

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.8.2016 & PRONOUNCED ON: 26.9.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.1637 & 1638 of 2014,
W.P.Nos.6909, 6910, 12515, 27098 & 31848
of 2015, 14562, 22911 & 26388 of 2016
&
Connected Miscellaneous Petitions

W.A.No.1637 of 2014

1. M.Aamira Fathima
2. S.Abiramai
3. Abissha S
4. Afia Thaslima Subaitha
5. Akshaya AG
6. Alice Shinny C
7. Amirtha M
8. Amirtha V
9. V.Anitha
- 10.M.Anushya
- 11.G.Archana
- 12.A.Bavhithra
- 13.Chandini Begum G
- 14.Chris Janice I
- 15.P.Deepika
- 16.C.Dharuni
- 17.Dhiyaneshwari T
- 18.Divyalakshmi R
- 19.W.Evangelin Sheela
- 20.Eshilmathi S
- 21.Ganimozhi RS
- 22.Gayathri K
- 23.Gokula Harshaa J
- 24.Gunasree K
- 25.Hemapriya K
- 26.Kalaivani N
- 27.Kalpana G
- 28.Kanimozhi D

- 29.TNA Kartheeka
- 30.Karthiga G
- 31.Karthika M
- 32.Karthika Nandhini
- 33.Karunya R
- 34.Khavya S
- 35.Kiruthika V
- 36.Kiruthiyga S
- 37.Kolika NV
- 38.Madhumitha M
- 39.Malathi B
- 40.Manjri A
- 41.Maria Jecintha Rina
- 42.Menaga K
- 43.G.Minusha Sharon
- 44.Mymoon Reshma T
- 45.Neena Nirupama G
- 46.Nethra Lavanya B
- 47.Nivetha Josephine A
- 48.Padhma M
- 49.Pavithra S
- 50.Pavithra JR
- 51.Pavithravarshini B
- 52.Poonguzhali S
- 53.Poornimadevi U
- 54.Prasana Priya R
- 55.Praveena S
- 56.Prisca Mercy P
- 57.Priya Chakaravarthy
- 58.Priyanga L
- 59.Ravage S
- 60.T.Rajalakshmi
- 61.Rajitha.M.C.
- 62.Ramya Omprakash
- 63.Ramyabharathi.S.
- 64.Rani.V.
- 65.Reshika.AS.
- 66.Rithika.P.
- 67.Ruvanthika.T.
- 68.Sabitha.S.
- 69.Sangeetha.A.
- 70.Sangeetha.S.
- 71.Savi Prabha.K.
- 72.Seviga.S.
- 73.Shobika.G.
- 74.Shruthi.SM.

- 75.Sinduja.V.
- 76.Sinithra.S.
- 77.Sivadarshini.SM.
- 78.Sonali.M.
- 79.Sowmiya.MS.
- 80.Sri Nivetha K.
- 81.Suchithra.S.
- 82.Sukanya.S.
- 83.Suruthi Priya.D.
- 84.Suryakala.M.
- 85.Sushmitha.V.
- 86.Suvithra.R.
- 87.Umadevi.K.
- 88.Vinotha.T.
- 89.Vishalini.G.
- 90.Abdul Kadhar.
- 91.Anandhakannan.M.
- 92.Aravindraaj.R.
- 93.Archit Krishna.M.
- 94.Arideepan.C.
- 95.Arjuhn.R.
- 96.Arulkumar.P.
- 97.Arunagiri.G.
- 98.Arvind Raman
- 99.Arvinth.VS.
- 100.Avinash.P.
- 101.Balagowtham.KM.
- 102.Balakumar.D.
- 103.Bhuvanesh.R.
- 104.Darun.N.
- 105.Dhinesh.RSM.
- 106.Dinesh Antony.A.
- 107.Dinesh Raj.B.
- 108.Goutam.T.
- 109.Gladson.S.
- 110.Gopinath.P.
- 111.Gowtham Raju.J.
- 112.Gunaseelan.D.
- 113.Haripraveen.S.
- 114.Jayapradeep.S.
- 115.Jeeva Vinayagam.CM.
- 116.Kabilan.T.
- 117.Karthick.K.
- 118.Karthik Manikandan.S.
- 119.Logeswar.SP.
- 120.Manjunath.J.

