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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2018

Pronounced on : 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23732 of 2017, 9472, 10550,
13039, 16924 of 2018

and W.M.P.Nos.11373 & 11374 of 2018 etc.,

W.P.No.23732 of 2017

- 1.N.Naga Harihara Sudan
- 2.R.Swetha
- 3.R.Keerthiga
- 4.C.Archana Devi
- 5.V.Subashree
- 6.T.Rajasudhakar
- 7.T.Vevaswaan
- 8.A.Leka
- 9.A.Iniyan
- 10.N.Deepikaa
- 11.G.Pournima
- 12.R.Arunkumar
- 13.K.Prinyanka
- 14.R.Priyadharshini
- 15.A.Bharath
- 16.V.T.Adhiyan
- 17.S.Leela Flavia
- 18.M.Glkulnath
- 19.A.Jean Aswin Lourde
- 20.v.Rashwin Raj
- 21.P.Himalni

.. Petitioners

.Vs.

- 1.The Secretary to Govt.(Health)
Goubert Avenue,
Chief Secretariat,
Puducherry-1.



2.The Director of Health & Family Welfare Services,
Goubert Avenue, Chief Secretariat,
Puducherry-1.

3.The Chairman,
Sri Venkateshwara Medical College,
Hospital and Research Centre,
Ariyur, Puducherry 605 102.

4.The Principal,
Sri Venkateshwara Medical College Hospital
and Research (SWMCH & R) Puducherry. (U.T.)

5.The Registrar,
Pondicherry Institute of Medical Sciences,
Kalapet, Puducherry (UT) 605 014.

6.Justice S.Rajeswaran
The Chairman,
Fee Committee,
No.AA-67, 1st Street, Near Rountana,
Nali Silk House, Anna Nagar,
Chennai 600 040.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the 1st and 2nd respondent to direct the 3rd and 5th respondents to implement prescribed fee fixed by the fee fixation committee 6th respondent proceedings dated 23.03.2017 as accepted by the Government of Pondicherry in Order No.983/H5/Health/2015-2016 dated 19.05.2017 and consequently direct the 3rd and 5th respondents by either refunding or adjusting the excess fee payments already received in the coming academic years and also without insisting any further fee.

W.P.No.9472 of 2018

1.Arulkavi.A
2.Athityan Siva
3.Gloriya Aishwarya Barman P.J.

.. Petitioners

vs.

1.The Government of Puducherry
Represented by Under Secretary to
Government (Health),
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.



2.The Director of Health and Family Welfare Services,
Goubert Avenue,
Chief Secretariat, Puducherry 605 001.

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3.The Registrar,
Pondicherry Institute of Medical Science & Research,
No.20, Ganapathichettikulam,
Kalapet, Puducherry 605 102.

4.The Fee Committee
Represented by its Chairman,
Union Territory of Puducherry,
No.AA-67, 1 Street, Near Rountana,
Nallik Silk House, Anna Nagar,
Chennai 600 040.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the Circular No.PIMS/UG/CIR/2018(01) dated 09.04.2018 issued by the 3rd respondent College prohibiting the petitioners from attending the lectures/practicals/clinics with effect from 09.04.2018 and to quash the same in respect of the petitioners alone and consequently to direct the 3rd respondent College to refund, within a prescribed time limit, the excess amounts collected from the petitioners so far towards Annual fees after adjusting the amounts due towards the prescribed Annual Fees for the Academic years 2016-17 and 2017-28 as approved and notified by the 1st and 4th respondents vide the Fee order dated 19.05.2017 for MBBS courses at the 3rd respondent College.

W.P.No.10550 of 2018

D.Sushmitha

.. Petitioner

vs.

1.The Government of Puducherry
Represented by Under Secretary to
Government (Health),
Goubert Avenue, Chief Secreariat,
Puducherry 605 001.

2.The Director of Health & Family Welfare Services,
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.



3.The Registrar,
Pondicherry Institute of Medical Sciences,
No.20, Ganapathichettikulam,
Kalapet, Puducherry 605 014.

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4.The Fee Committee,
Represented by its Chairman,
Union Territory of Puducherry,
No.AA-67, 1 Street, Near Rountana,
Nalli Silk House, Anna Nagar,
Chennai 600 040.

5.The Director/Principal,
Pondicherry University,
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry 605 014.

..Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the Notice No.PIMS/UG/STU/2018(60) dated 09.04.2018 issued by the 3rd respondent College prohibiting the petitioners from attending the lectures/practicals/clinics with effect from 09.04.2018 and to quash the same and consequently to direct the 3rd Respondent College to refund, within a prescribed time limit, the excess amounts due towards the prescribed Annual fees for the Academic years 2016-17 and 2017-18 as approved and notified by the 1st and 4th Respondents vide the Fee order dated 19.05.2017 for MBBS courses at the 3rd Respondent College.

W.P.No.13039 of 2018

M.Balamurugan

.. Petitioner

vs.

1.The Government of Puducherry
Represented by Under Secretary to
Government (Health),
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.

2. The Director of Health & Family Welfare Services,
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.

3.The Chairman,
Sri Venkateshwara Medical College,
Hospital and Research Centre,
Ariyur, Puducherry 605 102.



