

HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

**WRIT PETITION Nos.16651, 17903, 18723,
19960, 20489, 21137, 21391, 21410, 21570, 22558,
23091, 23167, 23219, 23221, 23307, 25054 &
25961 of 2015 and P.I.L.No.175 of 2015**

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COMMON ORDER : (Per Justice R.Subhash Reddy)

In this batch of cases, the petitioners are seeking directions for admission into MBBS/BDS courses by questioning the orders issued by the State of Andhra Pradesh and the State of Telangana in G.O.Ms.No.33, Health, Medical and Family Welfare (C1) Department, dated 17.04.2015, G.O.Ms.No.30, Health, Medical and Family Welfare (C1) Department, dated 17.04.2015, G.O.Ms.No.39, Health, Medical and Family Welfare (C1) Department, dated 20.05.2015 and G.O.Ms.No.41, Health, Medical and Family Welfare (C1) Department, dated 20.05.2015. As such, they are heard together and are disposed of by this common order.

2. The writ petition in W.P.No.25054 of 2015 is filed by B.C.Samkshema Sangham, Andhra Pradesh, P.I.L.No.175 of 2015 is filed by Sri S.A.Sampath Kumar, M.L.A. of Alampur Constituency and the remaining writ petitions are filed by the students, who are aspiring to enter into MBBS course.

3. By orders of the Government of Andhra Pradesh,

issued in G.O.Ms.No.33, dated 17.04.2015, the Government, in exercise of powers under Sections 3 and 15 of the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (hereinafter referred to as 'Act No.5 of 1983'), has amended Rules 4, 5 and 6 of the A.P. Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Under-graduate Medical and Dental Professional Courses) Rules, 2007 (hereinafter referred to as 'the Rules'), issued vide G.O.Ms.No.136, Health, Medical and Family Welfare (E1) Department, dated 30.04.2007. By this amendment, Rule 4 of the Rules is substituted and the substituted Rule reads as under :

“For Rule 4 ‘Allotment of seats’, the following shall be substituted:

The seats to be allotted in each unaided Non-Minority Professional Institutions under these rules, for admission of candidates shall be as:

Category-A seats (50% of the sanctioned intake of the seats)

Competent authority seats:- These seats shall be filled in through the counseling by the committee constituted by competent authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the state for that year following the rules of reservation.

Category-B seats (35% of the sanctioned intake of the seats)

MCET-AC ranking based management seats:- The seats shall be filled through the

counseling by the committee for admission constituted by APMDCMA as per the merit from the candidates who are qualified at MCET held by a third party employed for the purpose by the managements association for that year as per the procedure that may be prescribed in this regard.

Category-C seats (15% NRI quota)

These seats shall be filled by the managements of the individual institutions or the committee of the managements under these rules.”

4. In the orders issued by the Government of Andhra Pradesh in G.O.Ms.No.30, dated 17.04.2015, based on the consensual agreement arrived at between the Government and the private un-aided non-minority medical/dental colleges in the State, the tuition fee structure in respect of undergraduate medical and dental courses in private un-aided non-minority colleges from the academic year 2015-16 is notified. The tuition fee structure as shown in the annexure to G.O.Ms.No.30, dated 17.04.2015, reads as under :

“ANNEXURE to the G.O.Ms.No.30, Health, Medical & Family Welfare (C1) Dept., Dated:17.04.2015 :

Particulars of the tuition fee structure in respect of undergraduate medical/dental courses in private unaided non-minority colleges from the academic year 2015-16 and certain directions thereto.

Medical

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Sl.No.	Category	Tuition Fee per annum
1	A category	Rs.10,000/- p.a.
2	B category	Rs.11,00,000/- p.a.
3	C category (NRI)	Not exceeding five times maximum chargeable to B category students per annum

- Notes:**
1. Tuition fee is payable annually for five academic years.
 2. There shall be 5% increment in tuition fee per year to offset inflation.
 3. A sum of Rs.25,000/- p.a. per subject for all failed students in each phase of study during the academic year.
 4. The students who were admitted into the course prior to 2015 shall continue to pay every year the same annual fee at the rate existing at the time of their admission till they complete the course.
 5. The student shall pay the same tuition fee for the entire course period, as paid at the time of admission.
 6. The Institution shall collect the tuition fee every year in advance only for that particular year.
 7. The managements of the institution may seek Bank Guarantee for tuition fee chargeable for the entire course.