121.Mohammed Naveeth.B.
 122.A.Murugesh Raja
 123.Narendra Vignesh
 124.Navaneethan.N.
 125.Nikil Kumar.S.S.
 126.Nirmal.S.
 127.Nisanth.S.
 128.Prasanna Venkatesan.S.
 129.Rojar Sebastin.D.
 130.Rudesh Kumar.P.
 131.Sabari Rajan.M.
 132.Sanjiv.M.P.
 133.Sathishkumar.R.
 134.Shyam Sundar Rengan
 135.Sivakumar.S.
 136.Sivaramkrishnan.T.
 137.Srinivasa Guptha.L.R.
 138.Sudhathirarajan.M.
 139.Sujith Kumar.M.
 140.Sujith Kumar.T.
 141.Thamizharasan.V.
 142.Thangamani.S.
 143.Tonie Selwin.A.
 144.Vignesh.J.
 145.Vignesh.K.
 146.Vignesh.S.
 147.Vigneshwaran.B.
 148.Vigneshwaran.S.
 149.Yokul.T.

.. Appellants

Vs.

1. The Annamalai University, Annamalai Nagar, Chidambaram, Cuddalore District, rep.by its Administrator.
2. Rajah Muthiah Medical College rep.by its Registrar, Annamalai Nagar, Chidambaram, Cuddalore District.
3. The Government of Tamilnadu rep.by Secretary to Government Health & Family Welfare Department Fort St. George, Chennai-9.
4. The Government of Tamilnadu

rep. by Secretary to Government
Higher Education Department
Fort St. George, Chennai-9.

5. The Medical Council of India, New Delhi.
6. The Director of Medical Education
152, EVR Periyar Salai
Kilpauk, Chennai-10.
7. The Chairman
Fee Fixation Committee for Medical Colleges
Gandhi Mandapam Road
Chennai.
8. Annamalai University Asiriyargal Sangam
rep. by its President
Annamalai Nagar.
9. Annamalai Palkalai Kazhaga Uzhiyar Sangam
rep.by its President
Annamalai Nagar.
10. Keerthi Narayanan V

.. Respondents

W.P.No.6909 of 2015

1. Dr.P.Mruganand
2. Dr.V.Palaniappan
3. Dr.V.Balaji
4. Dr.M.Kumar
5. Dr.Saravanan
6. Dr.M.Menaga
7. Dr.C.Suganya
8. Dr.M.Sankar
9. Dr.G.Periyannayagi
10. Dr.S.Karthikeyan
11. Dr.J.Thilak
12. Dr.P.Magesh Babu
13. Dr.N.S.Kavitha
14. Dr.G.Ramachandran
15. Dr.D.Rajesh Kanna
16. Dr.S.Arunprasath
17. Dr.F.Grey Bernard
18. Dr.S.Manoharan

19.Dr.R.N.Suresh Kumar
 20.Dr.G.Karthik
 21.Dr.P.Anbukumar
 22.Dr.K.N.Praveen Kumar
 23.Dr.M.Muralisree
 24.Dr.S.Senthil Kumar
 25.Dr.V.Rajesh Kannan

.. Petitioners

[Dismissed as withdrawn in respect
 of petitioners 1 to 10 & 13 to 23 as
 per order dated 16.8.2016 made in
 WP No.6909 of 2015]

Vs.

1. The State of Tamilnadu
 rep. by Secretary to Government
 Higher Education Department
 Fort St. George, Chennai-9.
2. The Director of Medical Education
 152, EVR Periyar Salai
 Kilpauk, Chennai-10.
3. The Medical Council of India
 rep. by its Secretary
 Pocket No.14, Sector 8, Dwaraka Phase I
 New Delhi 110 077.
4. The Annamalai University
 rep. by its Administrator
 Annamalai Nagar, Chidambaram
 Cuddalore District.
5. The Rajah Muthiah Medical College
 rep.by its Registrar, Annamalai Nagar,
 Chidambaram, Cuddalore District.
6. The Chairman
 Fee Fixation Committee for Medical Colleges
 Gandhi Mandapam Road
 Chennai.
7. The Secretary to Government
 Health Department
 Fort St. George, Chennai-9.