4. The Puducherry Fee Committee,
Represented by its Chairman,
Union Territory of Puducherry,
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the Circular Ref.No.616/ME1(B)/SVmCH & RC/2018 dated 16.04.2018 issued by the 3rd Respondent College demanding payment of Annual fees for the academic year 2018-19 from the petitioner and to quash the same and consequently to direct the 3rd Respondent College to refund, within a prescribed time limit, the excess amounts already collected from the petitioner towards Annual fees after adjusting the amounts due towards the prescribed Annual fees for the Academic years 2016-17, 2017-18 and 2018-19 as approved and notified by the 1st and 4th respondents for MBBS courses for the 3rd Respondent College.

W.P.No.16924 of 2018

- 1.Hrishwar.I
- 2.Rohit Roy.V.
- 3.Yerra Ruchita Rao
- 4.Kanmani A.S.
- 5.Vigneshwaran.P.
- 6.Suhasini.S.
- 7.Liz Catherine Babu

.. Petitioners

vs.

- 1.Government of Puducherry
Represented by Under Secretary to
Government (Health),
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.
2. The Director of Health & Family Welfare Services,
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.
- 3.The Registrar,
Pondicherry Institute of Medical Science & Research,
No.20, Ganapathichettikulam,
Kalapet, Puducherry 605 014,
4. The Puducherry Fee Committee,
Represented by its Chairman,
Union Territory of Puducherry,
Goubert Avenue, Chief Secretariat,
Puducherry 605 001.



4.The Registrar,
Pondicherry University,
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry 605 014.

.. Respondents

prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the E.mail notices dated 20.06.2018 issued by the 3rd Respondent College demanding payment of Annual fees for the academic year 2018-19 and to quash the same in respect of the petitioners alone and consequently to direct the 3rd Respondent College to refund, within a prescribed time limit, the excess amounts already collected from the petitioners during the Academic years 2016-17 and 2017-18 towards Annual fees after adjusting the amounts due towards the prescribed Annual fees for the Academic years 2016-17, 2017-18 and 2018-19 as approved and notified by the 1st and 4th respondents vide the Fee order dated 19.05.2017 for MBBS courses at the 3rd Respondent College.

For Petitioners
(In all W.Ps.) : Mr.V.B.R.Menon

For Respondents 1 and 2
(In all W.Ps.) : Mr.L.T.Ramesh,
Addl.Govt.Pleader (Puducherry)

For Respondents : Mr. A.L.Somayaji, Senior Counsel
(In all W.Ps.) for Mr.A.Jenasenan for PIMS

Mrs.A.V.Bharathi,
for Pondicherry University

Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.A.Jenasenan
for Venkateswara Medical College

For R5 (In W.P.No.16924
of 2018) : Mr.V.Balamurugan



COMMON ORDER

C.SARAVANAN, J.

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By this common order we are disposing the above writ petitions. The petitioners are the students of Sri Venkateswara Medical College, Hospital & Research (SVM) and Pondicherry Institute of Medical Sciences (PIMS).

2. The petitioners were admitted to the MBBS courses offered by the Respondent Colleges during the academic year 2016-17. They are students other than those who were admitted under the State and NRI quota.

3. Out of 33 petitioners, 12 are from Pondicherry Institute of Medical Sciences and 21 from Sri Venkateswara Medical College Hospital and Research Centre.

4. The dispute in these writ petition arises on account of demand of fees over and above the fee fixed and recommended by the Fee Committee under Chairmanship of Mr. Justice S. Rajeswaran, (Retd.), High Court, Madras on 23.03.2017 for the academic years 2015-16, 2016-17 and 2017-18 as notified by the Government of Puducherry on 19.05.2017 vide its letter reference No. C.983/H5/Health/2015-16 and subsequent revision of the fees by the same committee fixing and recommending a tentative fee for the academic years 2016-17 as notified by the Government of Puducherry by letter dated 19.07.2017 bearing reference No. C.983/H5/Health/2017-18/238 Government of Puducherry, Chief Secretariat (Health) and fixation of final fee by the next committee under the chairmanship of Mr. Justice Authinathan (Retd), High Court Madras for the academic years academic years 2017-18 to 2019-20 under the Management quota and the NRI quota vide G.O.Ms.No.24 dated 02.07.2017.

5. For the academic year 2016-17, about 55 seats in the respective respondent colleges were surrendered to the Government of Puducherry for being filled under the State quota. Rest of the seats were filled by the respective colleges. The petitioners are MBBS students who joined these two colleges after qualifying in the common entrance exam. They were admitted from rest of the seats on merits apart from the 55 seats surrendered to the State of Pondicherry.



6. The 5th respondent College viz., Pondicherry Institute of Medical Sciences in W.P.No.23732 of 2017 had charged a tuition fee of Rs. 7.5 lakhs per annum during the academic year 2015-2016 for the MBBS course while Respondent Nos.3 & 4 Sri Venkateswaraa Medical College Hospital And Research Centre in W.P.No.23732 of 2017 charged a tuition fee of Rs.12 lakhs per annum during the academic year 2015-2016. The Government of Pondicherry had not appointed a Fee Committee for the aforesaid period.

7.The previous committee under the Chairmanship of Mr Justice Malai Subramanian, (Retd.) High Court, Madras had fixed the fees for academic years 2012-13, 2013-14 and 2014-15.

8. Though the Government of Puducherry had constituted a new Fee Fixation Committee under the Chairmanship of Mr.Justice S.Rajeswaran, (Retd.) , Judge High Court, Madras for the academic years 2015-16, 2016-17 and 2017-18 by G.O.No. 14 dated 6.3.2015, the fee was fixed and recommended by the said Fee Fixation Committee only on 23.3.2017 due to various factors. Thus, during the interregnum these colleges had collected fees on their own accord in absence of fixation of fees.