Dental

Sl.No.	Category	Tuition Fee per annum
1	A category	Rs.10,000/- p.a.

2	B category	Rs.4,50,000/- p.a.
3	C category (NRI)	Not exceeding five times maximum chargeable to B category students per annum

Notes: 1. Tuition fee is payable annually for four academic years.

2. There shall be 5% increment in tuition fee per year to offset inflation.

3. A sum of Rs.10,000/- p.a. per subject for all failed students in each phase of study during the academic year.

4. The students who were admitted into the course prior to 2015 shall continue to pay every year the same annual fee at the rate existing at the time of their admission till they complete the course.

5. The student shall pay the same tuition fee for the entire course period, as paid at the time of admission.

6. The Institution shall collect the tuition fee every year in advance only for that particular year.

7. The managements of the institution may seek Bank Guarantee for tuition fee chargeable for the entire course.”

5. Similarly, State of Telangana has issued orders in G.O.Ms.No.39, dated 20.05.2015, in exercise of powers under Sections 3 and 15 of Act No.5 of 1983, by effecting amendments to G.O.Ms.No.136, dated 30.04.2007. By the aforesaid amendment, the Government of Telangana has notified amendments to Rules 4, 5 and 6 of the Rules

framed vide G.O.Ms.No.136, dated 30.04.2007. As per the said G.O., the seats to be allotted in each un-aided non-minority professional colleges is classified as under :

“The seats to be allotted in each unaided Non-minority Professional Institutions under these rules, for admission of candidates shall be as :

Category-A seats (50% of the sanctioned intake of the seats)

Competent authority seats:- These seats shall be filled in through the counseling by the committee constituted by competent authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the state for that year following the rules of reservation.

Category-B seats (35% of the sanctioned intake of the seats)

MCET-AC ranking based management seats:- The seats shall be filled through the counseling by the committee for admission constituted by TPMDCMA as per the merit from the candidates who are qualified at MCET held by a third party employed for the purpose by the managements association for that year as per the procedure that may be prescribed in this regard.

Category-C seats (15% NRI quota)

These seats shall be filled by the managements of the individual institutions or the committee of the managements under these rules.”

6. Further, the Government of Telangana, vide G.O.Ms.No.41, dated 20.05.2015, has notified the tuition

fee structure for under-graduate courses i.e. MBBS and BDS courses, based on the consensual agreement between the Government and the Association of colleges. The tuition fee structure as shown in the Annexure to G.O.Ms.No.41, dated 20.05.2015, reads as under :

“ANNEXURE to the G.O.Ms.No.41, Health, Medical & Family Welfare (C1) Dept., Dated: 20.05.2015 :

Particulars of the tuition fee structure in respect of Under Graduate Medical/Dental courses in Private Unaided Non-Minority Colleges for the academic year 2015-16 and certain directions thereto.

Medical

Sl.No.	Category	Tuition Fee per annum
1	A category	Rs.60,000/-
2	B category	Rs.9,00,000/-
3	C category	Rs.11,00,000/-

- Notes:** 1. Tuition fee is payable annually for five academic years.
2. The students who were admitted into the course prior to 2015 shall continue to pay every year same annual fee at the rate existing at the time of their admission till they complete their course.
3. The student shall pay the same tuition fee for the entire course period, as paid

at the time of admission.

4. The Institution shall collect the tuition fee every year in advance only for that particular year.
5. The managements of the institutions may seek Bank Guarantee for tuition fee chargeable for the entire course.

Dental

Sl. No.	Category	Tuition Fee per annum
1	A category	Rs.45,000/-
2	B category	Rs.4,00,000/-
3	C category	Rs.5,00,000/-

Notes: 1. Tuition fee is payable annually for four academic years.

