

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2022

DELIVERED ON : 12.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.Nos.1398 and 1399 of 2022

1.State of Tamil Nadu,
rep. by its Secretary,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Additional Director of Medical Education/
Secretary, Selection Committee,
Directorate of Medical Education,
Chennai - 600 10.

.. Appellants
in both appeals

Vs

1.Srinivasan Medical College and Hospital,
(Affiliated to Dhanalakshmi Srinivasan University)
rep. by its Vice Chairman S.Kathiravan,
NH-45, Trichy Chennai Trunk Road,
(Near Samayapuram Toll Plaza)
Samayapuram, Tiruchirapalli-621 112.

.. 1st respondent
in WA.1398/2022
& sole respondent
in WA.1399/2022

2.Union of India,
rep. by its Secretary,
Ministry of Health and Family Welfare,
Room No.156-A, 'A' Wing,
Nirman Bhavan, New Delhi-110 011.

3.Directorate General of Health Services,
rep. by its Director General,
Nirman Bhawan, Maula Azad Road,
New Delhi-110 011.

4.The National Medical Commission,
rep. by its Secretary,
Pocket-14, Section-9, Dwarka Phase-1,

New Delhi-110 077.

5.The University Grants Commission (UGC),
rep. by its Member Secretary,
Bahadurshah Zafar Marg,
New Delhi-110 002.

.. Respondents 2 to 5
in WA.1398/2022

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 29.4.2022 passed in W.P.Nos.1392 and 9236 of 2022.

Prayer in W.P.Nos.1392 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus Calling for the records of the 5th Respondent in its notification dated 03.01.2022 in notification no. 003/SCSI(I)/2021 quash the same and consequentially direct the 5th Respondent to include the name of the Petitioner Institution in the counselling process to be conducted for filling up 35 percent of the 150 MBBS Seats available in the Petitioner Institution from the Academic Year 2021- 22 onwards and also direct the 1st Respondent to consider the representation dated 29.10.2021 submitted by the Petitioner and instruct the 2nd Respondent to include the name of the petitioner Institution in the counselling process to be conducted for filling up 65 percent of the 150 MBBS Seats available in the petitioner institution from the Academic year 2021-22 onwards.

Prayer in W.P.Nos.9236 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus calling directing the respondents to consider the representation dated 10.04.2022 submitted by the petitioner and consequently include the name of the petitioner Institution in the Counselling process and allot candidates to 150 MBBS seats by (i) Following the apportionment of seats followed in private Self-Financing medical institutions affiliated to Tamil Nadu Dr. MGR Medical University and (ii) by applying the fee structure fixed by the State Fee Committee for private self-financing medical institutions in the state for the Academic Year 2021 -22 alone.

For the 1st Appellant : Mr.R.Shunmugasundaram
in both appeals Advocate-General
assisted by
Mr.P.Muthukumar
State Government Pleader
Ms.A.G.Shakeena

For the 2nd Appellant : Mr.Amit Anand Tiwari
in both appeals Additional Advocate
General
(Supreme Court)
assisted by Ms.Devyani
Gupta

For the Respondents : Mr.Vijay Narayan
Senior Counsel
for Mr.Abishek Jenasenan
for 1st respondent
in W.A.No.1398 of 2022
and sole respondent
in W.A.No.1399 of 2022

: Mr.K.Srinivasamurthy
Senior Panel Counsel
for respondents 2 and 3
in W.A.No.1398 of 2022

: Ms.Shubharanjani Ananth
for 4th respondent
in W.A.No.1398 of 2022

: Mr.P.R.Gopinath
for 5th respondent
in W.A.No.1398 of 2022

COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The writ appeals have been filed by the State of Tamil Nadu and the Additional Director of Medical Education/Secretary, Selection Committee to assail the judgment of the learned Single Judge dated 29.4.2022, whereby the writ petitions preferred by Srinivasan Medical College and Hospital were allowed.

2. W.P.No.1392 of 2022 was filed by the writ petitioner/non-appellant to quash the notification dated 3.1.2022 and to consequently include the name of the writ petitioner/institution in the counselling process for allocation of students for filling up 35% of intake capacity of 150 seats allocated to the writ petitioner/ institution from the academic year 2021-2022 onwards. It was with a further prayer to consider the representation of the writ petitioner/institution dated 29.10.2021 and instruct the Directorate General of Health Services, New Delhi, to include the name of the writ petitioner/institution in the counselling process to be conducted for filling up 65% of the 150 MBBS seats to the writ

petitioner/institution from the academic year 2021-2022 onwards.

3. The prayer in W.P.No.9236 of 2022 was to seek a direction on the respondents therein to consider the representation dated 10.4.2022 and include the name of the writ petitioner/institution in the counselling process and allot 150 candidates for the MBBS Course by following the apportionment of seats followed in the private self-financing medical institutions affiliated to the Tamil Nadu Dr.M.G.R.Medical University and by applying the fee structure fixed by the State Fee Committee for the private self-financing medical institutions in the State for the academic year 2021-2022.

4. The necessity to file the writ petitions arose when the second appellant issued a government notification dated 3.1.2022, which is quoted hereunder:

"KIND ATTENTION TO THE SELF FINANCING MEDICAL /
DENTAL COLLEGES

The Self Financing Medical / Dental Institutions are informed that their Seat Matrix for MBBS / BDS courses for 2021-2022 will be included at the time of State / Management quota Counselling which have been affiliated by the Tamil Nadu Dr. MGR Medical University, Guindy, Chennai only."

5. The aforesaid government notification contemplated that the self-financing medical/dental institutions having affiliation with the Tamil Nadu Dr.M.G.R. Medical University, Chennai, would only be included at the time of the counselling for allocation of the candidates for the MBBS Course against the State/Management quota.

6. Prior to the issuance of the aforesaid government notification, Dhanalakshmi Srinivasan University sent a detailed representation on 29.10.2021 to the effect that they need to fill 35% of the total seats as per the reservation policy of the Tamil Nadu State Government and as per the prevailing procedure of the Director General of Health Service, New Delhi, 100% MBBS seats of deemed to be universities are filled through Medical Counselling Committee and similar is the position in respect of Super-specialty seats and, therefore, a request was made to include the name of the writ petitioner/institution for MBBS counselling.