9. The fees fixed and payable for academic years 2016-17, 2017-18 and 2018-19 were notified by the Government of Puducherry by a letter dated 19.5.2017 bearing reference No. C.983/H5/Health/2015-16 Government of Puducherry, Chief Secretariat (Health). Thus, for the academic year 2015-16 no fee was fixed.

10. While, fixing and recommending fee, the Fee Committee under the Chairmanship of Mr.Justice S.Rajeswaran, (Retd.), High Court, Madras took cognizance of the request of the respective colleges to increase the current fees on the basis of the fee structure arrived at by the fees committees in the State of Tamil Nadu and the State of Kerala.

11. The Fee Fixation Committee under the Chairmanship of Mr.Justice S.Rajeswaran, (Retd.), High Court, Madras in its recommendation dated 23.03.2017 has noted that all the colleges were unanimous in seeking for a steep increase from the current fee structure but were not able to substantiate the request for increase in the fees with adequate data. In fact it was observed in the report that the two of the colleges which include one of



the respondent college also did not come forward to submit any response to substantiate the request for increase in the fees. Paragraph 10 of the report reads as follows:-

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"10. Sri Venkateswara Medical College, Hospital and Research (SVC) requested for fixing the fees at Rs.20,00,000/- and Sri Mankula Vinayakar Medical College and Hospital (SMV) sought for a fee of Rs.24,00,000/-."

12. Ultimately, while fixing the fees for the academic years 2016-17, 2017-18 and 2018-19, the committee observed as follows:-

" 17. The Fee Committee considered the inflation Index of the previous three years and projection for the next three years. The Committee also considered the report of Hon'ble Mr.Justice N.V.Balasubramaniam, dated 23.6.15 fixing the fee for the self-financing colleges in Tamil Nadu for the year 2015-16.

18. The Committee carefully considered all the above relevant information and found that the cost of inflation for infrastructure development on property per year is 6% and the Consumer Cost Inflation Index per year is 4.8%. The Committee has also taken into consideration the requirement of the colleges to develop their infrastructure like laboratories, libraries, audio-visual equipments, seminars, sports activities etc. The Committee is aware that the increase in fees should commensurate with the inflation. It is also the bounden duty of the Committee to consider the representations submitted by the anxious and agitating public. The interest and welfare of the students community is the paramount consideration along with the required standards of education on non-exploitive terms.

19. The Committee after considering all the relevant information, as stated above, has come to the definite conclusion that an increase of 32% is certainly permissible on the fee fixed by the



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earlier committee for the previous academic years.

20. As the Committee has come to the definite conclusion that 32% is certainly permissible and reasonable and on that basis, the fee is fixed for the following Medical Colleges:

Sl.No	Name of the Medical Colleges	Previous Fee per years	Present Fee per year	For the academic years
1	Sri Venkateswara Medical College Hospital & Research (SVM)	2,25,000	2,99,000	2015-16, 2016-17 & 2017-18
2	Pondicherry Institute of Medical Sciences (PIMS)	2,52,000	3,35,000	2016-17, 2017-18 & 2018-19

13. After notification of the fees fixed by Mr.Justice S.Rajeswaran, (Retd.), High Court, Madras for the academic years 2015-16, 2016-17 and 2017-18 vide letter dated 19.5.2017 bearing reference No. C.983/H5/Health/2015-16 Government of Puducherry, Chief Secretariat (Health), the Government of Puducherry requested the Fee Committee under the chairmanship of Mr.Justice S.Rajeswaran, (Retd.) High Court, Madras to fix separate fees under the management quota.

14. The 2nd recommendation of the Fee Committee fixed a tentative fees for the academic years 2017-18 alone under the Management & NRI Quota even though in Paragraph 10,17 to 19, the earlier recommendation Fee Committee dated 23.03.2017, had factored all the demands of the colleges for increasing the fees and had balanced the interest of the students and colleges.

15. The 2nd mentioned G.O came to be issued after a request was made to the Fee Committee headed by Mr.Justice S.Rajeswaran, (Retd.) High Court, Madras by the Government of Puducherry vide letter dated 23.3.2017 to fix fee for the students admitted in the UG Medical/ Dental Courses in Private Self-Financing Medical/ Dental Colleges in Union Territory of Pondicherry under the Management Quota and NRI Quota for the academic year 2017-18 for the three Medical and two Dental Colleges.



16. Though copy of the letter dated 3.6.2017 is not available, from the proceeding dated 23.3.2017 of the Fee Committee pursuant to which the 2nd mentioned G.O came to be issued, it appears that the Government of Puducherry sought to persuade the Fee Committee to fix a separate fee for the students admitted under the Management quota/NRI quota as the previous recommendation and 1st G.O. did not make any distinction between the students admitted under the Government/State quota and under the Management quota/NRI quota.

17. In other words, the Government of Puducherry wanted to create a distinction between Management Quota, NRI Quota and Government/State quota and to fix a separate fee structure for students joining from the above 3 different stream.

18. The second recommendation fixing fee was notified on 19.7.2017 by the Government of Puducherry by letter bearing reference No. C.983/H5/Health/2017-18/238 Government of Puducherry, Chief Secretariat (Health).

19. In the 2nd mentioned G.O No. C 983/H5/Health /2017-18/238 dated 19.7.2017 tentative fees was fixed for the Academic Years 2017-18 alone under the Management Quota and the NRI quota. Paragraph-3 of the above 2nd G.O reads as under:-

"3. The fees fixed by the Committee, as above, for Management Quota and NRI Quota, will take effect for the students to be admitted from the Academic Year 2017-18 and it is needless to mention here that, the students who were already admitted i.e. before the Academic year 2017-18, are governed by the fee fixed by the Fee Committee on 23.03.2017 only. It is made clear that the above mentioned fee has been fixed tentatively only and the Fee Committee would decide the concrete fee to be fixed after receiving and evaluating the necessary particulars, proposals, data, information, etc. from the Colleges."