.. Respondents

Writ Appeal under Clause 15 of Letters Patent against the order dated 02.12.2014 made in W.P.No.20720 of 2014 on the file of this Court.

Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the order of Syndicate Resolution No.11 dated 21.3.2014 passed by the fourth respondent and that of the clause in the prospectus prescribing more fees than the fees prescribed in the Government Colleges, as impermissible, and to quash the same and consequently, direct the respondents to extend study leave and salary/stipend equivalent to the Government salary insofar as the service candidates are concerned and to extend all benefits arising thereto.

For Appellants	: Mr.AR.L.Sundaresan, S.C. For Ms.AL.Ganthimathi
For Petitioners	: Mr.C.Selvaraju, S.C. For M/s. C.S. Associates Mr.L.Chandrakumar Mr.M.V.Venkataseshan Mr.R.Natarajan Mr.T.Gowthaman Mr.T.Muruganantham
For Respondents/ State	: Mr.STS Murthi Addl. Advocate General Assisted by Mrs.A.Srijayanthi, Spl.G.P.
For Annamalai University :	Mr.AL.Somayaji, S.C. For Mr.R.Suresh Kumar

J U D G M E N T

HULUVADI G.RAMESH,J

The writ appeals are directed against the common order dated 02.12.2014 dismissing W.P.Nos.20720 and 22305 of 2014.

2. W.P.Nos.6909 & 6910 of 2015 have been filed by the students who are pursuing PG Course in Raja Muthiah Medical College, challenging Resolution No.11 of the Syndicate with respect to the tuition fee and seeking a direction to the respondents to extend them the benefit of study leave and salary/stipend insofar as service candidates are concerned.

3. W.P.No.27098 of 2015 has been filed by the second year PG student challenging the order rejecting the request to re-fix the fee on par with the fee collected by the Government Colleges and challenging the notice dated 28.5.2015 informing the students to pay the fees prescribed for the academic year 2013-14.

4. W.P.No.31848 of 2015 has been filed by the second year MBBS students and W.P.No.26388 of 2016 has been filed by the second year BDS students seeking a Mandamus forbearing the respondents from demanding or collecting fees in excess of the fee collected by the Government Medical Colleges.

5. W.P.No.12515 of 2016 has been filed by MDS students seeking a declaration that Annamalai University and Rajah Muthiah Medical College cannot fix and collect fees and to refund the excess fees collected more than permissible fees for self-financing colleges.

6. W.P.No.14562 of 2016 has been filed by MBBS students and W.P.No.22911 of 2016 has been filed by the second year BDS Students, seeking a declaration to declare that prescription and demand of tuition fees as per Clause 3.1 of the prospectus as illegal, unconstitutional and without jurisdiction and to direct respondents to collect the tuition fee fixed for Government Medical Colleges and to refund the excess fees collected, with interest at the rate fixed by the nationalised banks.

7. The facts which led to the filing of writ petitions are as under:

Raja Muthiah Medical College, in which the students have joined either MBBS or BDS or MDS or PG Course in Medicine, either in the academic year 2013-14 or 2014-15, is a constituent of Annamalai University. Annamalai University was established under the Annamalai University Act, 1928. Due to unfortunate events which led to the closure of the Annamalai University, the Government of Tamil Nadu had to pass Annamalai University Act, 2013, repealing the 1928 Act. After the passing of 2013 Act, the University came under the control of the State under the new Act.

8. The students were under the impression that the University is a State run University, since the University is now under the control of the Government and therefore, they would be required to pay the fees prescribed by the Government for the academic year 2014-15. However, to their shock, the students were required to pay the fees prescribed in the

prospectus, which was determined by the Senate. Aggrieved by the same, the students have come up with the above writ petitions.

9. Some of the students of the year 2013-14 filed writ petitions in W.P.Nos.20720 and 22305 of 2015 and the same was dismissed by a learned single Judge. Hence, those students have come up with the above writ appeals.

10. The main contentions raised by the learned senior counsel and counsel appearing on behalf of the students are:

Once the Government had taken the complete control of the Annamalai University, Rajah Muthiah Medical College has become a Government college and therefore, demanding the students to pay the fees that has been fixed by the Senate prescribed in the prospectus issued for the previous academic year, namely Rs.5,54,370/- and Rs.3,50,370/- for MBBS and BDS Courses respectively, is arbitrary, when the Government charges only a sum of Rs.12,990/- and Rs.10,290/- towards fees for MBBS and BDS Courses respectively, in the Government colleges.