7. The said representation was followed by another representation dated 10.4.2022 of the Dhanalakshmi Srinivasan University to inform that they have got the letter of permission from the National Medical Commission, New Delhi, on 1.11.2021

for starting Srinivasan Medical College and Hospital under Dhanalakshmi Srinivasan University from the academic year 2021-2022 with intake capacity of 150 seats and, therefore, it was to request allotment of 150 students and if they are not admitted during the academic year, the eligible and deserving students would miss their opportunity. The table of seat apportionment followed in the private medical colleges in Tamil Nadu affiliated to the Tamil Nadu Dr.M.G.R.Medical University was also given to follow it for allotment of 150 students to the writ petitioner/institution.

8. A representation was not made to challenge the government notification dated 3.1.2022 requiring affiliation of the writ petitioner/institution with Tamil Nadu Dr.M.G.R.Medical University, Chennai, however, a challenge to the aforesaid government notification has been made in the writ petition. It was precisely on the ground that a medical college and institution opened by a private university under the Tamil Nadu Private Universities Act, 2019 [for brevity, "the TNPU Act of 2019"] may not be compelled to have affiliation from other university, as it otherwise not only affects the autonomy of the institution, but would also be in violation of the provisions of the TNPU Act of 2019. The writ petitions were pressed even for a direction for fee fixation. The learned Single Judge allowed the writ petitions with the following conclusions:

"121. My conclusions are as follows:

(i) The issue of affiliation to the TN Dr.MGR University is held in favour of the petitioner. With this, what stands in the way of allocation of the 150 seats approved by the National Medical Commission is the seat-sharing arrangement to be arrived at between the parties as well as the fixation of fee by the Committee constituted for the purpose.

(ii) In view of the explicit direction in regard to the aforesaid two parametres by the Hon'ble Supreme Court in the cases of P.A.Inamdar(supra) and Islamic Foundation (supra), it is appropriate that the petitioner and the State engage in this exercise now. The petitioner is permitted to approach the concerned State authorities in this regard who shall, upon receipt of a request from the petitioner, convene a meeting as per the procedure normally followed and arrive at a consensual decision in regard to seat-sharing as directed by the Hon'ble Supreme Court.

(iii) As regards fee fixation, the

petitioner is permitted to approach the Fee fixation committee with an application for fee fixation and the Committee is requested to consider the application and take an appropriate decision in this regard within a week from date of submission of the application.

(iv) The process of counselling shall be initiated forthwith thereafter based solely upon the list of eligible candidates furnished by the seat selection committee.

(v) The entirety of the process as above, shall be completed not later than the 15th of June 2022."

9. The conclusions quoted above were made after referring to the time schedule for completion of admission process for First MBBS Course, as given by the Apex Court in the case of Ashish Ranjan and others v. Union of India and others, (2016) 11 SCC 225, and, according to the schedule quoted by the learned Single Judge, the first round of counselling was to be completed by 25th June of the year, with scheduled last date of admission, etc.

10. The challenge to the judgment of the learned Single Judge has been made not only in reference to the direction to include the name of the writ petitioner/college for counselling, but even in regard to the fee structure, apart from the ratio of seats against government and management quotas.

11. Mr.R.Shunmugasundaram, learned Advocate General appearing on behalf of the first appellant and Mr.Amit Anand Tiwari, learned Additional Advocate General appearing on behalf of the second appellant, submit that as per Section 6 of the Tamil Nadu Dr.M.G.R.Medical University (Chennai) Act, 1987 [for brevity, "the Act of 1987"], no college or institution within the university area can have affiliation with any other university other than the Tamil Nadu Dr.M.G.R. Medical University. In view of the mandate of Section 6 of the Act of 1987, the finding of the learned Single Judge that the writ petitioner/institution is not required to have affiliation with the Tamil Nadu Dr.M.G.R. Medical University is going contrary to the statutory provisions, that too, when the constitutional validity of the said provision has not been challenged. The definition of "university area" has also been given under the Act of 1987 to include the whole of the State of Tamil Nadu, excluding the Annamalai Nagar. It is apart from the provisions of the Indian Medical Council Act, 1956, now repealed by the National Medical Commission Act, 2019 [for brevity, "the NMC Act of 2019"], saving all the Rules and Regulations made under the

Indian Medical Council Act, 1956. As per the provisions made applicable by the NMC Act of 2019, every medical institution needs to have affiliation of the university, but, in the instant case, the writ petitioner/institution has been allowed to hold MBBS course even without its affiliation with any university, because the power of affiliation does not vest in the university, to which the writ petitioner/institution is a constituent college. There exists a specific bar on the affiliation by the private university established under the TNPU Act, 2019. Thus, it is stated that the judgment passed by the learned Single Judge is in ignorance of the statutory provisions.

12. It is further submitted that the schedule for counselling and admission has been fixed by the learned Single Judge in ignorance of the order of the Apex Court in the case of Ashish Ranjan and others, dated 9.5.2022, where for the academic year 2021-2022, the schedule was changed due to the pandemic COVID-19 and the last date for MBBS admission to the Undergraduate Medical Course was fixed as 28.4.2022. The order aforesaid came after the judgment, but the National Medical Commission proposed to change the schedule for the academic year 2021-2022 much prior in time and matter was pending consideration with the Apex Court.

13. It is submitted that an altered schedule was given by the National Medical Commission for the academic year to seek approval of the Apex Court and, by order dated 9.5.2022, it was approved and the last date for counselling and admission was fixed as 28.4.2022, which date had expired even prior to the judgment of the learned Single Judge. The Apex Court had directed to strictly adhere to the schedule of counselling and admission and emphasised that no institution would be allowed to fill the seats going beyond the schedule. A reference of the judgment was given with a prayer to interfere in the schedule given by the learned Single Judge as it was in reference to the judgment of the Apex Court in the case of Ashish Ranjan and others, supra, ignoring that the schedule was altered on the request made by the National Medical Commission for two academic years, out of which one is for the academic year 2021-2022. The change in the schedule was approved by the Apex Court on 9.5.2022.

14. It is also the case of the State that ignoring the mandate under Section 6 of the Act of 1987 for affiliation of medical college with the Tamil Nadu Dr.M.G.R. Medical University and even the definition of "University area" given under 2(r) of the Act of 1987, the writ petitions were allowed by applying the judgment of the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others v. State

of Himachal Pradesh and others, (2017) 6 SCC 675, holding that the writ petitioner/institution need not seek affiliation from the Tamil Nadu Dr.M.G.R. Medical University, though the said judgment was not applicable to the facts of the case. Therefore, elaborate arguments were made on the issue referring to the provisions of the Act of 1987 and the TNPU Act, 2019 for challenge to the judgment of the learned Single Judge.