20. After the tenure of the said Fee Fixation Committee came to an end, the next committee under the chairmanship of Mr



Justice Authinathan (Retd), High Court Madras fixed the fees for the academic years academic years 2017-18 to 2019-20 under the Management quota and the NRI quota. This was notified by the 3rd mentioned G.O.Ms.No.24 dated 3.7.2018. These events have led to the filing of the present writ petition.

21. Thus, there are three different recommendations for the Academic years 2015-16 to 2019-20 and they were notified by the three different Government Orders of the Government of Puducherry as detailed below:-

Recommendation of Fee Committee under the chairmanship/date	G.O No /Date	Academic Year	Remarks
Mr. Justice S.Rajeswaran, Retired Judge High Court Madras on 23.03.2017	No.C.983/H5/Health/2015-16 dated 19.5.2017 (1 st)	2015-16 2016-17 2017-18	Without any distinction between various categories.
Mr. Justice S.Rajeswaran, Retired Judge High Court Madras on 12.07.2017	No.C.983/H5/Health/2017-18/238 dated 19.7.2017 (2 nd)	2017-18	Tentative fee for Management/NRI Quota
Mr.Justice N.Authinathan, Judge Retired, High Court Madras on 19.06.2018	G.O.Ms. NO.24 dated 08.07.2018 (3 rd)	2017-18 2018-19 2019-20	Fee under Management/NRI Quota

22. In the 1st mentioned Government Order bearing reference No.C 983/H5/Health/2015-16, there is no distinction between students coming from different streams i.e. from the State quota, Management quota or NRI quota for MBBS.

23. In the 1st mentioned Government Order No.C 983/H5/Health/2015-16 dated 19.5.2017, the Government of Puducherry notified the fee for the following Colleges in the Union Territory of Puducherry alone as detailed below:



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MBBS Courses				
Sl.N o	Name of the Medical Colleges	Previous Fee per year	Present Fee per year	For the academic years
1	Sri Manakula Vinayakar Medical College & Hospital (SMV)	Rs.2,36,000/-	Rs.3,13,000/-	2016-17, 2017-18 and *2018-19
2	Sri Venkateswara Medical College, Hospital & Research (SVM)	Rs.2,25,000/-	Rs.2,99,000/-	2015-16, 2016-17 and 2017-18
3	Pondicherry Institute of Medical Sciences (PIMS)	Rs.2,52,000/-	Rs.3,35,000/-	2016-17, 2017-18 and *2018-19

24. By the 2nd mentioned G.O No.C 983/H5/Health /2017-18/238 dated 19.7.2017, the Government of Puducherry has fixed a tentative fee for the academic years 2017-18 as detailed below :

MEDICAL COLLEGES:-

Sl.N o	Name of the College	Tentative Tuition Fee for A.Y 2017-18 Management Quota	Tentative Tuition Fee for A.Y 2017-18 NRI Quota
1	Sri Manakula Vinayakar Medical College & Hospital	Rs.12,00,000/-	Rs.20,00,000/-
2	Sri Venkateswara Medical College, Hospital & Research	Rs.12,00,000/-	Rs.20,00,000/-
3	Pondicherry Institute of Medical Sciences (PIMS)	Rs.12,00,000/-	Rs.20,00,000/-

25. The Government of Puducherry has fixed the following



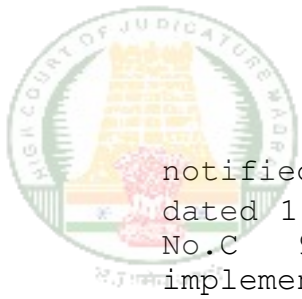
fees for Medical Colleges vide 3rd mentioned Government Order G.O.Ms. NO.24 dated 08.07.2018 :-

MEDICAL COLLEGES (MBBS)

Sl.No	Name of the Medical Colleges	Fee fixed for MBBS (management quota) for the years 2017-18 to 2019-2020	Fee fixed for MBBS (NRI quota) for the years 2017-18 to 2019-2020
1	Pondicherry Institute of Medical Sciences	Rs.16Lakhs per annum (Fees Rs.15.50 Lakhs plus Rs.50,000 towards development charges)	Rs.20 Lakhs per annum (plus Rs.50,000 towards development charges)
2	Sri Manakula Vinayagar Medical College & Hospital	Rs.16Lakhs per annum (Fees Rs.15.50 Lakhs plus Rs.50,000 towards development charges)	Rs.20 Lakhs per annum (plus Rs.50,000 towards development charges)
3	Sri Venkateshwaraa Medical College Hospital & Research Centre	Rs.16Lakhs per annum (Fees Rs.15.50 Lakhs plus Rs.50,000 towards development charges)	Rs.20 Lakhs per annum (plus Rs.50,000 towards development charges)

26. The 2nd and the 3rd notifications of the Government of Puducherry are subject matter of a separate batch of writ petitions. Though, writ petitions challenging 2nd and the 3rd G.Os were also listed with the above writ petitions, they have been delinked to be heard separately. Outcome in the present writ petitions may have a bearing on the order to be passed in those writ petitions.

