>Total</i>		<i>150</i>

Fee Structure: The fee structure for various categories of seats proposed by Shija Academy of Health Sciences are approved as under:

Sl. No.	Category	Tuition fee	Admission fee	Caution money	Total
1	Management Quota	Rs.19,00,000	Rs.75,000	Rs.25,000	Rs.20,00,000
2	NRI Quota	\$ 2,00,000 (one time)			

Fee structure of State Government Quota:

Sl No.	Particular	Amount
1	Admission Fee	Rs.4,000/-
2	Tuition Fee	Rs.6,000/-
3	Library Fee	Rs.1,000/-
4	Laboratory Fee	Rs.2,000/-
5	Blazer Fee	Rs.5,500/-
6	Health Care	Rs.2,000/-
7	Hostel Fee	Rs.7,000/-
8	Games Fee	Rs.2,000/-
9	College Cultural Fee	Rs.1,500/-
10	Magazine Fee	Rs.1,000/-
11	University Enrolment Fee	Rs.100/-
12	University Games fee	Rs.200/-
13	University Cultural Fee	Rs.100/-
14	Hostel Caution money (Refundable)	Rs.1,000/-
15	Laboratory Caution money (Refundable)	Rs.1,000/-
16	Mess Caution money	Rs.2,000/-
17	Security Deposit (Refundable)	Rs.1,000/-

18	College Examination Fee	Rs.3,000/-
19	House T-Shirt	-
20	Apron (2)	Rs.2,000/-
21	Annual Meet	Rs.3,000/-
22	Union Fees	Rs.300/-
Total		Rs.45,200

The fee structure for State Government quota seats, Management quota seats and NRI quota seats shall be subject to the outcome of the petition filed before the Hon'ble Supreme Court of India.

Reservation Policy:

Reservation policy notified by the State Government shall be adopted for seats available under State Government quota, However, Management of Shija Academy of Health Sciences shall adopt the guidelines of NMC/MCI or any other applicable guidelines for the reservation of seats falling under the category of Management Quota and NRI.

*Yours faithfully,
(Dr. Yumnam Suraj Singh)
Deputy Director (Health & FW)
Government of Manipur"*

28. The aforesaid letter clearly indicates that the fee structure in respect of State Government quota seats, Management quota seats and NRI quota seats shall be subject to the outcome of the petition pending before the Hon'ble Apex Court. The fee structure shown in the

Government letter dated 13.12.2021 has not been superseded in the letter dated 20.10.2022 and the fee structure in the letter dated 13.12.2021 is still in force. Therefore, the presumption is, the students of the first batch MBBS are bound by the fee prescribed in the Government letter dated 13.12.2021. Moreover, in the opening portion of letter dated 20.10.2022, it has been stated that "*I am directed to convey approval of the Government of the following in respect of Shija Academy of Health Sciences for the year 2022-23*", which means that the fee structure of State Government quota is applicable for admission of students of Government quota for the year 2022-2023 and, *prima facie*, the writ petitioners cannot claim the benefit under the letter dated 20.10.2022, as the earlier Government letter dated 13.12.2021 has not been superseded in the subsequent letter dated 20.10.2022.

29. The argument of learned senior counsel for the applicant is that no State in the country follows the National Medical Commission's memorandum on fee structure 2022 except in Manipur like the second batch of the applicant college i.e. 2022-2023 session. The fee structure of the second batch is financially incompatible for the newly established unaided private medical college like the applicant

and will lead to compromising the infrastructure and quality medical education. He would submit that the Government medical institutes like JNIMS, Churachandpur Medical College and RIMS, Imphal are fully funded by the Government. However, the applicant college could not get any NRI quota admissions from both the batches and the fees from the management quota students could not support the students in the Government quota seats. According to the learned senior counsel, the applicant college has to incur the annual expenditure of Rs.18,18,858/- per student and, therefore, the cost is justified as the applicant college is a newly established one. The aforesaid argument of the learned senior counsel in respect of the expenditure cannot now be gone into in the present proceedings, as it would involve a detailed enquiry.

30. It is to be noted that in the present prevailing nature of the fee structure applicable to the applicant college in respect of students admitted on Government quota for the year 2021-2022, the prescribed fee structure fixed in the letter dated 13.12.2021 is applicable. That apart, the fees for the first batch MBBS 2021-2022 was already fixed by the State Fee Fixation Committee on 13.12.2021 prior to the issuance of the National Medical Commission's Office Memorandum

dated 3.2.2022. Nothing has been produced to show that fees once fixed by the State Fee Fixation Committee cannot be changed for the entire course as explained in the Office Memorandum dated 3.2.2022. Since the applicant college is an unaided private new medical college operating in the North East Region and while attempting to build up young medical students to become a good deserving medical doctors which is now just budding to take the health care and to protect the valuable human lives and there are many requirements in the new establishment likely to face financial difficulties and the fact remains that the Government letter dated 13.12.2021 under which the applicant college was permitted to collect Rs.8 lakh for Government quota has not been superseded till date, in the interest of justice and welfare of the students and in order to avoid the financial burden, the students admitted under Government quota for the year 2021-2022, the fee structure may be governed as per the Government letter dated 13.2.2021, subject to the outcome in the proceedings pending before the Apex Court.