11. The students joined the College only on merit, after passing the entrance examination conducted by the Administrator appointed by the Government and as per the reservation policy of the Government, and therefore, the University cannot demand the fee fixed by the Senate for the

previous academic year as prescribed in the prospectus.

12. As per Section 2(b) of the Capitation Fee Act, 1992, Raja Muthiah Medical College is an educational institution. Section 4(2A) of the Capitation Fee Act mandates that the educational institution shall not collect or receive fees in excess of what is prescribed by the Fee Fixation Committee and therefore, the College cannot demand the fee prescribed in the prospectus issued for the previous academic year.

13. Moreover, if the stand taken by the University that it accumulated loss and therefore, if it is compelled to go before Fee Fixation Committee or to collect the fee fixed by the Government, it will suffer hardship, is accepted, then, all the educational institutions would plead for freedom of fixing of fees to set right the accumulated loss suffered by them and therefore, the University should not be allowed to collect the fee fixed by the Senate.

14. The learned single Judge, without taking note of the plight of the students, has passed the impugned order and therefore, the order of the learned single Judge has to be set aside.

15. In support of their contentions, the following decisions have been relied upon:

(i) ***Islamic Academy of Education v. State of Karnataka [(2003)***

6 SCC 697];

(ii) ***P.A.Inamdar v. State of Maharashtra [(2005) 6 SCC 537];***

(iii) ***Modern Dental College & Research Centre v. State of M.P. [2010) 14 SCC 186];*** and

(iv) ***Sachin Mehta v. State [Civil W.P.(PIL) No.10632 of 2012 dated 25.10.2013 - Rajasthan High Court].***

16. On the contrary, the contentions made on behalf of the University are:

The University had faced an unforeseen situation leading to the closure of the institution and therefore, the Government has taken the complete control of the University. Hence, it cannot be stated that the University is now a State run University and therefore, it should not demand and collect the fee in excess of what is charged by the Government.

17. Though the students stake a claim that they were admitted only based on their performance in the entrance examination conducted by the Administrator appointed by the Government and therefore, the University cannot demand the fee fixed by the Senate, in view of the fact that they joined the courses only after agreeing to the terms and conditions prescribed in the prospectus, they cannot now turn around and demand the University not to collect the fee prescribed in the prospectus, by taking advantage of the situation that the University had faced, resulting in the take over of the

University by the Government.

18. Section 4(13) of the 2013 Act empowers the University to fix the fee for various courses and to demand and receive the same. Accordingly, the University has demanded the fee as prescribed by the Senate. Hence, it cannot be contended that the University has violated the statute and therefore, the contention made on behalf of the students that the University cannot demand the fee prescribed in the prospectus has to be rejected.

19. The fact that the University was taken over by the Government in order to avoid the closure of the University will not extend any right to the students to contend that the University should collect the fee fixed by the Government for the students of the Government colleges. Further, taking note of the fact that the University is not running with the motive of profiteering, the Government had not referred the University to go before the Fee Fixation Committee. Therefore, the contention of the students in this regard is liable to be rejected.

20. The learned single Judge, taking note of the plight of the University and its financial condition and the object with which the University was established and the fact that the University is not running with profiteering motive, has rejected the prayer of the students. Therefore, the order of the learned single Judge has to be confirmed.

21. To buttress their contention, the following decisions have been relied upon:

- (i) ***Midhuna Nathan v. State of Tamil Nadu* [1995 WLR 851];**
- (ii) ***Krishna Bahadur v. Purna Theatre & Others* [(2004) 8 SCC 229];**
- (iii) ***Saraswathi v. The State of Tamil Nadu* [2005 WLR 267];**
- (iv) ***Sri Ram.A (Minor) v. State of Tamil Nadu* [2005 WLR 691];**
- (v) ***Dr.M.Ashiq Nihmathullah v. The Government of Tamil Nadu* [2005 WLR 697];**
- (vi) ***S.Arulselvan v. The Government of Tamil Nadu* [2006 WLR 165];**
- (vii) ***Cochin University of Science and Technology v. Thomas P.John* [(2008) 8 SCC 82];**
- (viii) ***Modern Dental College & Research Centre v. State of M.P.* [2010) 14 SCC 186];** and
- (ix) ***Sachin Mehta v. State* [Civil W.P.(PIL) No.10632 of 2012 dated 25.10.2013 - Rajasthan High Court].**

22. We have given careful consideration to the submissions of both sides and also perused the records.

23. Before delving into the issues that were raised before us, it is

necessary to see whether Annamalai University, which is under the control of the Government, is a Government University or not. In this regard, a brief history of the Annamalai University is apposite to be referred.