2. The students who were admitted into the course prior to 2015 shall continue to pay every year same annual fee at the rate existing at the time of their admission till they complete their course.
3. The student shall pay the same tuition fee for the entire course period, as paid at the time of admission.
4. The Institution shall collect the tuition fee every year in advance only for that particular year.
5. The managements of the institutions may seek Bank
Guarantee for tuition fee chargeable for the entire
course.”

7. In the writ petition in W.P.No.17903 of 2015, the petitioners have questioned the very consensual

agreement, dated Nil, signed on 13.04.2015, between the Private Non-minority Un-aided Colleges Association and also the State Governments, based on which, the impugned G.Os. are issued.

8. Heard learned Counsel Sri N.Subba Reddy, Sri S.Satyam Reddy, learned Senior Counsel and learned counsel Sri K.Ramakoteswara Rao, Sri P.Sridhar Rao, Sri P.R.Prasad and Sri Meherchand Nori, appearing for petitioners and Learned Advocate-Generals for the States of Telangana and Andhra Pradesh, Sri C.V.Mohan Reddy, learned Senior counsel appearing for the Association of Colleges, Sri A.Prabhakar Rao, learned counsel appearing for Dr.NTR University of Health Sciences, learned counsel Sri A.Abhishek Reddy and Sri C.Sudesh Anand, appearing for respondents.

9. Prior to enactment of Act No.5 of 1983 i.e. A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, the establishment of educational institutions and the admission process was governed by the provisions under A.P. Education Act, 1982 and the Rules made thereunder. With an object to eradicate the practice of collecting capitation fee and to maintain excellence in standards of education, Act No.5 of 1983 is brought into force. In exercise of power under Sections 3 and 15 of the said Act, Rules are framed to regulate admissions into under-graduate medical and

dental professional courses, vide G.O.Ms.No.136, Health, Medical and Family Welfare (E1) Department, dated 30.04.2007. Such Rules are titled as “Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Under-Graduate Medical and Dental Professional Courses) Rules, 2007. Rule 4 of the Rules deals with categorization of seats. Originally, the seat matrix was categorized as under :

“Category-A seats (50% of the sanctioned intake of the seats)

Competent authority seats:- These seats shall be filled in through the counseling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the state for that year following the rules of reservation.

Category-B (20% of the sanctioned intake of the seats)

EAMCET ranking based Management Seats :- The seats shall be filled through counseling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation as agreed to by the A.P. Private Medical and Dental Colleges Managements Association, Hyderabad.

Category-C (30% of the sanctioned intake of the

Seats) –

Managements Seats :- The seats shall be filled by the Managements of individual Colleges or Committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules.”

The said Rule was amended by orders of the Government of A.P. vide G.O.Ms.No.144, Health, medical and Family Welfare (E1) Department, dated 15.07.2009. As per the said amendment, 50% seats are categorized as A-Category i.e. Convenor quota, 10% seats are categorized as B-Category i.e. EAMCET rank based management quota and 40% seats are categorized as C-Category i.e. management quota. Further amendments are made by categorizing the C-Category seats into C1 and C2 categories, by which, 15% of seats are categorized as NRI quota. By impugned amendments made by the State of Andhra Pradesh and the State of Telangana, the seats are classified as under :

A-Category - 50% seats (Convenor quota)

B- Category – 35% seats (EAMCET rank based admissions)

C- Category – 15% seats (NRI quota)

Rule 9 of the Rules provides for various kinds of reservations. As per the said Rule, there is reservation for locals as per the Andhra Pradesh Educational Institutions (Regulations and Admissions) Order, 1974 (the

Presidential Order) to the extent of 85% in the Competent Authority seats apart from reservations to Scheduled Castes, Scheduled Tribes and Backward Classes under Rule 9(2) and reservations to Special categories viz., physically handicapped, NCC, games and sports etc., under Rule 9(3) of the Rules. There is also reservation of 33 1/3% of seats for women. Admissions were made as per the Rules framed in G.O.Ms.No.136, dated 30.04.2007 by the composite State of Andhra Pradesh. Pursuant to A.P. Re-organisation Act, 2014, the new State of Telangana is formed with 10 districts and 13 districts are remained in the residuary State of Andhra Pradesh. The new State of Telangana has come into existence with effect from 02.06.2014. After bifurcation also, the new State of Telangana is also following the Rules framed under G.O.Ms.No.136, dated 30.04.2007.