27. The writ petitioners desire the fee fixed by the Fee Committee under the chairmanship of Hon'ble Justice Mr.S.Rajeswaran, (Retd.,) High Court Madras on 23.3.2017



notified by the 1st mentioned G.O No. C 983/H5/Health /2015-16 dated 19.5.2017 and clarified in para 3 of the 2nd mentioned G.O No.C 983/H5/Health /2017-18/238 dated 19.7.2017 to be implemented for the academic year 2016-17 to 2018-19.

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28. The petitioners therefore desire the fees paid in excess of the above mentioned G.O's/letter at the time of their admission to be adjusted against fees for the succeeding academic years and excess if any, to be refunded to them.

29. The petitioners rely on certain passages from the decision of the Hon'ble Supreme in Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697 and in P.A.Inamdar and Others vs State of Maharashtra and Others (2005) 6 SCC 537 and seek adjustment/refund of the excess fees paid by them at the time of admission into the respective colleges for the succeeding years.

30. The two Colleges who are respondents in the present batch of writ petitions have however refused to accede to the request of the petitioners and have referred to fee structures fixed on 12.7.2017 by the said Fee Committee as notified by the Government vide 2nd mentioned G.O.No.C 983/H5/Health /2017-18/238 dated 19.7.2017 and the 3rd mentioned G.O.Ms.No.24 dated 03.07.2018 fixing separate fee for students under the Management Quota and the NRI quota.

31. According to the respective colleges, the practice has been to collect separate fees under the Management/NRI quota and the fees fixed by the Fee Committee was restricted applicable only for students joining the college under the Government/State quota alone. According to them it is the practice in TamilNadu also.

32. According to the respondent, the fees charged by them was reasonable for the academic year 2016-2017 ,Viz Rs. 18 lakhs by Pondicherry Institute of Medical Sciences and Rs. 16 lakhs by Sri Venkateswaraa Medical College Hospital And Research Centre and it is also borne out by the fact that the Fee Committee and the Government of Puducherry themselves have fixed the fee for



Management Quota/ NRI quota for the subsequent academic year 2017-18 at 16 lakhs per annum.

33. It was submitted that the Government of Puducherry has itself recognized that a fee of Rs. 16 lakhs per annum is adequate to meet the expenses incurred by the institution. Furthermore, Deemed Universities which have the same facilities in the Union Territory of Puducherry have charged about Rs. 20 lakhs per annum as tuition fees which is uploaded on the website of the Central Government

34. It was further contented that the petitioners were fully aware of the fees structure charged by the respondent institutions and also paid the first year fee before joining the institution and therefore they are estopped from challenging the same.

35. Heard Mr.V.B.R.Menon, learned counsel for the petitioner; Mr.L.T.Ramesh, learned Addl.Government Pleader appearing for the respondent Nos.1 and 2/Puducherry Government in all writ petitions; Mr. A.L.Somayaji, learned senior counsel for Mr.A.Jenasenan for Pondicherry Institute of Medical Sciences;; Mrs.A.V.Bharathi, learned counsel for Pondicherry University and Mr.A.R.L.Sundaresan, learned Senior counsel for Mr.A.Jenasenan for Venkateswara Medical College in all writ petitions.

36. The learned counsel for the respective petitioners relied on the following decisions:-

" i. In Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697.

ii. In *P.A. Inamdar and Others vs State of Maharashtra and Others* (2005) 6 SCC 537.

iii. In M.Aamira Fathima and Others vs Annamalai University and Others Supreme Court in Civil Appeal No.6654 of 2018 dated 13.07.2018."

iv. In N.Lakshana Shree vs Union Territory of Puducherry and Others, High Court of Madras in W.A.No.996 of 2017 dated 24.08.2017

37. We have considered the rival submissions of both parties and perused the material document.



38. The need for a Fee Committee to fix fee was on account of the tendency of private colleges to charge exorbitant fees in their quest to commercialise higher education and to generate profit.

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39. This practice was frowned upon by the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481.

40. The subsequent decisions in Islamic Academy Of Education versus State of Karnataka (2003) 6 SCC 697 and P.A. Inamdar and others Versus State of Maharashtra (2005) 6 SCC 537 are inspired from the decision of the 11 bench decision in T.M.A Pai Foundation Versus State of Karnataka and Others.

41. It was in the back ground of these cases, the Government of the Union Territory of Puducherry issued Pondicherry Private Professional Education Institutions (Provisions of Reservation; Admissions of Students and Fixation of Fees) Regulation, 2006. The above Regulation was notified by the Government of Pondicherry vide G.O.Ms.No.41 dated 29.03.2004 and continued as per G.O.Ms.No.2 Dated 25.11.2011.

42. To answer the issue in the present writ petitions we will refer to some of important passages from the three decisions in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481, Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697 and P.A.Inamdar and Others vs State of Maharashtra and Others (2005) 6 SCCC 537.

43. Though, T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481 was at the instance of a minority institution, the Court clarified the position for non minority unaided educational institutions as well.

44. 11 questions were framed in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481. However, not all were answered. Instead, the Hon'ble Mr. Chief Justice B.N.Kirpal while delivering the majority judgment framed and answered the following questions:-



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"1. Is there a fundamental right to set up educational institutions and if so, under which provision?