24. Under the Annamalai University Act, 1928, Annamalai University was established. Raja Sir Annamalai Chettiar entered into an agreement with the local Government to hand over all the institutions of higher education together with all its properties to the Government, along with a donation of Rs.20 Lakhs for establishing an University, reserving certain powers and privileges to himself and his successors. In the year 1985, a medical College by name Raja Muthiah Medical College was established. Though the Government's financial contribution to the University right from its establishment is more than the amount donated by the Founder, the Government's intervention in the management and administration of the University was least. Due to series of protests alleging serious irregularities and mal-administration, the University was closed in the year 2012.

25. The Government, therefore, constituted a Special Local Fund Audit Team and directed them to conduct a special audit. On receipt of the report which disclosed shocking state of affairs, the Government constituted a High Level Committee to analyse the said report. The High Level Committee, after examination of the report and the materials in support thereof, suggested certain recommendations. Thus, the Government appointed an Administrator

and thereafter, the State Legislature repealed the 1928 Act and passed the Annamalai University Act, 2013. The role played by the Founder and his male descendants was removed under the new Act and now, the Administrator appointed by the Government is managing and administering the University.

26. Originally, Raja Muthiah Medical College was designed to be a private unaided professional college supported by the Annamalai University from out of its funds. The medical courses offered are originally designed to be self supporting courses and not self financing courses. When the University was about to be closed due to its financial condition, the Government took over the control of the University, in order to keep it alive. Thus, the said act of the Government will not make the University a Government University. Therefore, it cannot be said that the University is a State run University.

27. Once it is clear that the University is not a Government University, the next question that has to be considered is whether Capitation Fee Act will apply to the University or not.

28. Tamil Nadu Act 57 of 1992 was issued by the State of Tamil Nadu to abolish the practice of collection of capitation fee by educational institutions. The preamble to Act 57 of 1992 shows that the object of the Act was not merely to curb the practice of collection of capitation fee, but also to

arrest the large scale commercialisation of education. Therefore, any interpretation of the provisions of the Capitation Fee Act, 1992 should be made keeping in mind two things namely (a) that the Act came into existence long before the Supreme Court directed the regulation of fee structure of self financing colleges; and (b) that the object of the Act is to curb the menace of commercialisation of education.

28. In this regard, a reference to some of the provisions of the Capitation Fee Act, 1992, would be of relevance.

29. Section 3 of the said Act declares that notwithstanding anything contained in any law, judgment or order of any Court or other authority, no capitation fee shall be collected by any person either for himself or on behalf of any educational institution or on behalf of the management of such institution. Section 3 reads as follows:-

"3. Notwithstanding anything contained in any law for the time being in force or in any judgment; decree or order of any court or other authority, no capitation fee shall be collected, --

(a) by any person who is in charge of, or is responsible for, the management of any educational institution; or

(b) by any other person either for himself or on behalf of any such educational institution or on behalf of any such management of any educational institution."

30. The expression "Capitation Fee" is defined under Section 2(a) as under:

"any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under Section 4".

31. Section 4 of the Capitation Fee Act, enables the Government to regulate the tuition fee or any other fee, by Notification in the Gazette. In its original form, Section 4 of the Capitation Fee Act, read as follows:-

"4. (1) Notwithstanding anything contained in any other law for the time being in force, the Government may, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institution in respect of any or all class or classes of students:

Provided that before issuing a notification under this sub-section, the draft of which shall be published in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it. "

32. By Act No.41 of 2007, the Capitation Fee Act, 1992 was amended.

By the said amendment, a new sub-section namely Sub-Section (2-A) was inserted in Section 4. It reads as follows:-

"(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), no educational institution imparting education leading to a degree in medicine or engineering shall receive or collect any fee in excess of the amount fixed by the 'Committee on fixation of fee' constituted by the Government.