10. In this batch of cases, the fixation of seat matrix as categorized under Rule 4 of the amended Rules is challenged mainly on the ground that it has not provided for various categories of reservations as per Rule 9 of the Rules. Mainly, it is the case of petitioners that the substituted Rule 4 of the Rules does not provide any reservation of seats for various categories, namely, Scheduled Castes, Scheduled Tribes, Backward Classes and other categories as contemplated under Rule 9 of the Rules, as such, such substituted Rule is illegal and

arbitrary and runs contrary to Rule 9 of the Rules apart from various provisions under Act No.5 of 1983 and also offends Article 15(5) of the Constitution of India. It is also the case of petitioners that the impugned orders issued by the Governments of Andhra Pradesh and Telangana States are subsequent to the notification issued by the Convenor, EAMCET-2015, as such, the impugned orders cannot be given retrospective effect and the admissions to various MBBS and BDS courses are to be made as per the pre-amended Rules. Apart from the same, the writ petitioners also questioned the tuition fee structure notified by the State of Andhra Pradesh and the State of Telangana for B and C Category seats. The said challenge is mainly on the ground that such fixation is not based on the recommendations made by the Fee Regulatory Committee.

11. Learned counsel appearing for petitioners have principally contended that in the absence of amending Rule 9 of the Rules, reservations are to be provided even for B-category seats. It is contended that the substituted Rule 4 of the Rules runs contrary to Rule 9 of the Rules and also contrary to Article 15(5) of the Constitution. It is contended that the Convenor, EAMCET-2015 has issued notification on 03.03.2015, as such, all the orders issued by both the Governments, which are impugned in this batch of cases, cannot be given effect to, for the purpose

of admissions into MBBS and BDS courses for the academic year 2015-16. The learned counsel Sri N.Subba Reddy also contends that as per the Rules framed in G.O.Ms.No.136, dated 30.04.2007, the Presidential Order is also to be applied for effecting reservations to locals to the extent of 85% for all the available seats. It is contended by the learned counsel that there is no reason or justification for depriving social reservations for B-category seats. Further, with regard to fee structure, mainly, it is contended by the learned counsel appearing for petitioners that the fee structure is notified without taking into account the recommendations made by the Fee Regulatory Committee constituted pursuant to the judgment of Hon'ble Supreme Court in the case of **Islamic Academy of Education & another v. State of Karnataka & others**^[1] and in **P.A.Inamdar & others v. State of Maharashtra & others**^[2]. It is further submitted that there is no material or any justification for fixation of tuition fee for B and C-category seats.

12. On the other hand, it is contended by the learned Advocate-Generals representing the State of Andhra Pradesh and the State of Telangana and Sri C.V.Mohan Reddy, learned Senior Counsel appearing for the Association of Colleges and Sri A.Prabhakar Rao, learned counsel appearing for Dr.NTR University of Health

Sciences and Sri C.Sudesh Anand and Sri A.Abhishek Reddy, learned counsel for some of the respondents, that in view of the judgment of Hon'ble Supreme Court in **P.A. Inamdar's** case (2 supra), it is always open for the State to enter into consensual agreement for fixing the seat matrix. It is submitted that the impugned G.Os., which are issued for amending Rule 4 of the Rules, is based on the consensual agreement entered into by the Governments of Andhra Pradesh and Telangana States with the Association of colleges. It is submitted that as per Rules, reservation can be given effect to only for the competent authority seats i.e. A-Category seats, but there is no basis for claiming reservation for B and C category seats, which are to be made by managements of the colleges. Further, it is submitted that mere issuance of notification by the convenor of EAMCET-2015 will not confer any right on the petitioners so as to plead that the impugned G.Os. cannot be given effect to for the academic year 2015-16. It is further contended that in the absence of any Legislative mandate or executive orders for effecting reservations in B and C category seats, there is no basis for claiming such reservations. It is submitted that the consensual agreement arrived at between the State Governments and the Association of colleges is in conformity with various directions issued by the Hon'ble Supreme Court in the judgments in **Islamic Academy of Education** (1 supra) and in **P.A. Inamdar's** case (2 supra). It is further

