

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WA.NO. 1759 OF 2014 () IN WP(C).22706/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 22706/2014 OF HIGH COURT OF
KERALA DATED 06-11-2014

APPELLANT(S)/APPELLANTS/PETITIONERS:

1. ASWATHI VEDALMAJI
'KRISHNARPANAM', ARADHANA ROAD, GURUVAYUR
THRISSUR.

2. NEEHARA KESYA JACOB
MOOLAKKODAYIL, VADACODE, KURA.P.O.
KOTTARAKKARA, KOLLAM.

3. ANJALI C.S.
'SREEMANGALAM', ELAKAMON.P.O., VARKALA
THIRUVANANTHAPURAM-695 310.

4. VIDYA S.
'SOPANAM', ALA.P.O., PERISSERY
CHENGANNUR, ALAPPUZHA.

5. ARYA L.
'SARAYU', THALAYAMKULAM, THOLICODE.P.O.
PUNALUR, KOLLAM.

6. MARIYA PAUL
KUNDUKULANGARA HOUSE, BEHIND TRINITY CONVENT, KOLAZHY
THRISSUR-10.

7. GEIDO DAVIS THOMAS
PULIKKIYIL HOUSE, VEMPALLY.P.O., KOTTAYAM-686 633.

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8. BIYA MARIA SUNNY
PALICKAMYALIL HOUSE, ITHITHONDU ROAD
THALAYOLAPARAMBU.P.O., KOTTAYAM DISTRICT-686 605.

9. MEERA ROSE SABU
KANJIRAKKATTU HOUSE, NEDUMANNY.P.O. 686 542
NEDUMKUNNAM, KOTTAYAM DISTRICT.

10. IRIN ANN JOHN
MANNOOR, PILAPUZHA, HARIPAD.P.O. 690 514
ALAPPUZHA DISTRICT.

11. DEEPA JOHN
VAIDHYAN PARAMBIL HOUSE, MEENADOM.P.O. 686 518
KOTTAYAM DISTRICT.

12. MUBEENA V.
VETTIKATTIL HOUSE, KURUVATTOOR.P.O., VALLAPUZHA
PALAKKAD-679 836.

13. ROSEMARY SIBY
KACHANKODATH, 'SANTHI NIKETHAN', THIRUMALA WARD
ALAPPUZHA-688 011.

14. BASMA HARRIS
'KAKKAT', ECRA 45, AL-AMEEN ROAD
EDAPPALLY, KOCHI-682 024.

15. AISHA A
CHERUKUNNATH HOUSE, ARATTUPUZHA NORTH.P.O.
THRIKKUNNAPUZHA, ALAPPUZHA.

16. ANN MARY AUGUSTINE
FLAT FA2, SUNNY ESTATES, MAMANGALAM
PALARIVATTOM.P.O. 682 025.

17. AFTHAB KASSIM
MANGATTU HOUSE, MANGATTUKAVALA
THODUPUZHA EAST.P.O. 685 585, IDUKKI DISTRICT.

18. THEERDHA MENON
VALIYA KAKKANATTU, KUMARANELLOOR.P.O., KOTTAYAM

19. RAKHI R. KURUP
'AKSHAYA', PULIYOORKONAM.P.O., KILIMANOOR
THIRUVANANTHAPURAM.

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20. KRISHNA VENI G.
TC 76/276, SOPANAM', ANAYARA.P.O.
THIRUVANANTHAPURAM-695 029.