Explanation:- For the purpose of this sub-section, 'Committee on fixation of fee' means the Committee constituted in pursuance of the direction of the Supreme Court in Islamic Academy of Educational and another vs. State of Karnataka and others [(2003) 6 SCC 697]."

33. The expression "Educational Institution" is defined in Section 2(b) of the Tamil Nadu (Prohibition of Collection of Capitation Fee) Act, 1992 (Tamil Nadu Act 57 of 1992) as follows:-

"(b) 'educational institution' means any institution, by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu and any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament) as the Government may, by notification specify:"

34. In order to come within the mischief sought to be eradicated by the Capitation Fee Act, 1992, the following pre-requisites are to be fulfilled:

(i) The institution must be an educational institution within the meaning of section 2(b);

(ii) What is sought to be paid to or collected by such institution, should be a capitation fee within the meaning of section 2(a); and

(iii) if the institution in question is one, imparting education leading to a degree in medicine or engineering, the amount collected by whatever name, should be in excess of what is fixed by the Committee constituted by the State Government, in pursuance of the directions issued by the Supreme Court in ***Islamic Academy v. State of Karnataka [2003 (6) SCC 697]***.

35. After quoting this, the learned single Judge has held as follows:

"73. Let me now see whether the first prerequisite is satisfied. The definition of the expression "educational institution" is so wide, as to include such institutions managed by even a local authority or University. But an educational institution established by the Central Government or under any law made by the Parliament, is not covered by the definition, as seen from the words appearing within brackets, in Section 2(b).

74. But there are two limbs to Section 2(b). The first is any institution, by whatever name called, whether managed by any person, private body, local authority, trust or University, carrying on the activity of imparting education leading to a degree or

diploma (including a degree or diploma in law, medicine or engineering) conferred by any University established under any law made by the Legislature of the State of Tamil Nadu. The second limb of Section 2(b) is any other educational institution or class or classes of educational institutions (other than any educational institution established by the Central Government or under any law made by Parliament).

75. But, the above two limbs of Section 2(b) are followed by the words "**as the Government may, by notification specify**". Therefore, to be an educational institution within the meaning of Section 2(b), for the purpose of application of the provisions of this Act, it must have been notified by the State Government under this Act. As a matter of fact, Mr.A.L.Somayaji, learned Advocate General produced a copy of the Government Order constituting the Fee Fixation Committee and the reference made to it. Neither the Respondent University or its constituent colleges are included therein. This is why the Fee Fixation Committee never ventured to take up the question of fixation of fee for the courses run by the Respondent, either before or after the 2007 amendment.

76. Let me assume for a minute that the words "**as the Government may, by notification specify**", go only with the second limb of Section 2(b) and they do not go with the first limb. Even then, the Act may not apply. This is for the reason that despite the Amendment Act 41 of 2007 coming into force on 14.11.2007, the Capitation Fee Act, 1992 was never applied to Annamalai University, either from 1992 or at least from 2007. The reason is too obvious.

77. The Annamalai University was established originally under an enactment of the pre-independence days. Section 2(b)

excludes from the purview of the definition of the expression "educational institution", those institutions established by the Central Government or under any law made by the Parliament. The Annamalai University Act, 1928, received several amendments by virtue of the Government of India (Adaptation of Indian Laws) orders of 1937, 1940, 1943 etc. Therefore, merely because the Act was repealed and replaced by Tamil Nadu Act 20 of 2013, it cannot be said that the first limb of Section 2(b) would apply, without the State Government referring the University to the Fee Fixation Committee.

78. Assuming for a minute that the first limb of Section 2(b) is attracted and that the first pre-requisite for the invocation of the provisions of the Capitation Fee Act is satisfied, I do not think that the other two pre-requisites are satisfied. This is for the reason that the Government never referred either the Annamalai University or any medical or engineering college run by the State itself, to the Fee fixation Committee constituted in pursuance of the decision of the Supreme Court in Islamic Academy."