15. The challenge to the judgment of the learned Single Judge has been made even in reference to the provisions of the National Medical Commission Act, 2019 [for brevity, "the NMC Act of 2019"] and the Rules and Regulations framed thereunder. As per the Rules and Regulations applicable, no medical college or institution can impart MBBS course or any other course unless it is affiliated to the University. It is submitted that, ignoring the aforesaid, the learned Single Judge has given direction in favour of the writ petitioner/institution having no affiliation with any of the Universities, which includes even the Dhanalakshmi Srinivasan University, to which the petitioner/institution is stated to be a constituent college. The learned Single Judge has failed to make a distinction between the "constituent college" and the "affiliation" of the college as mandated by the National Medical Commission.

16. It is submitted that the necessity of affiliation was mandated by the erstwhile Medical Council of India, now the National Medical Commission, to ensure the standard of medical education, which is otherwise the primary duty of the Commission. It is for that reason alone that the admission in MBBS Course is not allowed by the medical college or institution on its own or by their University, but has to be made based on the All-India Merit List as well as a State/Union Territory-wise Merit List of eligible candidates pursuant to the National Eligibility cum Entrance Test (NEET). All the universities and medical colleges have to give admission to the candidates based on the merit in the NEET and thereby no institution can claim autonomy to conduct entrance test on their own to make admission in MBBS Course, in view of judgment of the Apex Court and the Rules and Regulations brought in by the Medical Council of India, saved under the NMC Act of 2019. They are not given autonomy therein.

17. The importance to maintain the high standard of medical education was felt by the Apex Court, as the students graduating in medicine or taking Post-Graduation thereupon would serve the public with a pious object in their minds, i.e., to render medical assistance to the patients. Any compromise in the standard would have serious repercussions on the patients. It is only for that reason that the admission in the MBBS course or even Post-Graduation course is through the Common Entrance Test

at the All-India level and even admission is through counselling to fill up the different seat matrix allocated to medical colleges or the institutions in the State. A direction was given to the State/ Union Territory to conduct common counselling for all the medical institutions, which may be even a constituent college under a private university. The direction aforesaid was given to emphasise strict adherence to the merit which can be by conducting a common counselling for all the medical institutions in the State so that the meritorious candidates may make a choice of the medical institution strictly in the order of merit. There again, the admission of students is not kept at the instance of the medical institution which may be even a college under the private university. The autonomy of the medical college or the university was not recognised looking to the object sought to be achieved, i.e., to maintain the high standard of medical education.

18. In view of the above, an argument has been made to analyse the issue from the aforesaid angle and to comply the mandate of Section 6 of the Act of 1987, apart from the Rules and Regulations of the erstwhile Medical Council of India, now the National Medical Commission, requiring affiliation of every medical college in the State with the Tamil Nadu Dr. M.G.R. Medical University, so that even the medical course is imparted with same standard in the State with common examination to be conducted by the affiliating body. It is, therefore, that the National Medical Commission brought in Rules requiring affiliation of the medical institution with the University. However, ignoring the aforesaid, the judgment has been given by the learned Single Judge holding that there is no need for the writ petitioner/institution to obtain affiliation from the Tamil Nadu Dr.M.G.R. Medical University.

19. Learned Advocate General further referred to Sections 3 and 14 of the TNPU Act of 2019 to indicate that the statutory regime under the said Act clearly yielded itself to the regulatory mechanism and special law contained in the Act of 1987. Referring to Section 2(y) of the TNPU Act of 2019, it was stated that the definition of "regulatory body" given therein is an inclusive definition, which is noticeable from the use of the words "includes" and "such as". Thus, the definition aforesaid could not have been taken as an exhaustive definition to ignore any other regulatory mechanism other than that mentioned in Section 2(y) of the TNPU Act of 2019. It is submitted that the learned Single Judge instead of giving the expression "regulatory body" contained in Section 2(y) of the TNPU Act of 2019 an expansive meaning, gave it a narrow meaning and thereby the mandate under Section 6 of the Act of 1987 was ignored.

20. Learned Advocate General has further made a reference

of the judgment of the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra, to show a distinguishing fact therein and submits that the judgment therein is not applicable to the facts of this case. In that case, amendment to the provisions of Section 3(6-a) of the Himachal Pradesh Private Medical Education Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 was challenged and the said provision was struck down by the Apex Court, whereas there is no challenge to Section 6 of the Act of 1987 requiring affiliation of each medical college with the Tamil Nadu Dr.M.G.R. Medical University. It is also stated that the Act of 2006 referred by the Apex Court in the case supra was in regard to admission and fixation of fee and, therefore, according to the Apex Court, the said Act of 2006 could not have been brought to emphasise affiliation of medical institution with the Himachal University. Therefore, the judgment of the Apex Court after giving interpretation to the Act of 2006 was on its own facts and thereby not applicable to the present case, yet the learned Single Judge has heavily relied on the said judgment for acceptance of the plea of the writ petitioner/ institution.

21. Learned Advocate General has given reference of Section 3(4) of the TNPU Act of 2019 to show that the private university has not been given any power to affiliate or recognise any college or institution and thereby the affiliation of the medical college required as per the direction of the National Medical Commission could not have been complied by the private university established under the TNPU Act of 2019. It cannot be held that by merely being a constituent college, the writ petitioner/institution is not required to obtain affiliation, despite specific direction of the National Medical Commission to have affiliation with the University. The position would be different for other courses under the private university other than medical, where a mandate of affiliation with the university may not be there, but the case in hand could not have been analyzed in reference to the other courses, which can be taken up by the university. The learned Single Judge has thus given an erroneous interpretation of different provisions of the Act of 1987 and the TNPU Act of 2019.

22. It is submitted that the requirement of affiliation from the university was necessary even to seek permission to operate the medical course, but ignoring all these aspects, the learned Single Judge was driven by the issue of autonomy of the university and the medical college, without considering the object and scheme under which medical education is to be imparted.