21. SALU CHANDRAN
'ATHIRA NIVAS', KURUPPANKULANGARA.P.O., CHERTHALA
ALAPPUZHA.

22. AATHIRA R.
'ROHINI, ANAPPARA, VELLARADA.P.O.
THIRUVANANTHAPURAM.

23. FATHIMA HARIS
'ASIF MANZIL', KTN 73, VADAKKEVILA.P.O.
PALLIMUKKU, KOLLAM-691 010.

24. NEETHU JOHN
AKKARAPPATTIAKKAL HOUSE, P.O.PURANATTUKARA
THRISSUR-680 551.

25. NANDINI MOHANLAL
'PUSHPAK', UG 68, ULLOOR GARDENS
ULLOOR, THIRUVANANTHAPURAM-695 011.

26. SAYOOJYA SURESH
CHARAL PARAMBIL HOUSE, POTHNOOR, POLPAKKARA.P.O.
EDAPPAL, MALAPPURAM.

27. ATHIRA C. NAIR
'INDIRA BHAVAN', CHANDANATHOPE.P.O., KOLLAM-695 014.

28. LEKSHMI S.S.
'SAIJASILA', KARIODE, KUTTICHAL.P.O.
THIRUVANANTHAPURAM.

29. SHILPA BABU
THOTTIYIL HOUSE, NARIAMPARA.P.O., KATTAPPANA
IDUKKI.

30. MAHIMA SIBY
PLATHOTTAM HOUSE, KALATHOOKADAVU.P.O., KOTTAYAM.

31. VINITHA SUSAN JOHN
THOPPIL ADAKATHU HOUSE, OLD SEMINARY ROAD, CHUNGAM
KOTTAYAM-686 001.

32. MELVI JOHNSON
KOCHUKUNNEL HOUSE, AYROORPADAM.P.O., 686 692
KOTHAMANGALAM, ERNAKULAM.

33. AMBILI P.A.
'SREYASS', P.O.CHALA EAST, KANNUR-670 621.

34. STENSA C.F.
CHIRAYATH HOUSE, SASTHRI NAGAR, 1ST STREET
NADATHARA.P.O., THRISSUR-680 751.

BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HEALTH & FAMILY WELFARE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM
PIN-695 001.

2. THE DIRECTOR OF MEDICAL EDUCATION
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695011.

3. THE CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION
(KERALA)
REPRESENTED BY ITS DIRECTOR, FIRST FLOOR
CO-BANK TOWER, VIKAS BHAVAN P.O.
THIRUVANANTHAPURAM-695033.

4. THE PRINCIPAL
GOVERNMENT MEDICAL COLLEGE, ERNAKULAM
H.M.T. COLONY P.O., KALAMASSERY-683503.

R3 BY ADV. SRI.V.KRISHNA MENON, SC, CO.OP.ACADEMY OF
PROFESSIONAL EDUCATION
R BY GOVERNMENT PLEADER SHRI ROSHEN ALEXANDER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02.02.2015
ALONG WITH W.A.1757 OF 2014 AND CONNECTED CASES THE COURT ON
16.02.2015, DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, Ag. C.J.

and

A.M. SHAFFIQUE, J.

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**W.A. Nos.1759, 1756, 1757,
1634, and 1694 of 2014**

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Dated this the 16th day of February, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

These five Writ Appeals have been filed against the common judgment dated 06.11.2014 passed by a learned Single Judge in the Writ Petitions filed by the appellants. Learned Single Judge by the above judgment has dismissed all the Writ Petitions. First four Writ Appeals have been filed by the students who are pursuing the MBBS course whereas the last Writ Appeal, W.A. No.1694 of 2014 has been filed by the students who are pursuing B.Sc. Nursing Course. W.A. No.1759 is being treated as the leading case. For deciding all these Writ Appeals reference to the pleadings in W.A. No.1759 of 2014 shall suffice except where reference of

pleadings in some other Writ Appeals are necessary.

2. The background facts giving rise to the Writ Petitions filed by the appellants are as follows: The Co-operative Academy of Professional Education (Kerala), respondent No.3, is a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955. The 3rd respondent has been running a Medical College, namely Kochi Co-operative Medical College, Kalamassery which was treated under the category of self financing institutions. The State Legislature enacted an Act, viz., Kerala professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006. Admission in various professional institutions including medical self financing institutions are being conducted on the basis of consensual agreement

between the college concerned and the State Government. Agreement between the college and Government relates to the manner of carrying on admission and collection of fee. The admissions are being conducted on the basis of entrance examinations conducted by the Commissioner for Entrance Examinations, Kerala. The admissions were being taken under three streams, viz., merit quota to the extent of 50%, management quota to the extent of 35% and 15% quota for Non-Resident Indians. On the basis of consensual agreement entered between the management of the college and the Government, Government Orders have been issued for each academic year for conducting admission and fees. The State Government issued a Government Order dated 16.08.2010 (for the academic year 2010-11) on the basis of the agreement entered into between the 3rd respondent and the Government. Paragraph 3 of the

said order dealt with the terms and conditions and paragraphs 4 and 5 dealt with the fee including fee concession to be given to the candidates belonging to BPL families, SC/ST category and SEBC reservation category. 7 candidates belonging to the BPL families were need to pay only tuition fee of Rs.25,000/-. 13 candidates were selected under the SEBC reservation category are need to pay tuition fee of Rs.35,000/-. Annual tuition fee for the candidates belonging to SC/ST category was to be paid by the Government to the concerned College at the rate of uniform fee fixed by the Fee Regulatory Committee of the Government. Other candidates admitted under the 50% merit quota were required to pay Rs.87,000/-, 35% management quota candidates were required to pay Rs.4,45,000/- and 15% NRI quota candidates were required to pay Rs.10 lakhs. The above was in addition to the fee concession granted to BPL and SEBC reservation

category candidates. For the academic year 2012-13 similar Government Order was issued on 18.06.2012 wherein the 50% merit quota candidates were required to pay Rs.1,50,000/-, 35% management quota candidates were required to pay Rs.6,50,000/- (which was subsequently reduced to Rs.5,50,000/- by another Government Order dated 09.07.2012) and 15% NRI quota candidates were required to pay Rs.9,95,000/- lakhs (which was subsequently enhanced to Rs.10,00,000/-) with the fee concession. For the academic year 2013-14 similar Government Order was issued on 11.07.2013 wherein 50% merit quota candidates were required to pay Rs.1,50,000/-, 35% management quota candidates were required to pay Rs.6,00,000/- and for the 15% NRI quota the candidates were required to pay Rs.11,00,000/- with the fee concession mentioned therein. The State Government in the meantime during the academic year