2. Does the judgment in Unni Krishnan case require reconsideration?

3. In case of private unaided institutions, can there be government regulations and, if so, to what extent?

4. In determining the existence of a religious or linguistic minority, in relation to Article 30, what is to be the unit, the State or the country as a whole? And

5. To what extent can the rights of aided minority institutions to administer be regulated? "

45. Dealing with the 3rd question, which is relevant for the present case, the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481, in paragraph Nos. 47 and 54 observed as follows:-

"47.Private educational institutions, both aided and unaided, are established and administered by religious and linguistic minorities, as well as by non-minorities. Such private educational institutions provide education at three levels viz. school, college and professional level. It is appropriate to first deal with the case of private unaided institutions and private aided institutions that are not administered by linguistic or religious minorities. Regulations that can be framed relating to minority institutions will be considered while examining the merit and effect of Article 30 of the Constitution."

"54.The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory



nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

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46. In paragraph 56 the Hon'ble Supreme Court held that "one cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play.

The Court further held that the decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government."

47. After making the above observations, the Hon'ble Supreme Court further held that the "Government can provide regulations that will ensure excellence in education, while forbidding charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution."

48. The Hon'ble Supreme Court further recognised that "even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons."



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49. Ultimately the Hon'ble Supreme Court in paragraph 69 held as follows:-

"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."

50. The decision rendered in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481 was later revisited in Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697 and was further clarified by a 7 judges bench in P.A.Inamdar and Others vs State of Maharashtra and Others (2005) 6 SCC 537.

51. The position of law as clarified in P.A.Inamdar and Others vs State of Maharashtra and Others (2005) 6 SCC 537 governs the field as on date. The action of the colleges have to conform with the said decision of the Hon'ble Supreme Court.

52. In Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697, the Hon'ble Supreme Court formulated four questions for consideration in view of the rival submissions made before it. They are as follows:-

- "1. Whether the educational institutions are entitled to fix their own fee structure?
- 2) Whether minority and non-minority educational institutions stand on the same footing and have the same rights?
- 3) Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not, to what extent? and
- 4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission?



53. Some of the passages from the above decision of the Hon'ble Supreme Court are relevant and are extracted. In particular paragraph Nos.16, 19 and 20 it was observed as follows:-

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"16. That brings us to the question as to how the management of both minority and non-minority professional colleges can admit students in the quota allotted to them. Undoubtedly, the majority judgment T.M.A.Pai Foundation has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and/or charging of capitation fees. It is for this reason that the majority judgment provides that in professional colleges admission must be on the basis of merit. As has been rightly submitted, it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also, as has been rightly pointed out, if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs 500 to Rs 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further, as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each college. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be



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for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de hors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn."

"19. We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical



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Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of the University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove."

20. Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament. The



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expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government."

54. Hon'ble Mr. Justice. S.B. Sinha in his separate judgment in Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697 explained the role of the Fee Committees and fees to be charged. In para 74,147,149-163 it was observed as under:-

"74. As regards fee structure, it was held that the fixing of a rigid fee structure, dictating the formation and composition of a Governing Body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. Although an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the admission of students and recruiting staff, and the quantum of fee that is to be charged."

"147. On a bare reading of the relevant paragraphs of the judgment in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC481, some of which are referred to herein before, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizen carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in paragraph 56, economic forces have a role to play. They, thus, indisputably have to plan their



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investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is: (a) capitation fee, and (b) profiteering.

149. The expression "capitation fee" does not have any fixed meaning. The legislatures of some of the States, however, have defined capitation fee. We may notice that in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, capitation fee has been defined as:

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

150. Section 4 of the said Act states that any amount collected in excess of the fee so prescribed is prohibited in the following terms:

"Regulation of fee etc.—

(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 institutions 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).



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

151. Once, however, it is held that such a provision would not constitute a reasonable restriction within the meaning of clause (6) of Article 19, it must also be held that such a provision would not satisfy the test of permissible regulations within the meaning of Article 30 thereof.

152. The ground reality, however, cannot be lost sight of. It is true, as has been contended by the learned counsel appearing on behalf of the applicants, that the Central Government in answer to the question raised in Parliament has stated that the expenses incurred by the State for imparting education to the students is very high. It may vary from three lakhs to five lakhs. Some States, however, in their colleges charge about rupees five thousand per year; whereas the unaided institutions demand anything between rupees two lakhs to five lakhs.

153. Some State Governments unfortunately followed suit, hiked fees and like many private unaided institutions the State of Haryana has also demanded the entire amount of fees for the whole course.

154. The fee structure, thus, in relation to each and every college must be determined separately 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. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.



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155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in paragraph 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

156. While this Court has not laid down any fixed guidelines as regards fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education.

157. The institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course.

158. Profiteering has been defined in Black's Law Dictionary, 5th Edn. as:

"Taking advantage of unusual or exceptional circumstances to make excessive profits;"

159. With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.

160. The respective institutions, however, for the aforementioned purpose must file an



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appropriate application before the Committee and place before it all documents and books of accounts in support of its case.

161. Fees once fixed should not ordinarily be changed for a period of three years, unless there exists an extraordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/body set up. For this purpose the application should not be filed later than April of the preceding year of the relevant education session. The authority/body shall take the decision as regards fees chargeable latest by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalized bank. In other words, no employee or any other person employed by the management shall be entitled to take fees in cash from the students concerned directly. The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation.

162. However, there cannot be any doubt that before any such order is passed, the institutions concerned shall be entitled to an opportunity of being heard. For the aforementioned purpose, the State shall set up a machinery to detect cases where amounts in excess of the permitted limit are collected as it is the general experience that students pay a huge amount.

163. However, if for some reason, fees have already been collected for a longer period the amount so collected shall be kept in a fixed deposit in a nationalized bank against which no loan or advance may be granted so that the interest accrued thereupon may ensure to the benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned students.