31. In order to produce good medical students and further to undergo research in the field of medical sciences, it is the expectation of all concerned to grow the applicant

college, which is an unaided medical college more and more to fulfil the object and reasons of the establishment of such institute in the State of Manipur as well as in the North East Region of India.

32. The interim prayer made in the writ petition staying the operation of the notice dated 6.2.2022 and allowing the students of 2021-2022 batch to pay their tuition fees at par with the tuition fees of the students of 2022-2023 batch is a debatable question, which cannot now be gone into. Since the issue is in seizin of the Hon'ble Apex Court, this Court is of the prima facie view that the respondents 1 to 10/writ petitioners cannot seek the aid of the letter dated 20.10.2022 and argue that pursuant to the order dated 15.11.2021, the State Government constituted a State Fee Regulatory Committee for fixation of fee for MBBS course in the applicant college and the State Government, by a letter dated 20.10.2022, has conveyed approval of the Government for the fee structure of State Government quota for admission to the applicant college for the academic session 2022-2023 at Rs.45,700/- only and the same should be applicable to the batch of medical students who were admitted for Government quota for the year 2021-2022. It is also the arguments of the senior counsel for the writ

petitioners that there is a huge disparity in the fee structure for the students under the Government quota for the academic session 2021-2022 and 2022-23 in the applicant college and similarly situated persons has to be treated similarly.

33. As stated supra, when the tuition fee fixed by the Government vide letter dated 20.10.2022 at the rate of Rs.45,700/- is meant for the academic year 2022-2023, the writ petitioners cannot seek to implement the said letter dated 20.10.2022 retrospectively for the Government nominated students of the academic session 2021-2022. That apart, for the second batch MBBS 2022-2023, the fees fixed by the Fee Fixation Committee vide order dated 20.10.2022 is not yet settled, as the same is subject to the outcome of the petition pending before the Apex Court.

34. Though the State Fee Regulatory Committee had been constituted under the order dated 15.11.2021, the Government after considering the matter in proper perspective, issued letter dated 13.12.2021 allowing the applicant college to collect fee for State Government quota at Rs.8 lakh for the students admitted in the year 2021-2022. As stated supra, now the 2021-2022 batch have completed their first year and for collection of second year fee, the applicant

college had issued the notice dated 6.2.2022 calling upon the students of 2021-22 batch to pay the second year's tuition, hostel and mess fees on or before 15th March, 2023. Issuance of such notice cannot be faulted by the students of 2021-2022 batch, as the timely payment of fees is required for infrastructure development of the applicant college, a newly established unaided private medical college so as to run the college smoothly and effectively. The learned senior counsel for the applicant argued that the fee structure of the second batch is financially incompatible for the applicant college which is a newly established unaided private medical college.

35. This Court while issuing notice to the applicant college, stayed the notice dated 6.2.2022 and after notice and entering appearance, the applicant *prima facie* established that if payments of tuition, hostel and mess fees are stayed, the management has to face financial difficulty in running the college.

36. Considering the fact that the fee structure for the academic year 2021-2022 fixed by the Government of Manipur was accepted by all concerned without any complaint and the first batch have completed their first year course and the continuation of the interim order dated 2.3.2023 passed in the

writ petition in respect of the notice dated 6.2.2022 would definitely cause financial problem and also untold hardship to the applicant college for its smooth functioning and administration, this Court is of the view that there is bona fide in the contentions made by the applicant college. It is not the case of the writ petitioners that the applicant college management has discontinued the training/academic courses and closed down the hostel and mess facility for fee default. Taking into consideration the future of all the students, the applicant college is continuing its training/academic courses including the Government nominees.

37. Since the National Medical Commission has not prescribed the fee in respect of the applicant college and the power of the National Medical Commission qua 50% of seats in private medical college is under challenge before the Hon'ble Apex Court and the fee structure shown in the Government letter dated 13.12.2021 in respect of the applicant college for State Government quota for the year 2021-2022 has not yet been superseded and still in force and the fee structure shown in the letter dated 20.10.2022 is meant for the academic session 2022-2023, this Court is of the prima facie

view that the interim order dated 2.3.2023 passed in the writ petition deserves to be re-considered in the interest of justice.

38. For all the reasons stated above, the interim order dated 2.3.2023 granted by this Court in W.P.(C) No.158 of 2023, which was extended from time to time, stands vacated and M.C. (WP) No.119 of 2023 in W.P.(C) No.158 of 2023 is allowed.

ACTING CHIEF JUSTICE

FR/NFR

Sushil