2013-14 decided to take over the Kochi Co-operative Medical College. The District Collector, Ernakulam was entrusted with the preparation and submission of report of taking over of the Kochi Co-operative Medical College by the Government. The District Collector submitted a report. The State Government constituted a Committee by Government Order dated 20.07.2013 consisting of the Principal Secretary (Health and Family Welfare), Principal Secretary (Finance Department), District Collector, Ernakulam and Medical Superintendent of Kochi Co-operative Medical College to prepare a consolidated report after examining the assets and liabilities of the Kochi Co-operative Medical College to place before the Council of Ministers. The report was prepared by the Committee which was considered by the Government and by Government order dated 17.12.2013 the Kochi Co-operative Medical College was taken over by the Government with all existing assets

and liabilities. The Kochi Co-operative Medical College was renamed as Government Medical College, Ernakulam by order dated 30.07.2014. Another Committee was constituted by the Government comprising of the Additional Chief Secretary (P&ARD), Secretary (Finance), Secretary (H&FWD), Secretary (Co-operation), Director of Medical Education and Medical Director, CAPE and Special Officer. The said Committee was constituted to study the service conditions of the employees in the institutions and some other allied matters. The Committee noted that major revenue of the institution is through fees of the students. The Committee in its minutes dated 24.01.2014 (Ext.P4 in W.P.(C) No.24473 of 2014 recorded that even after taking over fee payable by the students must be collected at the rate fixed at the time of their admission till the end of their course. Another meeting was held on 14.05.2014 (Exhibit P5 in W.P(C)

No.24473 of 2014) headed by the Chief Minister of the State where it was decided that all the existing students who were admitted under the merit, management and NRI quotas shall continue to pay their fees prescribed during the time of their admission and only for the students who were admitted for the academic year 2014-15 the fee structure will be that of the Government Medical Colleges. Principal of the Government Medical College, Ernakulam issued notices dated 20.05.2014 and 13.08.2014 demanding tuition fee for the 11th batch of 2012 Admission as per the rate at which they were admitted. Representations were submitted on 29.05.2014 by the parents and teachers Association. On 22.07.2014 another representation was made by the General Secretary of the College Union before the Chief Minister seeking a direction to the Chief Minister to the effect that only the same rate of fee be collected from the students

which is being collected in the Government Medical Colleges.

3. Government of Kerala, Office of the Commissioner for Entrance Examination issued a notification on centralised allotment process for professional degree courses - 2014. The said notification mentioned also about the fee to be paid in MBBS in Government Colleges and Government controlled self financing medical colleges and private self financing medical colleges. Fee for the Government Colleges was mentioned as Rs.25,000/-.

4. W.A. No.1694 of 2014 - arising out of the judgment in W.P(C) No.24923 of 2014 was filed by 70 students who were pursuing the course of B.Sc. Nursing. Petitioners in the above Writ Petition were admitted in the B.Sc. Nursing Courses under merit quota as well as management quota. Petitioners included the students who were studying in the 2nd and 3rd year B.Sc. Nursing

Course. Government also decided to take over the Nursing College and building situated in the campus by order dated 17.12.2013. Nursing College students were also admitted on the similar line as of MBBS students under the merit, management and NRI quotas with different fee structure. The Nursing College being taken over by the Government, fee to be paid for the academic year 2014-15 was only Rs.20,000/-. College Unions submitted representations to the Chief Minister stating that Government fee also be implemented for all the students.

5. One of the Writ Petitions which was decided along with the bunch of Writ Petitions was W.P(C) No.10402 of 2014. On behalf of the State counter affidavit was filed in that case. The said counter affidavit was also adopted by the State by filing memo in other Writ Petitions. In the counter affidavit the State took the plea that change of character of the

institution, i.e., Kochi Co-operative Medical College as the Government Medical College, does not affect the nature of the admission or payment of fee by the petitioners. It was stated that the Government has taken a decision that the existing students in all categories, i.e., merit, management and NRI in Government Medical College will continue to pay fee prescribed during their admission to the course. Government Order dated 16.08.2010 was also annexed as Ext.R1(a) by the Government which was issued regarding fee and admission of the students during the academic year 2010-11.

6. We have heard Shri M.K. Damodaran, Senior Advocate, Advocate Shri Devan Ramachandran and Advocate Shri P.Chandrasekhar for the appellants and Government Pleader Shri Roshen D.Alexander has appeared for the State-respondents.