23. The learned Single Judge has even failed to appreciate

the difference between the All India Quota, government and management quota. It is submitted that even though the learned Single Bench agreed that the respondent college is governed by the Regulation 5A of the Regulations on Graduate Medical Education, 1997, it has misunderstood the concept of All India Quota seats. It is submitted that All India Quota is a specific term denoting 15% of the seats in the MBBS course of a government medical college which are reserved to be filled on a non-domicile basis and there is no All India Quota in private medical colleges. However, the learned Single Judge ignored the judgment of the Apex Court in *Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146, and Regulation 5A of the Regulations on Graduate Medical Education, 1997 and issued directions to fill up the seats in violation of the seat matrix between the different quotas.

24. It is also submitted that though manifold directions have been given by the learned Single Judge, the government notification dated 3.1.2022 has not been quashed and, thus, would stand and is to be given effect to.

25. Per contra, the case of the writ petitioner/institution is that the learned Single Judge has properly dealt with all the issues raised and, therefore, the judgment under challenge does not warrant interference.

26. Mr. Vijay Narayan, learned Senior Counsel appearing for the writ petitioner/institution submits that the private university, namely the Dhanalakshmi Srinivasan University, was established under the TNPU Act of 2019 and, thus, is to be governed by the provisions of the said Act. It is not in reference to the admission of the students, but even to regulate the courses with autonomy to conduct the examination on their own. A constituent college of the university established under the TNPU Act of 2019 cannot be directed to seek affiliation from any other university, otherwise it would not only offend the TNPU Act of 2019, but the autonomy of the institution and, therefore, the learned Single Judge has rightly held that the direction to obtain affiliation from the Tamil Nadu Dr. M.G.R. Medical University cannot be endorsed.

27. A reference of all the relevant provisions of the TNPU Act of 2019 has been given for making thorough analysis of the issue and therein even the provisions of the Act of 1987 were considered and finding the provisions to be similar to what were discussed by the Apex Court in the case of *Maharishi Markandeshwar Medical College and Hospital and Others*, supra, the judgment under challenge was given. The judgment of the Apex Court in the case supra squarely applies to the facts of this case and, therefore, the argument of learned Advocate

General in reference to the distinguishable facts of the judgment in the case referred supra was contested.

28. Learned Senior Counsel for the writ petitioner/institution had vehemently argued on the issue of autonomy of the university. It is submitted that when a university is established under the TNPU Act of 2019, then it cannot be governed by the provisions of any other university, when it is not provided under the TNPU Act of 2019. The learned Single Judge has thus rightly given interpretation to Section 2 (y) of the TNPU Act of 2019, where the definition of the expression "regulatory body" has been given. Therein, a reference of the Tamil Nadu Dr. M.G.R. Medical University has not been given so as to treat it to be a regulatory body for Dhanalakshmi Srinivasan University.

29. Learned Senior Counsel appearing for the writ petitioner/ institution further supported the directions of the learned Single Judge in regard to the fee structure and even schedule for counselling and admission. It was submitted that the fee for the medical course can be determined by the university alone, so as to maintain its autonomy and cannot be governed by any other Rules or Regulations, especially in regard to the seats other than those reserved for the candidates from the State of Tamil Nadu. Therefore, learned Senior Counsel has endorsed the judgment of the learned Single Judge and placed heavy reliance on the judgment of the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra. The prayer is to dismiss the writ appeals.

30. The other elaborate arguments raised by learned Senior Counsel for the writ petitioner/institution would be referred while dealing with the arguments of learned Advocate General.

31. Mr.K.Srinivasamurthy, learned Senior Panel Counsel appearing for respondents 2 and 3 in W.A.No.1398 of 2022, submitted that the third respondent conducts the counselling for deemed university established only under Section 3 of the University Grants Commission Act, 1956 and inasmuch as the writ petitioner/institution and the university are established through the TNPU Act of 2019, the prayer made by Dhanalakshmi Srinivasan University to include for counselling under the Medical Counselling Committee, Directorate General of Health Services is not tenable. More so, when as per Clause 5A(3) of the Regulations on Graduate Medical Education, 1997, the counselling for State private universities shall be done by the respective State Government.

32. Mrs.Shubharanjani Ananth, learned counsel appearing for the National Medical Commission, has supported the arguments of

learned Advocate General in reference to the provisions of the NMC Act of 2019, which repealed the Indian Medical Council Act, 1956, though the Rules and Regulations were saved. Referring to the Medical Council of India Establishment of Medical College Regulations, 1999, it is submitted that a proposed medical college needs to obtain consent of affiliation in Form-3 from a university and, therefore, it is a prerequisite. Therefore, referring to the provisions applicable to the case, it was stated that the finding and observation of the learned Single Judge is not tenable, rather it offends the provisions of the NMC Act of 2019 and the Rules and Regulations saved by the said Act, otherwise brought under the Indian Medical Council Act, 1956.

33. The direction of the learned Single Judge to hold the counselling on the dates given in the judgment has also been questioned by learned counsel appearing for the National Medical Commission. It is in the light of the order of the Apex Court dated 9.5.2022 to approve the schedule of counselling and last date for admission as given by the National Medical Commission for the academic year 2021-2022. The last date for counselling and admission given therein was 28.4.2022 and the date having expired, a direction to conduct counselling and admission for the writ petitioner/institution is hit by the judgment of the Apex Court and the schedule of admission stipulated therein. The power does not exist in the National Medical Commission or for that even in the High Court to issue direction for admission in violation of the schedule, rather the authority to alter the dates lies only with the Apex Court. Any violation therein is to invite contempt as held by the Apex Court in the case of Priya Gupta v. State of Additional Secretary, Ministry of Health and Family Welfare and others, (2013) 11 SCC 404.

34. It is also the case of the National Medical Commission that to maintain high standards of medical education, the Regulations have been brought under the Indian Medical Council Act, 1956 and are being saved. The standard of education in the State can be maintained only with the affiliation of the medical college with the university. For admission to medical courses, it is by a common entrance test, irrespective of the status of the medical college. It is even for admission through the process of counselling as given under Regulation 5A of the Graduate Medical Regulations, 1997, as amended in 2017. The medical college or university cannot be given autonomy for it, otherwise high standards of medical education cannot be maintained.