(emphasis supplied)

55. In *Inamdar and others Versus State of Maharashtra* (2005) 6 SCC 537, the Hon'ble Supreme Court revisited the law laid down by the Honourable Supreme Court in *T.M.A.Pai Foundation and Others vs State of Karnataka and Others* (2002) 8 SCC 481 and reiterated in *Islamic Academy of Education and Another vs State of Karnataka and Others* (2003) 6 SCC 697.

56. However, the Court pointed out there were few anomaly in the decision rendered in *Islamic Academy of Education and Another vs State of Karnataka and Others* (2003) 6 SCC 697, particularly with regard to two committees system. The case was heard by a larger bench of the Hon'ble Supreme Court which consisted of 7 Judges.

57. The seven Judges Bench framed the following questions to be answered which reads as under:-

1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the direction made in *Islamic Academy* [(2003) 6 SCC 697] for compulsorily holding an entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in *Pai Foundation* [(2002) 8 SCC 481] ?

(3) Whether *Islamic Academy* [(2003) 6 SCC 697] could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by *Islamic Academy* [(2003) 6 SCC 697] ?



58. In paragraph 16 of the decision in P.A.Inamdar and others vs. State of Maharashtra (2005) 6 SCC 537 the court summarised the views of the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC 481 and in Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697 as follows:-

"16.We could attempt at formulating the gist of the answers given by the Constitution Bench of the Court as under:

(1). Each minority institution is entitled to have its own fee structure subject to the condition that there can be no profiteering and capitation fees cannot be charged. A provision for reasonable surplus can be made to enable future expansion. The relevant factors which would go into determining the reasonability of a fee structure, in the opinion of the majority, are: (i) the infrastructure and facilities available, (ii) the investments made, (iii) salaries paid to the teachers and staff, (iv) future plans for expansion and betterment of the institution, etc.

S.B. Sinha, J., defined what is "capitation" and "profiteering" and also said that reasonable surplus should ordinarily vary from 6 per cent to 15 per cent for utilisation in expansion of the system and development of education.

(2). In the opinion of the majority, minority institutions stand on a better footing than non-minority institutions. Minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. State legislation, primary or delegated, cannot favour non-minority institutions over minority institutions. The difference arises because of Article 30, the protection where under is available to minority educational institutions only. The majority opinion called it a "special right" given under Article 30.

In the opinion of S.B. Sinha, J., minority educational institutions do not have a higher right in terms of Article 30(1); the rights of minorities and non-minorities are equal. What is conferred by Article 30(1) of the Constitution is



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(2) Without interfering with the autonomy of unaided institutions, the object of merit-based admissions can be secured by insisting on it as a condition to the grant of recognition and subject to the recognition of merit, the management can be given certain discretion in admitting students.

(3) The management can have quota for admitting students at its discretion but subject to satisfying the test of merit-based admissions, which can be achieved by allowing the management to pick up students of their own choice from out of those who have passed the common entrance test conducted by a centralised mechanism. Such common entrance test can be conducted by the State or by an association of similarly placed institutions in the State.

(4) The State can provide for reservation in favour of financially or socially backward sections of the society.

(5) The prescription for percentage of seats, that is allotment of different quotas such as management seats, State's quota, appropriated by the State for allotment to reserved categories,

etc., has to be done by the State in accordance with the "local needs" and the interests/needs of that minority community in the State, both deserving paramount consideration. The exact concept of "local needs" is not clarified. The plea that each minority unaided educational institution can hold its own admission test was expressly overruled. The principal consideration which prevailed with the majority in Islamic Academy[(2003) 6 SCC 697] for holding in favour of the common entrance test was to avoid great hardship and incurring of huge cost by the hapless students in appearing for individual tests of various colleges."

59. The Court in P.A.Inamdar and others vs State of Maharashtra (2005) 6 SCC 537, held that setting up of Committee did not go beyond the law laid down by the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC 481.



60. Answering the question relating to Fee regulations, the court recognized that 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 whether directly or indirectly in any form as per the decision of the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC 481 supra.

61. To capture the essence of the ruling in P.A.Inamdar and others vs State of Maharashtra (2005) 6 SCC 537, it will be useful to reproduce few more passages from the said decision.

131 [Ed.: Para 131 corrected vide letter dated 31-8-2005.] . Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever



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form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy [(2003) 6 SCC 697] to regulate.

132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).

"144 [Ed.: Para 144 corrected vide letter dated 31-8-2005.]. The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy [(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 Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

145. The suggestion made on behalf of minorities and non-minorities that the same



admitted against the state quota and the Management Quota.

65. The only discrimination that is permissible is regarding fees that can be charged from the students admitted against the seats allocated under the NRI quota which has been pegged at 15% of the total seats. Even here the minimum modicum of merit has to be maintained as observed in paragraph 131 by the Hon'ble Supreme Court in P.A. Inamdar and others Versus State of Maharashtra (2005) 6 SCC 537.

66. Secondly, within this quota, merit should not be given a complete go by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting such students who are from economically weaker section of the society, whom, on well-defined criteria, the educational institutions may admit on subsidised payment of fee. To prevent misuse/mis utilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the state does not do it, it will be for the committee constituted pursuant to the directions in Islamic Academy to regulate.

67. Barring the above discrimination in the manner of fixing the seats and fees, neither the policy of the reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be apportioned by the State in a minority or non minority unaided educational institution as observed in paragraph 132 of in P.A.Inamdar and others vs State of Maharashtra (2005) 6 SCC 537.