submitted that though there was a Fee Regulatory Committee constituted before bifurcation of the State, there was no such committee at the time of issuing orders by the State of Telangana. It is further contended that so far as A-category seats are concerned, nominal fee is prescribed and in view of foregoing 50% of seats, which are to be filled by competent authority, the Government has notified the fee structure taking into account the revenue and expenditure incurred by the colleges and also taking into account the revised pay-scales to employees. In that view of the matter, it is submitted that there is no merit in the contention of petitioners and prayed for dismissal of the writ petitions.

13. Originally, admissions into private non-minority professional institutions for under-graduate medical courses were governed by G.O.Ms.No.136, dated 30.04.2007, framed in Act 5 of 1983. Even after new State of Telangana is formed, the said Rules were followed by the State and after bifurcation of State, the State of Telangana has issued G.O.Ms.No.39, dated 20.05.2015 and G.O.Ms.No.41, dated 20.05.2015. So far as the seat matrix is concerned, both the Governments have amended the Rule in similar lines, but in the fee structure, there is a difference with regard to A and B-category seats. As per the definitions in the Rules framed in G.O.Ms.No.136, dated 30.04.2007, "Competent

Authority” means the Vice-Chancellor of the University of Health Sciences, “Competent Authority Seats” means the seats earmarked from out of the sanctioned intake of seats in each course and in each College to be filled by the Committee for Admissions constituted by the Competent Authority and “Management Seats” means the seats earmarked from out of the sanctioned intake of seats in each course to be filled in the manner as prescribed in these rules towards Management quota. The classification of seats is as per Rule 4, which categorises the seats into 3 categories – A, B and C. A-category seats are competent authority seats, B and C-Category seats are the seats to be filled-up by the managements of colleges. B-category seats were originally 20%, but reduced to 10% and C-category was also divided into C1 and C2 categories. As per the presently substituted Rule, which is impugned in this batch of cases, there are three categories i.e. A-category seats (50% which are to be filled-up by the competent authority), B-category seats to be filled up by the managements based on EAMCET ranking and C-category seats i.e. NRI quota. It is to be seen that Rule 9 of the Rules provides for various reservations, but a comprehensive reading shows that such reservations are made only for competent authority seats i.e. A-category seats, but not to B and C-category seats. It is also not brought to our notice that by any Legislative mandate or

by any executive orders, social reservations are made applicable in B and C-category seats also. In the case of **P.A. Inamdar** (2 supra), the Hon'ble Supreme Court has held in paragraphs 124, 125 and 126, as under :

“124. So far as appropriate of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of *Pai Foundation* nor in the Constitution Bench decision in *Kerala Education Bill* which was approved by *Pai Foundation* is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such

private institutions. This would amount to nationalization of seats which has been specifically disapproved in *Pai Foundation*. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in para 68 of the majority opinion in *Pai Foundation* on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the

judgment in *Pai Foundation* if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment in the light of previous judgments of this Court, which have been approved in *Pai Foundation*, in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.”

Further, the Hon’ble Supreme Court, in paras 17 and 19 of the judgment in **Gulshan Prakash & others v. State of Haryana & others**^[3], has held as under :

“17. Learned counsel for the appellants next contended that, inasmuch as even in All-