35. Learned counsel referred to the judgments of the Apex Court on the issue and directions for common counselling at the State level for all medical colleges and institutions

irrespective of a medical college under the university. It is submitted that the same principle has to be applied even for imparting medical courses with one and the same standard in the State and which can be achieved only when the affiliation of all the medical colleges is with one regulatory body for a such course and, in the instant case, it is the Tamil Nadu Dr.M.G.R. Medical University.

36. The mandate of Section 6 of the Act of 1987 is to achieve the object to maintain the high standard of medical course. Learned counsel even made an argument in regard to the direction to regulate the fee for the writ petitioner/institution. It is stated that the directions issued by the learned Single Judge are de hors the judgment of the Apex Court whereby a Committee was constituted to determine the fee of the management quota and otherwise the fee of government quota is to be determined by the State.

37. A reference of the recent guidelines issued by the National Medical Commission dated 3.2.2022 has been given by the learned counsel for the National Medical Commission. The Office Memorandum dated 3.2.2022 was to issue guidelines for determination of the fees and other charges in respect of 50% of seats in private medical colleges and deemed to be universities governed by the NMC Act of 2019. The official memorandum was issued by drawing the power under Section 10(1)(i) of the NMC Act, 2019. The prayer is accordingly to set aside the impugned judgment.

38. We have considered the rival submissions of the parties and perused the records.

39. The challenge to the judgment of the learned Single Judge dated 29.4.2022 has been made on manifold grounds.

40. The first argument to challenge the judgment of the learned Single Judge is in reference to the schedule of dates for holding the counselling for admission of students in the writ petitioner's institution. The schedule of the dates has been given by referring to the judgment of the Supreme Court in the case of Ashish Ranjan and others, (2016) 11 SCC 225. According to learned Advocate General and learned counsel for the National Medical Commission, the changed schedule of date for the academic year 2021-2022 given by the National Medical Commission was approved by the Apex Court, with the last date for admission fixed as 28.4.2022. The order of the Apex Court dated 9.5.2022 to approve the new schedule of counselling and admission given by the National Medical Commission does not match to the schedule given by the learned Single Judge.

41. It seems that the fact about the pendency of matter before the Apex Court to approve change of schedule was not brought to the notice of the learned Single Judge while the writ petitioner/institution sought direction for counselling and admission to the medical college to fill up the intake capacity of 150 students in the MBBS course. The judgment was given by the learned Single Judge on 29.4.2022 and by the aforesaid date, the altered schedule for counselling and admission for the academic year 2021-2022 had already expired.

42. It cannot be disputed by learned counsel for the parties that no one has the authority to alter or substitute the date of counselling or admission determined by the Apex Court and for that it cannot be even by the National Medical Commission. Realizing the aforesaid, the National Medical Commission had submitted a changed schedule before the Apex Court for approval for the academic year 2021-2022 due to the delay in admission on account of the pandemic COVID-19. The altered schedule was approved by the Apex Court. In support of the proposition that no one is having the authority to alter the schedule of counselling and admission and even to make admission de hors the schedule given by the Apex Court, reliance has been placed on paragraphs (40) and (41) of the judgment in the case of Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433, which read as under:

"40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

(1) Delay and unauthorised extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of

colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in Muskan Dogra v. State of Punjab [(2005) 9 SCC 186] .

(2) Midstream admissions are being permitted under the garb of extended counselling or by extension of periods for admission which again is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit."

[emphasis supplied]

43. In the light of the direction given above, counselling and admission dehors the schedule given by the National Medical Commission and approved by the Apex Court cannot be allowed. It may be that the facts relevant to it were not brought to the notice of the learned Single Judge, but for that reason, we

cannot allow the direction of the learned Single Judge de hors the schedule approved by the Apex Court for the academic year 2021-2022.

44. The last date for counselling and admission cannot be altered for an individual medical college. In that regard, reference of the judgment in the case of Education Promotion Society for India v. Union of India, (2019) 7 SCC 38 would also be relevant. Paragraph (6) of the said judgment reads as under:

"6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UoI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated."

[emphasis supplied]

45. Therefore, the direction for counselling and admission on the schedule dates given by the learned Single Judge cannot be approved.

46. The moot issue that now needs consideration is the requirement of affiliation of the writ petitioner/institution with the Tamil Nadu Dr.M.G.R.Medical University.

47. The writ petitioner/institution had challenged the government notification dated 3.1.2022 requiring affiliation of

all the self-financing medical/dental institutions in the State of Tamil Nadu with the Tamil Nadu Dr.M.G.R.Medical University. It was mainly in reference to the provisions of the TNPU Act of 2019, which has been elaborately referred by the learned Single Judge. However, certain provisions referred therein may not be relevant. Thus, we would be quoting only those provisions which are relevant to the issue of affiliation of the writ petitioner/institution with Tamil Nadu Dr.M.G.R.Medical University.

48. The definition of the term "multidisciplinary" given under Section 2(s) of the TNPU Act of 2019 and the term "regulatory body" given under Section 2(y) of the TNPU Act of 2019 are relevant, apart from Sections 3, 13 and 14 of the TNPU Act of 2019. Those provisions are reproduced hereunder:

"2(s) "multidisciplinary" means study in the Departments of Humanities and Social Sciences, Science, Engineering and Technology, Architecture, Medical, Dental, Nursing, Pharmacy, Physiotherapy, Allied Health Sciences, Education, Law, Agriculture, Veterinary and other branches of knowledge;

2(y) "Regulatory Body" means and includes a body such as UGC, AICTE, NCTE, MCI, PCI, ICAR, BCI established for maintenance of standards of higher education;

3. Establishment of Private University.-

(1) The Government may permit the establishment of a Private University, by any sponsoring body, by inclusion of the name of the Private University, its location and the details of the sponsoring body in the Schedule.

(2) The Private University shall be a Greenfield University and shall also be a multidisciplinary University. Its location shall be within the State of Tamil Nadu.

(3) The Private University shall be a body corporate, shall have perpetual succession and a common seal and shall sue and be sued by the said name.

(4) The Private University shall be of the unitary type and shall not have power to affiliate or recognise any college or institution.

(5) The Private University may establish constituent colleges, regional centres, additional campuses and study centres at

such places in the State as it deems fit subject to the norms of UGC and other regulatory bodies.