68. Thus, the distinction brought out by the 2nd and 3rd GO's of Government of Puducherry qua State/Government Quota vis a vis management quota insofar as far as fixation of fees are concerned, may run contrary to the decisions of the Hon'ble Supreme Court in T.M.A.Pai Foundation and Others vs State of Karnataka and Others (2002) 8 SCC 481 , Islamic Academy of Education and Another vs State of Karnataka and Others (2003) 6 SCC 697. and in P.A.Inamdar and others vs State of Maharashtra (2005) 6 SCC 537. This aspect will be separately dealt in the connected writ petitions which were delinked.

69. On a overall reading of the three decisions, it is also clear that the colleges and institution have a fair amount of autonomy while fixing fees. However, such fees have to be approved by the Fees Committee which has to be fair and



transparent .

70. Fees that can be approved by the Fees Committee and charged by the Colleges/institution and notified by the Government has to be:-

- a) a reasonable fee without profit motive while taking care of their reasonable requirement to meet the administrative expenses and infrastructural need and future development;
- b) without any discrimination between the candidates/students joining under the state/government quota and management quota;
- c) higher fee amount can be collected only from candidates/students admitted from the NRI quota.
- d) excess collected from candidates/students admitted from the NRI quota can be used only for subsidizing the fees of students coming from the economically weaker section of the society.
- e) once fee is fixed and approved by the Committee and notified, it cannot be tampered or re-fixed as has been done.

71. Therefore, collection of fees contrary to the fees fixed and notified by G.O./letter bearing Reference No.983/H5/Health/2015-2016 dated 19.05.2017 from the student admitted during the academic year 2016-17 is impermissible.

72. Hence, the demand of the respective college to collect fees over and above the fees fixed on 23.3.2017 as notified by G.O/Letter No.C.983/H5/Health/2015-16 dated 19.5.2017 by the Government of Puducherry from the Petitioners are unsustainable. This is so particularly in the light of the 2nd mentioned G.O/Letter No.C.983/H5/2017- 18 dated 19.7.2017 of Government of Puducherry wherein it has been specifically stated that the Tentative Fee Fixed by the Committee for the academic year 2017-18 will not apply to students already admitted before the academic year 2017-18. It has been clearly stated that the students already admitted during the academic year 2016-17 will



be governed only by the fees fixed by the Fee Committee on 23.3.2007 only.

73. Further, the subsequent Fee Committee has also not revised the fees fixed on 23.3.2017 for the students admitted during the academic year 2016-17. That being so, we are of the view that the fees collected in excess of the fees fixed on 23.3.2017 by the fee committee as notified by Letter/GO Ms. No No.C.983/H5/2015-16 dated 19.5.2017 is liable to be adjusted against the fees for the subsequent academic years and excess if any should be refunded back to the petitioners.

74. Excess fee paid by the students admitted against the Management quota so far should be adjusted against the fees payable by them for the succeeding academic years and if any there is any surplus after adjustment should be refunded back to them by the respective colleges without further delay.

75. In view of the above, we are of the view that the fee fixed by the fee committee headed by Mr. Justice S. Rajeswaran (Retd.), High Court, Madras for the academic year of 2015-16, 2016-17 and 2017-18 shall be applicable to the students admitted during the academic years 2016-2017 and excess fees paid by the petitioners if any shall be refunded to the petitioners.

76. The Writ Petitions are disposed with the above observations. No cost. Consequently, connected all Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

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//True copy//
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Sub Assistant Registrar

kkd/ɿen

To

1.The Secretary to Govt.(Health)
Goubert Avenue,
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Puducherry-1.



2.The Director of Health & Family Welfare Services,
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Ariyur, Puducherry 605 102.

4.The Principal,
Sri Venkateshwara Medical College Hospital
and Research (SWMCH & R) Puducherry. (U.T.)

5.The Registrar,
Pondicherry Institute of Medical Sciences,
Kalapet, Puducherry (UT) 605 014.

6.The Registrar,
Pondicherry Institute of Medical Science & Research,
No.20, Ganapathichettikulam,
Kalapet, Puducherry 605 102.

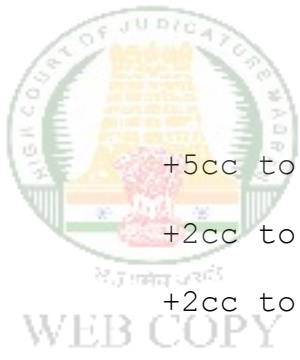
7.The Chairman,
The Fee Committee
Union Territory of Puducherry,
No.AA-67, 1 Street, Near Rountana,
Nallik Silk House, Anna Nagar,
Chennai 600 040.

8.The Director/Principal,
Pondicherry University,
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry 605 014.

9. Under Secretary to Govt.(Health)
Govt of Pondicherry,
Goubert Avenue, Chief Secretary,
Puducherry 605 001.

10. The Registrar
Pondicherry University,
Administrative Building,
R.V.Nagar, Kalapet,
Puducherry 605 014.

+5cc to Mr.V.B.R.Menon, Advocate SR.No.66104,61105,61106, 61107,
61108



+5cc to Mr.A.Jenasenan, Advocate SR.No.61410,62104, 62105,62103

+2cc to Mrs.A.V.Bharathi, Advocate SR.No.61118

+2cc to Government Pleader SR.No.61669, 61670

W.P.Nos.23732 of 2017, 9472,
10550, 13039, 16924 of
2018 and W.M.P.Nos.11373 &
11374 of 2018 etc.,

PP (CO)
GMY (28/08/2019)