7. Learned counsel for the appellants contended

that the Kochi Co-operative Medical College having been taken over by the State Government with effect from academic year 2014-15, the appellants could not have been asked to pay the fee which has been earlier fixed by the self financing institutions. It is submitted that the Kochi Co-operative Medical College having become Government Medical College, the fee payable by the students of the Government Medical Colleges ought to have been realized from the appellants. It is submitted that the Principal has no authority or jurisdiction to demand fee by issuing demand notice from the students who are already carrying on their MBBS course for 2nd to 5th year. It is submitted that the Government having fixed the fee for MBBS at Rs.25,000/- per annum in Government Medical Colleges, the same fee should have been levied on the appellants. It is submitted that character of the Kochi Co-operative Medical College which was earlier a self

financing institution having changed into Government Medical College, fee structure of the College has also to be changed to the fee structure of the Government Medical Colleges. It is further submitted that charging of fee in the Government Medical College, Ernakulam at the higher rate from the students pursuing MBBS Course as compared to the fee of Rs.25,000/- which is being paid by students studying in other Government Medical Colleges is arbitrary and discriminatory. It is submitted that petitioners who are pursuing their studies for the 2nd to 5th year of the MBBS Course as well as B.Sc Nursing Course are liable to pay fee which is fixed for the Government Medical Colleges, i.e., Rs.25,000/- and Rs.20,000/- respectively.

8. Shri Roshen D.dAlexander, learned Government Pleader refuting the submissions of the learned counsel for the appellants submitted that appellants were admitted in the MBBS/B.Sc. Nursing

Course in the self financing institutions. Appellants are liable to pay the same fee under which they were admitted in the self financing institutions throughout their course of study. The mere change of management of institutions does not absolve the appellants from the liability to pay the fee which they were required to pay during the currency of their course. It is submitted that the mere fact that Kochi Co-operative Medical College has been now taken over by the Government as Government Medical College does not automatically relieve the appellants from their liability to pay tuition fee under which they were admitted. It is submitted that in the Government Medical College, Ernakulam collection of fee of Rs.25,000/- per annum has been changed with regard to students who are admittedly in the MBBS Course for the year 2014-15. It is submitted that the Government has taken over the Kochi Co-operative Medical College

along with its all assets and liabilities. Fee which has to be realised from the students studying in the Kochi Co-operative Medical College is the source of revenue for taking care of the requirement of the institution and the committee constituted by the Government has already recommended, which recommendation has been accepted that students who are studying in the College shall continue to pay fee which they were paying consequent to their admission in the MBBS Course. It is further submitted by the learned Government Pleader that the appellants who were admitted in the self financing institution cannot claim parity with the students who have been admitted in the Government Medical Colleges. It is submitted that it is common knowledge that those who are admitted in Government Medical Colleges are the students who are higher in the merit and appellants at the time of their admission could not get admission in the Government Medical

Colleges as they were lower in rank hence they cannot claim that they should be permitted to pay fee as in the Government Medical Colleges. It is submitted that for the purpose of realization of fee, there is a valid classification between appellants who were admitted in the self financing institutions and those who were admitted in the Government Medical Colleges.

9. We have considered the submissions of the learned counsel for the parties and have perused the records.

10. The issue which arises in the present batch of Writ Appeals is as to whether consequent to the taking over of the Kochi Co-operative Medical College by the Government, appellants are liable to make payment of fee as per the fee structure under which they were admitted or they are liable to pay fee which is being realised in the Government Medical Colleges, i.e., Rs.25,000/- and Rs.20,000/- for MBBS Course and B.Sc.

Nursing Course, respectively.

11. Learned counsel for the parties have placed reliance on the judgments of the Apex Court as well of this Court in support of their submissions which shall be referred while considering the submissions in detail.

12. The Government have taken a decision to take over the Kochi Co-operative Medical College as Government Medical College and for that purpose the Government have issued orders constituting a committee. The Government vide Order dated 20.07.2013 has constituted a committee for submitting a report as regards the assets and liabilities of the Kochi Co-operative Medical College. Government by order dated 17.12.2013 has passed an order taking over the Kochi Co-operative Medical College by the Government along with the current assets and liabilities. The Committee appointed by the Government held its meeting on 24.01.2014 where it

was noted that the major revenue of the institution is the fee from the students. It is useful to quote the extract of the proceeding of the meeting held on 24.01.2014 which is to the following effect:

"It is suggested that the existing students including NRI students who have contracted with CAPE at the time of admission and agreed to pay fee as per the fee structure fixed by Government at the time of their admission should pay fee as per the fee structure fixed by Government at the time of their admission should pay the same fee until completion of their course. It is brought to the notice of the Committee that an amount of Rs.4 crores is due from the students towards tuition fee for the last quarter of the current academic year. The Special Officer may therefore be given direction to collect the annual tuition fee due from students till the end of the Academic year as per their original rates and fee payment schedule. Even after take over, fee of the existing students may be collected at the rate fixed at the time of their admission till the end of their course, and in that case the anticipated income from fee will be as follows:

Year Average fee expected to collect

2014-15	Rs.16 Crores
2015-16	Rs.12 Crores
2016-17	Rs.8 Crores
2017-18	Rs.4 Crores

An overview of the financial position is also appended."

