

LPA No.1558 of 2015 (O&M) -1-

Sr. No.245

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. LPA No.1558 of 2015 (O&M)

Deepak Mangla and othersAppellants

VS.

Union of India and others Respondents

2. LPA NO.1398 OF 2017(O&M)
Date of Decision: August 16, 2017

Dr. Monu Kumar Chaudhary and othersAppellants

VS.

Union of India and others Respondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present:- Mr.Rajbir Singh Attri, Advocate for the appellants.
Mr. H.S.Sethi, Addl. A. G. Punjab.
Mr. Puneet Gupta, Sr.Panel Counsel
for respondents no.1,4 and 5 in LPA No.1558 of 2015.
Mr. M.S.Longia, Advocate for respondent no.3
in LPA No.1558 of 2015.
Mr. Munish Dadwal, Advocate for respondent no.7
in LPA No.1558 of 2015..

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MAHESH GROVER, J (ORAL)

By this order we shall dispose of two above mentioned Letters Patent Appeals No. 1558 of 2015 and No.1398 of 2017 as same question of law is involved in both the appeals. The facts are taken from LPA-1558-2015.

This appeal is directed against the judgment of the learned Single Judge dated 10.08.2015.

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The appellants before us are Post Graduate Medical students who have taken admission in Government Medical Colleges at Amritsar and Patiala. In writ proceedings, they challenged the validity of a notification dated 21.05.2015 enhancing the fee for the courses that they had undertaken which may be extracted here below:-

Sr.No.	Name of the Course	Year	Fee per year(Rs. in lacs)
1)	M.D/M.S (Clinical)	1 st year	1.25
		2 nd year	1.5
		3 rd year	1.75
2)	M.D/M.S (Basic)	1 st year	1.00
		2 nd year	1.10
		3 rd year	1.20

Prior to the above, the colleges were charging fee at the rate of Rs.40,000/-.

Appellants before the writ court had sought to project a case that apart from the exorbitant rise which is irrational, there was no notice qua the enhancement.

The learned Single Judge negated the plea after noticing the relevant provisions of the prospectus indicating that appellants were on notice even before they chose the medical colleges for it was mentioned therein that the fee structure of Government / Private medical colleges is yet to be determined by the Government.

In appeal before us similar arguments have been raised but in addition thereto, it has been stated that in terms of the judgment of **ISLAMIC ACADEMY OF EDUCATION AND ANOTHER V. STATE OF KARNATAKA AND ORS, 2003(6) SCC 697** which in turn is based on the judgment in **T.M.A Pai's case**, there should have been a committee headed by a retired High Court Judge to be nominated by the Chief Justice of the State with the other member, a Chartered Accountant of repute to

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look into the fee structure to be prescribed for the institutions.

We may extract the relevant portion of the observations of the order of Hon'ble Supreme Court in **Islamic Academy of Education and another v. State of Karnataka and others, 2003 (6) SCC 697** which is as under:-

“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 T.M.A. 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 of 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 penalized and also face the prospect of losing its recognition/affiliation.”

After taking note of the above observations, this Court vide its order dated 09.05.2016 had directed the State counsel to inform the court whether such a committee had been set up by the State of Punjab and whether the increase in fee is with the consent of the said committee.

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Today when the matter was taken up, the entire record of the proceedings of the committee has been produced before us indicating the composition of eminent doctor (Dr.K.K.Talwar) as its head. The proceedings indicate two separate decisions taken there by them qua the Government and the Private medical Institutes. The prescribed fee for the Government colleges is as follows:-

Sr.No.	Name of the Course	Year	Fee per year(Rs. in lacs)
1)	M.D/M.S (Clinical)/M.D.S	1 st year	1.25
		2 nd year	1.5
		3 rd year	1.75
2)	M.D/M.S (Basic)	1 st year	1
		2 nd year	1.10
		3 rd year	1.20

Whereas for the private institutes, the fee structure is as follows:-

Sr.No.	Name of the Course	Fee per year (Rs.)	NRI seats fee for full course(in US \$)
1)	M.D/M.S (Clinical)	6,50,000	1, 25,000
2)	M.D/M.S (Basic)	2,60,000	20,000
3)	P.G.Diploma	3,90,000	30,000
4)	MDS	5,85,000	1,00,000
5)	D.M/M.C.H	7,80,000	--

Evidently, there is a sea of difference between the two.

We are, thus, of the opinion that a conscious decision has been taken by the committee in this regard. The composition of the committee is not under challenge and insofar as the argument before us that a retired High Court Judge should have been the head of the committee, we are of the opinion that the plea has to be rejected for two reasons (i) that there is no challenge to the composition of the committee (ii) the judgment relied upon pertains to the Private medical colleges and the matter being agitated before

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us relates only to the Government Medical Institutes and not the private ones. Even otherwise, as long as the composition of the committee and its proceedings are fair, their findings would have to be respected. Rather it has been brought to our notice that the appellants are admissible to honorarium of more than Rs.16,00,000/- for the entire course and what they are repaying to the government is about Rs.4,50,000/-.

We are also of the opinion that Government Institutes need to sustain themselves in a healthy way and even if the government does support these medical colleges yet, the amount generated from the fee forms a substantial portion of the amount spent for the welfare of the students and their education.

We, thus, do not find any reason to interfere in the decision which is based on the report of the committee whose composition has also not been questioned.

Both the appeals which are barred by a delay of 30 days and 19 respectively stand dismissed.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

16.08. 2017
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No