India Entrance Examination for Post-Graduate Courses, the Government of India itself has made a provision for reservation for SC/ST candidates, the State of Haryana is bound to follow the same and issue appropriate orders/directions providing reservation in the Post-Graduate Courses. He further contended that the prospectus de hors any provision for reservation is bad and is liable to be quashed. In our view, this contention is also liable to be rejected. It is true that Government of India itself has made a provision for reservation of SC/ST categories. This was a decision by the Government of India and it is applicable in respect of All-India Entrance Examination for MD/MS/PG Diploma and MDS Courses, and reservation for SC/ST candidates in All-India quota for PG seats. However, the same cannot automatically be applied in other selections where State Governments have power to regulate. In fact, the Government of Haryana, in the counter affidavit before the High Court, explained their position that according to them, the matter regarding reservation of seats in the PG Courses has been considered by the State Government from time to time and it has been decided that keeping in view the recommendations of the Medical Council of India and precedents in the other States, reservation of SC/ST in PG Courses is neither feasible nor warranted, as there is already a reservation of 50 per cent of the total seats

in MD/MS/PG Diploma and MDS Course in the institutions of the State of Haryana on all-India basis entrance examination, being conducted by AIIMS, New Delhi, and that the appellants had already availed the benefit of reservation of seats in their qualifying examination of MBBS/BDS. They further clarified that only the State Government is the Competent Authority to decide the reservation in the State. The State Government did not prescribe any reservation for SC/ST and backward classes, due to which it was not included in the prospectus. They also clarified that the petitioners before the High Court were on the wrong impression that the Government of Haryana has already taken a decision to make a reservation in admission to MD/MS/PG Diploma and MDS Courses for SC/ST category. It was clarified that the Government of Haryana has never granted the benefit of reservation to SC/ST category in admission to MD/MS/PG Diploma and MDS Course. The Government of Haryana, for the first time, considered and decided on 05.04.1988 that there will be no reservation in admission to PG/Diploma courses. Again, in their letter dated 01.01.1991, reiterated that Government of Haryana is not in favour of reservation for SC/ST categories in PG/Degree/Diploma Courses. Again, by the letter dated 26.04.2002 reiterated that there will be no reservation for SC/ST candidates at Post-Graduate level admission in PGIMS,

Rohtak. It is pointed out that since Government of Haryana has taken a conscious decision of not to make reservation for SC/ST categories in admission at the Post- Graduate level, such a decision of the Government suffers no infirmity. The other materials placed by the State shows that before taking such a decision, they considered the recommendations of the Medical Council of India and precedents/decisions in other States and concluded that the reservation for SC/ST categories in Post-Graduate Degree and Diploma Courses is not feasible in the State. Though, even at the Post-Graduate level, reservation for SC/ST/Backward Community is permissible in view of the specific decision by the State of Haryana not to have reservation for Scheduled Castes and Scheduled Tribes at the Post-Graduate level, there cannot be any mandamus by this Court as claimed by the appellants. After all, medical education is an important issue which should not have any mandatory condition of this nature which may give rise to a situation against public interest if so interpreted by the State Government as State Government is in a better position to determine the situation and requirement of that particular State, as mandated by the Constitution.

- 19) As stated earlier, [Article 15\(4\)](#) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class

categories at Post-Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. under graduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also. As stated earlier, the State Government, in more than one communication, has conveyed its decision that it is not in favour of reservation for SC/ST/Backward Classes at Post-Graduate level. In such circumstances, Court cannot issue mandamus against their decision and their prospectus also cannot be faulted with for not providing reservation in Post-Graduate Courses. However, we make it clear that irrespective of above conclusion, State of Haryana is free to reconsider its earlier decision, if they so desire, and circumstances warrant in the future years.”

Further, in Writ Petition (C) No.69 of 2009, the Hon’ble Supreme Court has held in Para 19 of the judgment, as under :

“19. As stated earlier, Article 15(4) is an enabling provision and the State Government is the best judge to grant reservation for SC/ST/Backward Class

categories at Post-Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post-Graduate level suffers no infirmity. In our view, every State can take its own decision with regard to reservation depending on various factors. Since the Government of Haryana has decided to grant reservation for SC/ST categories/Backward Class candidates in admission at MBBS level i.e. undergraduate level, then it does not mean that it is bound to grant reservation at the Post-Graduate level also. As stated earlier, the State Government, in more than one communication, has conveyed its decision that it is not in favour of reservation for SC/ST/Backward Classes at Post-Graduate level. In such circumstances, Court cannot issue mandamus against their decision and their prospectus also cannot be faulted with for not providing reservation in Post-Graduate Courses. However, we make it clear that irrespective of above conclusion, State of Haryana is free to reconsider its earlier decision, if they so desire, and circumstances warrant in the future years.”