Subsequently on 14.05.2014 under the Chairmanship of the Chief Minister a final decision was taken considering all the relevant aspects that all the existing students those admitted under the merit, management and NRI quotas in the MBBS Course will continue to pay the fee prescribed at the time of admission. It is useful to quote extract of the proceeding of the meeting held on 14.05.2014 which is to the following effect:

"Academic fees payable by the existing students:

Considering all relevant issues, it was decided that all the existing students those admitted in general quota, management quota and NRI quota will continue to pay the fees prescribed during their admissions in this college. Only for the students admitted from the academic year 2014-15 the fee structure will be that of the Government Medical College. All the students should be directed to pay the fee as per the schedule at the contracted rates at the time of their admissions."

Thus a conscious decision was taken by the Government to continue realization of same fee from

the students who were already admitted under the merit, management and NRI quotas. It was further resolved that only for students admitted in the academic year 2014-15, the fee structure will be that of the Government Medical Colleges. Thus from the above it is clear that taking over of the Kochi Co-operative Medical College as Government Medical College was with the above stipulation.

13. Learned counsel for the appellants in support of the submissions placed reliance on the judgment of the Apex Court in **T.M.A. Pai Foundations v. State of Karnataka** ([2002] 8 SCC 481), **Islamic Academic of Education v. State of Karnataka** ([2003] 6 SCC 697 and **P.A. Inamdar v. State of Maharashtra** ([2005] 6 SCC 537).

14. Before we proceed to consider the further submissions, it is necessary to refer to the proposition as laid down by the Apex Court in the aforesaid cases.

15. Eleven Judge Bench constituted in **T.M.A. Pai Foundations v. State of Karnataka** (supra) was to consider various aspects of minority and non-minority unaided institutions. Rights of institutions regarding admission and fee structure had also come up for consideration. Various issues were framed for consideration in the above case. One of the issues framed was Issue No.5. The majority judgment was delivered by Chief Justice, Kripal and in paragraph 161 answers to the 11 questions were given. Questions No.5(c) and 9 are relevant. It is useful to refer to the above questions and its answers given by the Constitution Bench which are quoted below:

“Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?”

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot

be regulated but no institution should charge capitation fee.

Q.9 Whether the decision of this Court in Unni Krishnan J.P. v. State of A.P. 1993 (1) SCC 645 (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

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

The Apex Court in the said judgment while referring to private unaided professional colleges has also laid down that appropriate machinery can be devised by the State or University to ensure that no capitation fee is charged and there is no profiteering. If reasonable surplus to meet cost of expansion and augmentation of facility is maintained the same cannot be said as profiteering. It is useful to quote paragraph 69 which is to the following effect:

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

16. Next Judgment relied is **Islamic Academic of Education v. State of Karnataka** (supra). A five Judge Bench was constituted to clear various doubts which had arisen regarding interpretation of the 11 Judge Bench judgment in **T.M.A. Pai Foundations v. State of Karnataka** (supra). The majority judgment was delivered by V.N. Khare, Chief Justice. One of the questions which was framed for answering was "whether the educational institutions are entitled to fix their own fee structure". It was held that there can be

no fixing of a rigid fee structure by the Government and institutions must have the freedom to fix its own fee structure but each State/concerned authority shall set up a committee headed by a retired High Court Judge who shall approve the fee structure or to propose some other fee and the fee fixed by the Committee shall be binding for a period of three years. It is useful to quote paragraph 7 which is to the following effect:

"7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping

in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits / surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the

Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation."

17. Next judgment is **P.A. Inamdar v. State of Maharashtra** (supra) which was again a 7 Judge Constitution Bench constituted to clear certain doubts

regarding the ratio laid down by the Apex Court in **T.M.A. Pai Foundations v. State of Karnataka and Islamic Academic of Education v. State of Karnataka** (supra). In this case the Apex Court noted three questions for consideration in paragraph 26 and one of the questions was question No.(iii), “the fee structure.” The Apex Court noted the general principle for scrutinising the fee structure in paragraph 75 which is quoted below:

"75. So far as the regulation of fee structure is concerned, it is submitted that in Pai Foundation (T.M.A. Pai Foundation v. State of Karnataka, 2002 (8) SCC 481) there is a mention of

appropriate machinery to be devised by the State or University to ensure that no capitation fee is charged and profiteering is checked.