13. Powers of Private University.- Every Private University shall have the following powers, namely:-

(a) to provide for instructions in such branches of learning as the Private University may, from time to time, determine and to make provisions for research and for the advancement and dissemination and application of knowledge and skills;

(b) to impart and promote the study of humanities and social sciences, science, engineering and technology, management, law, medical and allied sciences and any other professional courses through in-campus, off-campus, and satellite centres or by distance educational programmes;

(c) to honour educational stalwarts and persons of academic eminence with the decoration of professor Emeritus;

(d) to grant, subject to such conditions as the Private University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(e) to confer honorary degrees or other distinctions in the manner prescribed;

(f) to provide education and training including correspondence and such other courses, to such persons who are not members of the Private University, as it may determine;

(g) to institute Directorships, Professorships, Associate Professorships, Readerships, Assistant Professorships, Lecturerships and other teaching or academic posts required by the Private University and to make appointments for the same;

(h) to create administrative, ministerial and other posts and to make appointments thereto;

(i) to appoint or engage persons of eminence working in any other University or

Organisation permanently or for a specified period;

(j) to co-operate, collaborate or associate with any other University or Authority or Institution in India and abroad in such manner and for such purpose as the Private University may determine;

(k) to establish and maintain schools, centres, specialised laboratories or other units for research and instructions as are in the opinion of the Private University, necessary for the furtherance of its objects;

(l) to institute and award fellowships, scholarships, studentships, medals and prizes;

(m) to establish and maintain and supervise residences, hostels within the Private University and promote the health and general welfare activities for students and staff;

(n) to make provisions for research and consultancy, and for that purpose to enter into such arrangements with other institutions or bodies as the Private University may deem necessary;

(o) to declare a centre, an institution, a department, or school, as the case may be, in accordance with the statutes;

(p) to determine standards for admission into the Private University, which may include examination, evaluation or any other method of testing;

(q) to prescribe, demand and receive payment of fees and other charges;

(r) to make such arrangements in respect of the residence, discipline and teaching of women and other disadvantaged students as the Private University may deem fit;

(s) to regulate and enforce discipline amongst the employees and students of the Private University and take such disciplinary measures in this regard as may deem necessary by the Private University;

(t) to make arrangements for promoting the health and general welfare of the employees of the Private University;

(u) to receive donations and to acquire, hold, manage and dispose through sale or lease or rent of any property, movable or immovable for the welfare of the Private

University;

(v) to borrow without security or by way of hypothecation or mortgage against the property of the Private University with the approval of the sponsoring body;

(w) to appoint either on contract or otherwise, visiting professors, emeritus professors, consultants, fellows, scholars, artists, course writers and such other persons who may contribute to the advancement of the objects of the Private University;

(x) to organise and to undertake extra-mural studies and extension service;

(y) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Private University.

14. Admission.-

(1) Every Private University shall, subject to the provisions of this Act and the relevant statutes and regulations of the UGC and other regulatory bodies, as the case may be, be open to all persons.

(2) Nothing contained in sub-section (1) shall require a Private University,-

(a) to admit to any course of study any person who does not possess the prescribed academic qualification or standard;

(b) to retain on the rolls of the Private University any student whose academic record is below the minimum standard required for the award of a degree or other academic distinction;

(c) to admit any person or retain any student whose conduct is prejudicial to the interest of the Private University or the rights and privileges of other students and teachers;

(d) to retain on rolls of the Private University any student who fails to remit necessary fees as prescribed for the course.

(3) Subject to the provisions of sub-sections (1) and (2) and the standard admission process of the Private University as may be prescribed, the Private University shall reserve thirty-five percentage of seats in each course of study for resident students of Tamil Nadu.

(4) Admission of students to thirty-five percentage of seats reserved for resident students of Tamil

Nadu under sub-section (3) shall be made following the reservation as per law in force.

Explanation.— For the purpose of this section "Resident student of Tamil Nadu" means:—

(i) a student who or either of whose parents has resided in the State of Tamil Nadu for a period of not less than five years preceding the qualifying examination; or

(ii) a student who has studied in any one of the educational institutions in the State of Tamil Nadu for a period of not less than five years leading to the qualifying examination."

49. The provisions of the Act of 1987 to the extent they are relevant to deal with the issue raised by the parties need to be quoted and accordingly, the definition of the term "university area" given under Section 2(r) thereof and Section 6 of the Act of 1987 are quoted hereunder:

"2(r) "University area" means the area to which this Act extends under sub-section (2) of section 1 excluding the Annamalai Nagar as defined in clause (a) of section 2 of the Annamalai University Act, 1928 (Tamil Nadu Act I of 1929);

6. Colleges situate within the University area not to be affiliated to any other University and recognition of institutions by University.—

(1) No college or institution within the University area shall be affiliated to any other University other than the Tamil Nadu Dr. M.G.R. Medical University, Chennai.

(2) No institution affiliated to, or associated with, or maintained by, any other University whether within the State of Tamil Nadu or outside the State of Tamil Nadu shall be recognized by the University for any purpose except with the prior approval of the Government and the University concerned."

50. That apart, Section 5(5) of the Act of 1987 empowers the Tamil Nadu Dr.M.G.R. Medical University to affiliate colleges to the university as affiliated colleges within the university area. The said provision reads as under:

"5. Powers of University. - The University shall have the following powers, namely:—

(1) to (4) ...

(5) to affiliate colleges to the University as affiliated colleges, within the University area

under conditions prescribed and to withdraw such affiliation:

Provided that no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission have been complied with;"

[emphasis supplied]

51. The relevant provisions of the TNPU Act of 2019 would be discussed, followed by the discussion of the provisions of the Act of 1987.