In view of the aforesaid judgments of the Hon’ble Supreme Court and in the absence of any Legislative mandate or any executive orders of the Government, there is no basis for the claim of petitioners for effecting reservations in B and C-category seats.

14. The next contention advanced on behalf of petitioners is that the notification for EAMCET-2015 was issued on 03.03.2015 and all the impugned orders, which are issued by the States of Andhra Pradesh and Telangana either for amending Rule 4 of the Rules or for notifying the tuition fee structure, are subsequent, as such, they cannot be given effect to for the Academic year 2015-16. Such contention also cannot be accepted for the reason that the notification issued is only for the purpose of filling-up A-category seats. B-category seats are to be filled-up as per the notification and merit based on the examination separately conducted by the managements of colleges. In any event, the mere issuance of notification by Convenor, EAMCET, does not confer any right on the students for grant of admission. In that view of the matter, we do not find any force in such contention of petitioners.

15. So far as fixation of tuition fee structure is concerned, the State of Andhra Pradesh has notified the tuition fee structure for A-category seats at Rs.10,000/-, for B-category seats at Rs.11,00,000/- and for C-category seats not exceeding 5 times the fee chargeable to B-category seats per annum, for medical courses. For dental courses, for A-category seats Rs.10,000/-, for B-category seats Rs.4,50,000/- and for C-category seats, not exceeding 5 times the fee chargeable to B-category

seats per annum. The State of Telangana has notified the tuition fee structure for A-category seats at Rs.60,000/-, for B-category seats at Rs.9,00,000/- and for C-category seats at Rs.11,00,000/- per annum for Medical courses. For dental courses, for A-category seats Rs.45,000/-, for B-category seats Rs.4,00,000/- and for C-category seats Rs.5,00,000/- per annum. For the purpose of fixation of tuition fee structure, a Committee was constituted before the new State of Telangana is formed. The fee structure was also considered by the Fee Regulatory Committee constituted under G.O.Ms.No.6, dated 08.01.2007. The said Committee has also made recommendations for block period up to the Academic Year 2016-17 by fixing uniform rates for all categories of seats. But as per the consensual agreement, the Association of Private College Managements have appeared to have agreed for fixing the fee for A-category seats at Rs.10,000/- for the State of Andhra Pradesh and Rs.60,000/- for the State of Telangana. There was no fixation of tuition fee based on such categorization. In the counter affidavit filed on behalf of the State of Telangana, it is stated that by the time G.O.Ms.No.41, dated 20.05.2015 was issued, the Fee Regulatory Committee was not constituted. As evident from the counter, it is also the case of respondents that such fixation is made by considering the revenue and expenditure incurred by the colleges and also having regard to the claim of the

managements that they have implemented revised pay-scales for the employees. In the Additional Counter affidavit filed on behalf of the Private College Managements Association, it is stated that except the petitioner in W.P.No.23167 of 2015, none of the petitioners have got admission. Further, the admission process was completed for the academic year 2015-16 on 30.09.2015 and courses have commenced from 01.09.2015 itself. As there was no fee structure notified by the Fee Regulatory Committee, by taking into account the arrangement of seat matrix, as per which, 50% of seats are to be filled-up by the competent authority at the subsidized fee structure at Rs.10,000/- and Rs.60,000/- per annum for the States of Andhra Pradesh and Telangana respectively, and as the courses have commenced from 01.09.2015 and more than 4 months courses are already completed, and further, as it is stated that except the petitioner in W.P.No.23167 of 2015, none of the petitioners have come up for admission, we find no ground to interfere in the matter at this stage.

16. For the aforesaid reasons, we do not find any merit in these writ petitions and P.I.L.No.175 of 2015, which are accordingly dismissed. No order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

25th January 2016

ajr

[\[1\]](#) (2003) 6 SCC 697

[\[2\]](#) (2005) 6 SCC 537

[\[3\]](#) AIR 2010 SC 288