The judgment in Islamic Academy (Islamic Academy of Education v. State of Karnataka, 2003 (6) SCC 697) merely implements the legal position explained by Pai Foundation (T.M.A. Pai Foundation v. State of Karnataka, 2002 (8) SCC 481) by providing a Fee Determination Committee. In reply to the argument that post fixation audit may be permitted to check profiteering and capitation, the learned counsel answers that if the role of

the Committee is limited to supervisory post fixation audit, it would amount to denying credible restriction to the charging of capitation fee. It is chimerical to suggest that the student should first pay the exorbitant fee fixed by the institution and later on complain about it to the post audit machinery to recover the excess through a court Of law. The controlling of the fee fixing machinery is necessarily to be done before it is charged otherwise it is meaningless to the benefit of the students for whom it is suggested in para 69. The general principle for scrutinising the fee structure is twofold: (1) that education is a charity, (2) that educational institutions cannot charge such fee as is not required for the purpose of fulfilling that object which means cost plus reasonable surplus for expansion and growth of the institution. These are the parameters before the Committee whose decisions, in any case, are subject to judicial review."

The Apex Court further held that every institution is free to devise its own fee structure subject to the limitation that there could be no profiteering and no capitation fee can be charged directly or indirectly. The following has been laid down by the Apex Court in paragraphs 139, 141, 144 and 146:

"139. To set up a reasonable fee structure is also a component of "the right to establish and administer an

institution" within the meaning of Art.30(1) of the Constitution, as per the law declared in Pai Foundation (T.M.A. Pai Foundation v. State of Karnataka, 2002 (8) SCC 481). Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (paras 56 to 58 and 161 [answer to Question 5(c)] of Pai Foundation (T.M.A. Pai Foundation v. State of Karnataka, 2002 (8) SCC 481) are relevant in this regard).

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

144. The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy (Islamic Academy of Education v. State of Karnataka, 2003 (6) SCC 697) are in our view, permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Art.30(1) or the right of minorities and non minorities under Art.19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Art.30(1) and in the interest of general public under Art.19(6) of the Constitution.

146. Non minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community. Professional education should be made accessible on the criterion of merit and on non exploitative terms to all eligible students on a uniform basis. Minorities or non minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure”.

18. From the proposition laid down by the Apex Court in the above cases, it clear that the Apex Court has essentially dealt with the fee structure to be provided in unaided minority or non-minority institutions and the extent of State regulation of the said fee structure. After the aforesaid judgments of the Apex Court, in the State of Kerala an Act has been enacted, viz., the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of non-Exploitative Fee and Other

Measures to Ensure Equity and Excellence in Professional Education) Act, 2006. As we have already noticed above, on the basis of consensual agreement the Government has fixed fee for self financing medical colleges and Government Orders were issued for every year. Government had fixed fee for the Kochi Co-operative Medical College under the merit, management and NRI quotas from year to year including fee concession given therein. It shall suffice to refer to one of the Government Orders issued by the Government regarding the fee structure for the academic year 2013-14 dated 11.07.2013 which has been filed as Ext.P6. Paragraphs 4 to 8 relate to payment of fee by three streams, i.e., merit, management and NRI including fee concession which is required to be given to the categories of BPL families, SEBC and SC/ST. It is useful to quote paragraphs 4 to 8:

"4. As per the agreement arrived at between the Government and the Management of the Medical College under Co-operative sector, the Management has agreed to give concession in the fess collected to the candidates belonging to BPL families as per state norms/students having low annual family income up to a maximum 10 candidates of those allotted by the Commissioner for Entrance Examinations. The Managements have also agreed to give fee concession to the students belonging to SEBC allotted by the Commissioner for Entrance Examination. The details of concessional fees shall be as follows:

(a) Ten candidates from among those allotted by the Commissioner for Entrance Examinations in each institution coming under BPL families as per Kerala State norms irrespective of rank or category need only pay an annual tuition fee of Rs.25,000/-. If enough number of candidates belonging to BPL category as above are not available, the balance number of candidates will be allowed concessional fees of Rs.25,000/- per annum to be selected from among those allotted by the Commissioner for Entrance Examinations from those having lower family income, irrespective of rank or category. However SC/ST category of candidates, who already enjoy fee concession benefits will not be considered for the above purpose.

(b) 13 (Thirteen) candidates who have been selected under SEBC reservation category by the Commissioner for Entrance Examination shall pay an annual tuition fee of ` 45,000/-. They will be selected on the basis of the rank. However, if the required number of SEBC candidates is not available among the students allotted by the CEE in the institution, the remaining number of candidates will be selected from among the general category on the basis of income, irrespective of rank or category as explained in clause(a).

(c) All other candidates as explained in clause (a), (b) & SC/ST shall pay an annual tuition fee of `

1,50,000/- . The fee benefits will be granted only after the closure of allotments to Private Self financing Medical Colleges. Hence candidates (except SC/ST) allotted to these institutions will have to remit the fee of ` 1,50,000/- (One Lakh and Fifty Thousand only) provisionally at the time of the allotment. The Commissioner for Entrance Examination will refund the balance amount to the candidates who will become eligible for fee benefits after the completion of the allotment process, based on the verification of income certificate to be produced by them.

(d) Annual fee for SC/ST students shall be paid by the Government to the concerned college, at the rate of uniform fees fixed by the Fee Regulatory Committee of the Government.