52. The learned Single Judge has given interpretation to the definition of the term "regulatory body" under the TNPU Act of 2019 to include only the bodies specified therein. According to the learned Single Judge, any other body could not have fallen within the definition of the regulatory body, which includes the Tamil Nadu Dr. MGR Medical University. We find that the regulatory body defined under Section 2(y) of the TNPU Act of 2019 no doubt refers to the regulatory bodies named therein, but the definition aforesaid cannot be said to be exhaustive, rather is an inclusive definition to refer certain bodies, but does not exclude any other regulatory body. In the said provision, the words used are "such as" and the names of certain bodies remain as an illustration and, thus, could not have been taken to be exhaustive definition. In this context, the judgment of the Apex Court in the case of Royal Hatcheries Private Limited and others v. State of Andhra Pradesh and others, 1994 Supp (1) SCC 429 would be relevant. Therein, discussion on the use of the words "such as" has been made elaborately. The relevant paragraphs of the said judgment are quoted hereunder:

"5. Having regard to the relevance of the language employed in Rule 5(2)(xxvi), it would be appropriate to set out the same over again here. It reads : "Livestock, that is to say, all domestic animals such as, oxen, bulls, cows, buffaloes, goats, sheep, horses etc." The clause opens with the word, 'livestock', but it does not stop there. Had it stopped there, there could be no doubt that day-old chicks or for that matter, older chicks and chicken would have certainly fallen within the ambit of the expression 'livestock' and would have been taxable at purchase point. But the clause proceeds further and restricts the ambit of the expression "livestock" to domestic animals referred to therein. That is the effect of the words "that is to say". The meaning and purport of the words

"that is to say" is explained by this Court in Rajasthan Roller Flour Mills Assn. v. State of Rajasthan [1994 Supp (1) SCC 413] . They are words of limitation. In other words because of the use of the said words, the livestock contemplated by the said clause becomes confined to the domestic animals referred to in the said clause. 'Livestock' is, ordinarily speaking, not confined to domestic animals. As held in Peterborough Royal Foxhound Show Society v. IRC [20 Tax Cases 249] the word 'livestock' takes in 'animals' of any description. But the rule-making authority chose to limit the meaning of 'livestock' in the said clause only to domestic animals mentioned therein. Yet again, the clause does not stop with the words "all domestic animals". It proceeds further and goes on to illustrate the meaning of the expression "all domestic animals" by mentioning some of them, namely oxen, bulls, cows, buffaloes, goats, sheep and horses and then ends with the word "etc.". This could not have been without a purpose. It could only be to indicate the type of domestic animals the rule-making authority had in mind. Why did the rule-making authority not mention a single bird, while mentioning so many animals? It is true, the words "such as" indicate that what are mentioned thereafter are only illustrative and not exhaustive. The clause also ends with the word "etc.", which does mean that some more domestic animals in addition to those specifically mentioned therein are also included within the meaning the words "all domestic animals". But the question still remains, whether day-old chicks were contemplated as included within the clause? In other words, whether chicks can be called 'domestic animals' so as to fall within the purview of the said clause?

...

15. So far as words "such as" are concerned, there is no dispute that they are meant to be illustrative and not exhaustive. It is, therefore, unnecessary to refer to the decisions cited by the learned counsel for the appellants on this aspect."

[emphasis supplied]

53. In view of the judgment supra, the definition of the term "regulatory body" could not have been taken to be exhaustive when before naming the bodies the words "such as" have been used. The definition of "regulatory body" given under Section 2(y) of the TNPU Act of 2019 is thus an inclusive

definition.

54. In the light of the aforesaid, we would now take up Section 3 of the TNPU Act of 2019 and specifically sub-sections (4) and (5) thereof. Sub-section (4) to Section 3 of the TNPU Act of 2019 provides that the private university shall be of the unitary type and shall not have power to affiliate or recognise any college or institution. The provision aforesaid imposes a bar on the power of the private university to affiliate or recognise any college or institution, which may be even its own college, because the provision does not exclude the aforesaid so as to give power to the private university to affiliate its own college, if it is so required. Affiliation of the college may not be required for all the courses but, in the instant case, we are concerned with the medical course for which, as per the Medical Council of India Establishment of Medical College Regulations, 1999, the affiliation is a precondition for seeking permission to operate the course by a medical college. The relevant portion of the Medical Council of India Establishment of Medical College Regulations, 1999 is quoted hereunder:

"2(4) that Consent of affiliation in Form-3 for the proposed medical college has been obtained by the applicant from a University."

[emphasis supplied]

Form-1, which is the format of application for permission of the Central Government to establish a new medical college contemplates under Column (6) that the "Name of the Affiliating University" should be mentioned by the applicant. That apart, the list of enclosures mentioned in Form-I require under Serial No.8 "Certified copy of the consent of affiliation issued by a recognised University." Form-3, which is the proforma for "Consent of Affiliation" reads as under:

"CONSENT OF AFFILIATION

On the basis of the report of the Local Inquiry Committee the University of has agreed, in principle, to affiliate the proposed medical college to be established at by the (Name of the person) subject to grant of permission by the Government of India, Ministry of Health and Family Welfare, New Delhi under/Section 10(A) of the Indian Medical Council Act, 1956 (102 of 1956)."

[emphasis supplied]

The writ petitioner/institution has shown its affiliation with the university to which it is a constituent college ignoring that under Section 3(4) of the TNPU Act of 2019, the university has no power to grant affiliation.

55. Now, we would be making further reference to Sub-

section (5) to Section 3 of the TNPU Act of 2019, which permits the university to establish constituent colleges, regional centres, additional campuses and study centres at such places in the State as it deems fit, subject to the norms of UGC and other regulatory bodies. The aforesaid provision is very relevant for the reason that while the private university is having authority to establish a constituent college, it remains subject to the norms of the regulatory body. The writ petitioner/institution is a constituent college of the private university and, thus, needs to follow the norms of the UGC and other regulatory bodies.

56. For the aforesaid reason, we have given meaning of the term "regulatory body" and, according to it and as per the regulation of the National Medical Commission, being the regulatory body, the affiliation from the University is required and such power exists only with the Tamil Nadu Dr.MGR Medical University in the State and otherwise there is a bar on the power of the private university for affiliation as per Section 3 (4) of the TNPU Act of 2019. The Tamil Nadu Dr.MGR Medical University is the only university to have power of affiliation of medical college in the whole of the State of Tamil Nadu, excluding Annamalai Nagar. Therefore, while enacting the TNPU Act of 2019, the State Government was cautious to regulate the constituent college by the norms of the University Grants Commission and other regulatory bodies and to that extent, the writ petitioner/institution cannot claim autonomy, as the private university has no power to grant affiliation.

57. At this stage, we would be further giving reference to Sections 13 and 14 of the TNPU Act, 2019, on which much emphasis was laid by learned Senior Counsel appearing for the writ petitioner/institution. It is no doubt true that the private university has been given authority to confer diplomas or certificates, apart from degrees, which may include even of the medical course, but it is subject to Section 3(5) of the TNPU Act of 2019. The establishment of constituent college by the private university is subject to the norms of the regulatory body, which may be the National Medical Commission or the Tamil Nadu Dr.MGR Medical University. Therefore, the court is required to give meaning to the provisions by taking harmonious construction of the provisions.