36. A perusal of the above extract would show that both the pre-requisites are not satisfied to invoke the provisions of Capitation Fee Act. Further, the learned single Judge, after referring to the statement submitted by the Special Local Fund Audit Team, has also observed as under:

"A careful look at the above statement, which is submitted after the Special Local Fund Audit Team had conducted a local fund audit would show that these courses are now run on deficit financing. Therefore, the question of commercialisation of

education, which forms the foundation for the invocation of the Capitation Fee Act, 1992 does not arise."

37. It is therefore clear that the University is running on deficit financing. In a situation where the University is under deficit financing, the question of profiteering or commercialising the education by the University will not arise. Moreover, the fact that the respondent University or its constituent colleges were not included in the Government Order constituting the Fee Fixation Committee would itself show that the University is not profiteering or commercialising the education. Therefore, the question of fixation of fee for the courses run by the respondent was never ventured by the Fee Fixation Committee. Hence, we hold that the question of invocation of Capitation Fee Act, 1992 does not arise.

38. Now, the issue left to be decided is whether the students are bound by the terms and conditions, including the fee, prescribed in the prospectus.

39. With respect to the contention of the students that charging of fees by the University is in excess of the fee charged by the Government, the stand taken by the University is that once a student submitted the application for admission in terms of prospectus and joined the course, the student is bound by the terms and conditions stipulated in the prospectus.

40. In ***Midhuna Nathan v. State of Tamil Nadu [1995 WLR 851]***, a Division Bench of this Court held that the rules and norms contained in a prospectus are not only binding on the Selection Committee and the Authorities, but also binding on the students.

41. In ***S.Arulselvan v. Government of Tamil Nadu [2006 WLR 165]***, this Court has held that even the Court does not have the power to amend or alter or add something to the prospectus. At the same time, judicial review can be made only in cases where the prospectus contains certain clauses contrary to the Rules.

42. Even in the judgments referred to by the University, namely ***Sri Ram.A. (Minor) b. State of Tamilnadu [2005 W.L.R. 691]*** and ***Dr.M.Ashiq Nihmathullah v. State of Tamil Nadu [2005 W.L.R. 697]***, it is held that the prospectus are binding on both sides.

42. Thus, as observed by the learned single Judge, prospectus could be considered as an invitation to offer and the applications made by students for admission in terms of the prospectus, constitute the offer and accordingly, the admission of the students in terms of the prospectus constitutes acceptance and thereupon a binding contract is born between the institution and the students. Therefore, the students who have accepted the

offer made in prospectus, namely the terms and conditions and the fee fixed by the Senate and joined the course, cannot now turn around the same and contend that charging and demanding the fee prescribed in the prospectus is arbitrary, on the ground that the University is now a State run University.

43. As regards, the fixation of fee by the University on its own, we shall refer to the decisions referred to by the parties.

44. In ***T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481]***, the Apex Court has held as follows:

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.

45. After the judgment in ***TMA Pai Foundation***, various State Governments and the educational institutions understood the majority

judgment in different perspectives and different statutes were enacted and and regulations were framed by different State Governments, resulting in litigations in several Courts. Therefore, to clarify the doubts and anomalies, a Bench of five Judges was constituted in ***Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697]***.

46. After hearing both sides, the Five Judges Bench formulated four questions for consideration, of which, the first question alone is relevant to the case on hand, namely whether the educational institutions are entitled to fix their own fee structure. It reads as under:

"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 the total number of members of the Committee shall not exceed five. 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."

47. In the very same judgment, in his dissenting note, S.B.Sinha,J, observed that beyond any doubt, the unaided institutions exercised a greater autonomy in the matter of fee structure and that economic forces have a role to play. He also observed that the fee structure must be determined separately in relation to each and every college, keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. Therefore, the case of each institution has to be considered by an appropriate Committee, even by looking into books of

accounts maintained by the institution and the institution would not be entitled to charge anything more than what is determined by the Committee. Though he has not laid down any guidelines as regards fee structure, he was of the opinion that reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

48. In the instant case, though the University is under the control of the Government, the stand of the Government is that the University had not fixed the fee with the object of profiteering and it is only for the purpose of compensating the expenditure involved in running the institutions. Taking note of the above, the learned single Judge has held as follows:

*"85. Raja Muthiah Medical College was originally designed to be a private unaided professional college supported by the Annamalai University from out of its funds. **But today, it is financially in the intensive care unit and any attempt at reducing the fee structure would destroy the very institution** and may result in 2 consequences namely (1) either the closure of the medical college on the ground of unviability or (2) the return of the University by the Government to the Founder's family. Both these consequences are disastrous for the students. This is why the Association of Teachers of the University came up with an application for impleading and they have now supported the case of the Government. The teaching and non-teaching staff of the University are now apprehensive that if the University and its constituent colleges become white elephants, incapable of being*

financially managed, the Government may wash its hands off, leading to the closure of the institutions or to the surrender of the institutions to the founder. This is why they got impleaded and supported the stand taken by the Respondents.

86. The very premise on which the Supreme Court proceeded in Islamic Academy was that each institution stands on a different footing. Today, if Raja Muthiah Medical College had gone before the Fee Fixation Committee and had furnished the statistics relating to income and expenditure, which I have extracted earlier, the Committee could have fixed a much higher fee than what is now charged. As on date, the institution is not even able to break even. Therefore, there is no question of profiteering.

87. In the academic year 2013-14 when the petitioners joined the Respondent University, they did not seek a reference of the institution to the Fee Fixation Committee. Today, if the Government hands over the University, back to the family of the founder, the management may even find it convenient to refer the college to the Fee Fixation Committee, since the chances of an enhancement of the fee from what it is now, are much brighter, in view of the present financial condition of the University. If it so happens, the students may themselves contend that Capitation Fee Act, 1992 does not apply to these institutions."

49. Furthermore, when the deemed Universities in the State of Tamil Nadu are not covered by Capitation Fee Act, 1992, and they are kept out of the purview of the Fee Fixation Committee, Annamalai University should also be kept out of the purview of the Fee Fixation Committee, since it would

inflict double jeopardy upon the Government. Accordingly, the Annamalai University will not come under the purview of the Fee Fixation Committee.

50. At this juncture, it would be apt to refer Sections 4(13) and 20(1)(m) and (ab) of the 2013 Act, which reads as under:

Section 4:

The University shall have the following objects and powers, namely:—

....

(13) to fix fees and to demand and receive such fees as may be prescribed;"

Section 20:

(1) The Syndicate shall have the following powers, namely:-

.....

(m) to prescribe the fees to be charged for admission to the examinations, degrees, titles and diplomas of the University and for all or any of the purposes specified in section 4;

....

(ab) to charge and collect such fees as may be prescribed;"

51. A plain reading of the above Sections would make it clear that the University is empowered under Section 4(13) to fix fees and to demand and receive such fees as may be prescribed. Under Section 20(1)(m), the

Syndicate is empowered to prescribe the fees to be charged for admission to the examinations, degrees, titles and diplomas of the University and for all or any of the purposes specified in Section 4. Under Sub-section (ab) of Section 20(1), the Syndicate is empowered to charge and collect such fees as may be prescribed.

52. Thus, the University is empowered by the statute to fix the fees and to demand and receive such fees, as prescribed by the Senate. Accordingly, when the University demanded the students to pay the fees prescribed by the Senate for the previous academic year, it cannot be stated that the University is charging the fees with the ulterior motive of profiteering, particularly when the Government had not included the University in the Government Order constituting the Fee Fixation Committee, as rightly held by the learned single Judge.

53. In view of the detailed discussions made above, we hold that

- (i) Annamalai University is not a Government University;
- (ii) the Capitation Fee Act, 1992 will not apply to the University;
- (iii) Annamalai University will not come under the purview of the Fee Fixation Committee; and
- (iv) Annamalai University is empowered to fix the fees as prescribed by the Syndicate.

54. In the result, the writ appeals are dismissed, confirming the order of the learned single Judge. The writ petitions are also dismissed. There shall be no order as to costs. Consequently, connected M.Ps. are also dismissed.

Index : Yes
Internet: Yes

(H.G.R.J.) (M.V.M.J.)
26.9.2016

kpl

HULUVADI G.RAMESH,J,
and
M.V.MURALIDARAN,J.

kpl

Judgment in
W.A.Nos.1637 & 1638 of 2014,
W.P.Nos.6909, 6910, 12515,
27098 & 31848 of 2015,
14562, 22911 & 26388 of 2016.

26.9.2016.