5. The annual fees fixed as above shall be inclusive of all amounts collected as in the case of similarly situated students in Government Colleges. However, the management concerned shall be entitled to collect such other statutorily permitted fees including University fees and charges and such other amounts collected from similarly situated students in Government colleges or the Government controlled Medical Colleges, which shall be specifically listed out and published each year, during the entire course of study. The management concerned shall not collect any amount from any students so admitted, other than those specified above.

6. 35% of the total seats will be treated as management seats and shall be filled up from among the candidates who have qualified themselves in NEET UG-2013 Examination and who have opted for these management seats, based on their inter se merit. The management will admit the students to these seats as per the allotment made by the Commissioner for

Entrance Examinations.

7. *Each student admitted by the management concerned to the above mentioned 35% seats shall be annual tuition fees up to ` 6,00,000/- (Rupees Six Lakhs only), or such amount as fixed by the Fee Regulatory Committee of the Government, for which signed and sealed receipts shall be given by the management.*

8. *The Management shall be entitled to fill up the remaining 15% seats in the Non Resident Indians Category (NRI) by admitting eligible students who are children/dependants of Non Resident Indians, as per the conditions stipulated in GO(MS) No.34/2011/H&FWD dated 5.02.2013 and GO(MS) No.193/2013/H&FWD dated 22.05.2013. Such students shall be liable to pay annual tuition fees up to Rs.11,00,000/- (Rupees Eleven Lakhs only)."*

19. In the present case there is no dispute regarding the fee structure as was fixed for the Kochi Co-operative Medical College by the Government for the different academic years. The issue in the present case is as to whether after the take over of the Kochi Co-operative Medical College by the Government and it having become Government Medical College with effect from 2014-2015, whether the appellants who were

admitted prior to academic year 2014-15 are liable to continue to pay fee as was determined for them at the time of their admission or they can be permitted to pay the fee which is fixed for the Government Medical Colleges. The above three judgments of the Apex Court as noted above is on the issue of fixation of fee and regulation of fee by the Government pertaining to minority and non-minority in private institutions. Although, there is nothing in the aforesaid cases regarding fee structure of a Government Medical College, there is no denial of the fact that fees fixed for Government Medical Colleges are substantially less than the fee which is fixed for self financing institutions. A perusal of the Government Orders which were issued from time to time fixing the fee for self financing institutions makes it clear that the said Government Orders were issued fixing the fee structure for a particular academic year is relevant only for the

students who are to be admitted in that year. Thus even in self financing institutions students who have been admitted in earlier academic year for a particular course are liable to continue to pay fee under the fee structure they were admitted. On the said analogy the fact that with effect from academic year 2014-15 students admitted in the MBBS Course or B.Sc. Nursing Course in the Government Medical College, Ernakulam are paying the fee fixed for Government Medical Colleges does not give any right to the appellants to claim that they are also liable to make payment of fee at par with the students who are admitted in the Government Medical College, Ernakulam for the academic year 2014-15.

20. Further as noted above, the Government have taken over the Kochi Co-operative Medical College with its assets and liabilities. The Committee constituted by the Government has after considering the financial

aspects of the matter has recommended that the existing students shall be asked to continue to pay the fee according to the fee structure under which they were admitted which has been accepted by the Government as part of the terms and conditions of taking over of the institutions. Government have consciously taken over the Kochi Co-operative Medical College with the above condition, we do not find any arbitrariness or unreasonableness on the part of the Government to provide that the appellants shall continue to pay fee as per the fee structure under which they were admitted.

21. The Government is also entitled to consider all financial implications on taking over of an institution as Government Institution and can arrange its affairs accordingly. Appellants does not have any right to claim that the moment an institution has become a Government institution, the same fee be charged from

them which is charged in the Government Medical College. There is difference between a self financing institution which is being taken over by the Government as Government institution with certain terms and conditions and existing Medical Colleges where the students were admitted as students in the Government Medical Colleges. It cannot be said that the Government has not extended the benefit of Government fee for the students who are admitted in the Government Medical College, Ernakulam, since from the academic year 2014-15 fee structure in the Government Medical College, Ernakulam is also the same for the students admitted in the year 2014-15.

22. The submission of the learned counsel for the appellants that non-implementation of fee structure for the MBBS Course i.e., Rs.25,000/- per annum in the Government Medical Colleges in the case of the appellants is arbitrary and discriminatory also does not

appeal to us. There is clear distinction between the two category of students; one category to which the appellants belong, i.e., the students who were admitted under the fee structure of self financing institutions and the second category, the students who are admitted as students of Government Medical Colleges in the year 2014-15. Continuing earlier fee structure for the students earlier admitted and charging fee of Rs.25,000/- for the students who are admitted in the Government Medical College, Ernakulam from academic year 2014-15 is neither discriminatory nor arbitrary.

23. Learned Government Pleader has placed reliance on a Division Bench judgment of this Court in **Hanna Tasnim K.V. v. State of Kerala and Others** (2014[2] ILR Kerala 388). In the said case the petitioner on the basis of the result for admission in the professional Degree Course and option exercised by

him was admitted in a self financing college in BDS Course in the State merit quota. In the subsequent allotment she was not considered and candidates who were waiting and were lower in merit to the petitioner were allotted seats for the BDS Course in the Government Dental College. Petitioner challenged the action with the claim that petitioner was entitled to be considered in the final allotment for admission to the BDS Course in Government Dental College and allotment and admission given to persons lower in merit was not justified. The Division Bench repelled the submission of the petitioner and held that there was valid classification in those students who have opted for Self Financing Colleges and Government Colleges and those who have opted only Government Colleges. It is submitted that petitioner having opted Self Financing Dental College and on the basis of the option was admitted, whereas those who have opted only for

Government College and were waiting though lower in merit got subsequent admission in Government Dental College. It was held that there is valid classification between the students who opted for admission in Self Financing Colleges and those who opted for admission in Government Colleges. It is relevant to quote paragraph 31 of the said judgment:

"31. Burden of showing that a classification rests upon an arbitrary and not on a reasonable basis or the discrimination is apparent and manifest is upon the person who impeaches the administrative decision to be violative of the guarantee of equal protection. If any state of facts can be reasonably conceived that would sustain the classification, the existence of that state of facts at the time the law was enacted or decision was taken can be presumed. The above said presumption can be rebutted not only by referring to the contents of law or the administrative decision itself, but also by extraneous evidence. In this case, the fact that the agreement executed between the Government and the Management Consortium of self financing dental colleges enured to the benefit of a large number of students will have to be considered. Those students who willingly opted for self financing colleges along with Government Colleges form a distinct class and those who opted for Government

Colleges alone form a different class. This classification is expressly discernible from the terms in Ext.P2 itself. Therefore, we do not find any illegality, arbitrariness or unfair deal in the classification as mentioned above, Hence, we are unable to find that the rights of the petitioner guaranteed under Art.14 of the Constitution of India have been violated."

24. The above judgment reinforces our view that there is valid classification between students who took admission in the Self Financing Institutions under merit/management/NRI quota as compared to those who were admitted in the Government Medical Colleges in the relevant year.

25. Learned Government Pleader has placed reliance on another judgment of the Apex Court in **Cochin University of Science and Technology v. Thomas P.John** (2008 [2] KLT 718). In the said case, the respondents, students were admitted in the B.Tech. Course in the year 1997-98 and 1998-99. They were admitted in the NRI students quota. Fee in the relevant academic year was US\$4000 per annum whereas in the

year 1999-2000 earlier provision which was made in the year 1995-96 i.e., fee of US\$5000 and in addition to that payment of Rs.20,000/- per semester was reduced. Petitioners filed representation claiming that they are also entitled to have the benefit of reduction of fee on account of reduction of fee in the subsequent years. High Court allowed the Writ Petition against which judgment the respondent-University filed an appeal in the Supreme Court. The Apex Court in the said judgment has laid down that an educational institution chalks out its own programme year wise on the basis of the projected receipts and expenditure and the court need not interfere in this purely administrative matter which is the right of the educational institution. The Apex Court further laid down that NRI students who took admission on certain basic conditions and on a fee structure cannot claim as a matter of right reduction in fee to bring them at par

with the students admitted later in a lower fee structure. It is useful to quote paragraph 12 of the judgment which is to the following effect:

12. We are also of the opinion that it would be well nigh impossible for an educational institution to have an effective administration and to maintain high educational standards, if a downward revision during the pendency of a course would be automatically made applicable to students admitted earlier under a different fee structure. A periodic revision is also visualized in the directions of the Supreme Court in Islamic Academy's case (supra) wherein it has been provided that the fee structure fixed by a committee headed by a retired Judge would be operable for 3 years. 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 at 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 Art.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 over lap 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. We have also gone through the judgments cited by Mr. Iyer. To our mind, they are not applicable to the facts of this case."

The above judgment clearly supports the submission of the learned Government Pleader that subsequent reduction in fee structure for subsequently admitted students cannot be a ground to claim reduction by a student who was admitted on a different fee structure in an earlier year.

26. In view of the forgoing discussion we are of the view that decision of the Government to continue to charge the same fee from the appellants who were earlier admitted was based on valid reasons and the appellants have no right to claim that with effect from

2014-15 onwards only fee of Rs.25,000/-/Rs.20,000/- (for MBBS and B.Sc. Nursing Courses, respectively) be charged from them. We do not find error in the judgment of the learned Single Judge dismissing the Writ Petitions filed by the appellants. There is no merit in these Writ Appeals.

All the Writ Appeals are dismissed.

Parties shall bear their own costs.

ASHOK BHUSHAN, Ag. C.J.

A.M. SHAFFIQUE, JUDGE.