58. We may further refer to Section 14 of the TNPU Act of 2019 giving power to the private university for admission. Then again, the admissions are subject to the relevant statutes and regulations of the University Grants Commission and other regulatory bodies. Therefore, a complete free hand has not been given to the private university in that regard also. The admission is to be guided by the statutes and regulations of

University Grants Commission and other regulatory bodies, which, in the present case, would be the National Medical Commission and the Tamil Nadu Dr.MGR Medical University, being an affiliating university. The elaborate reason for it would further be given while referring to the provisions of the NMC Act of 2019 and the Rules and Regulations applicable to this case.

59. We may now refer to the provisions of the Act of 1987. The definition of the word "university area" given under Section 2(r) of the Act of 1987 states that other than Annamalai Nagar, the university area would extend to area specified under Section 1(2) of the Act of 1987, i.e., to the whole of the State of Tamil Nadu.

60. The interpretation of definition is relevant for giving interpretations to Section 6 of the Act of 1987. Section 6(1) of the Act of 1987 debars any college or institution within the university area from being affiliated to any other university other than the Tamil Nadu Dr.M.G.R.Medical University, Chennai, and such power of affiliation does not exist with the university to which the writ petitioner/institution is a constituent college. Section 6(2) of the Act of 1987 further emphasises that no institution affiliated to or associated with or maintained by any other university, whether within the State of Tamil Nadu or outside the State of Tamil Nadu, shall be recognised by the university for any purpose except with the prior approval of the government and the university concerned.

61. The aforesaid provisions make it clear that affiliation from the Tamil Nadu Dr.M.G.R.Medical University is required to be obtained by every medical college or institution. It is not a case where validity of Section 6(1) of the Act of 1987 is challenged. In the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra, the amendment to bring Section 3(6-a) of the Himachal Pradesh Private Medical Education Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 was challenged and held to be ultra vires. The aforesaid aspect was ignored by the learned Single Judge while applying the judgment of the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra.

62. At this stage, we need to consider one more aspect relevant to the issue. It cannot be disputed that the Act of 1987 was enacted much prior to the TNPU Act of 2019. While enacting the TNPU Act of 2019, the legislature did not bring a non-obstante clause to give overriding effect to the provisions of the TNPU Act of 2019, so as to ignore the effect of Section 6 (1) of the Act of 1987, which was enacted much prior in time. While making interpretation of the subsequent legislation, the

court cannot ignore the effect of the earlier legislation, when the subsequent legislation was not enacted with a non-obstante clause in case of conflict in the provisions. If the learned Single Judge was of the view that the provisions of the Act of 1987 are in conflict with the provisions of the TNPU Act of 2019, the issue was required to be analyzed as to whether the provisions of the TNPU Act of 2019 can be given interpretation in ignorance of the provisions of the Act of 1987, when non-obstante clause does not exist in the subsequent legislation and, therefore, the learned Single Judge could not have ignored the rigour of Section 6(1) of the Act of 1987 which debars the affiliation of the medical college by any other university than the Tamil Nadu Dr.MGR Medical University.

63. The learned Single Judge has accepted the argument raised by learned counsel for the writ petitioner/institution that the college cannot be asked to obtain affiliation from two different universities, one under which it was established and then from the Tamil Nadu Dr.MGR Medical University. The finding of the learned Single Judge cannot be accepted for the reason that there is no power with the private university to give affiliation to any college or institution and, therefore, there is no question of affiliation by two universities. Section 3(5) of the TNPU Act of 2019 no doubt gives power to open a constituent college, but difference between the word "constituent college" and the "affiliation" of the college could not be made by the learned Single Judge. It is more especially in regard to the medical course, where the affiliation of the medical college with a university is a precondition as per the Medical Council of India Establishment of Medical College Regulations, 1999. Therefore, it is not that the writ petitioner/institution would have affiliation under two different universities. Therefore, the analysis on the issue in that regard was not made after giving proper interpretation of the provisions of the laws applicable to the issue.

64. For giving interpretation to the provisions of the Act of 1987 and the TNPU Act of 2019, the learned Single Judge could not have been driven only by the issue of autonomy of the university. It is no doubt true that a private college has to be given autonomy to the extent it is provided under the Act under which it has been established, but while deciding the issue aforesaid, the provisions of the NMC Act of 2019 and the Act of 1987 could not have been ignored.

65. The National Medical Commission is having the prime duty to maintain the high standard of medical education. It is for that purpose the Rules and Regulations were brought. The aforesaid is even reflected in the judgments of the Apex Court, wherein it was held that all the admissions in the medical

course in different universities or medical colleges in the country would be out of the merit list from a common entrance test known as NEET. The University and college have not been given the autonomy to conduct their own entrance test, but are required to be driven by the merit list of the common entrance test.

66. If the aforesaid is taken into consideration, the question would be as to whether the autonomy of the private university established under the TNPU Act of 2019 is not sacrificed when they have been given power to make admission on their own in different courses, which includes medical courses. The admission and courses imparted by it are subject to approval of the regulatory body even as per the TNPU Act of 2019.

67. The further limb of the argument on the issue of autonomy would be even on the process of admission which has to be only by way of common counselling at the State level and is to be conducted by the State/Union Territory as per the judgment of the Apex Court in the case of Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353. Relevant portion of the said judgment reads as under:

"168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the legislature in its wisdom has taken the view that merit-based admissions can be ensured only through a common entrance test followed by centralised counselling either by the State or by an agency authorised by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of common entrance test (CET) to secure merit-based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common entrance test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:

- (i) fairness and transparency, and
- (ii) merit apart from preventing

maladministration.

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it would be permissible for the State to regulate admissions by providing a centralised and single-window procedure. Holding such CET followed by centralised counselling or single-window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a "right of occupation" in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community."

[emphasis supplied]

68. The significance of common counselling was reiterated in the decision in Dar-us-Slam Educational Trust and others v. Medical Council of India and others, (2017) 8 SCC 638, wherein it is held as under:

"23.1. Common counselling for admission to all-India quota seats in government medical colleges shall be conducted by DGHS. The counselling conducted by DGHS will also include deemed universities as they have an all-India character. The deemed universities mentioned above shall also include deemed universities run by religious and linguistic minorities.

23.2. Common counselling for State quota seats in government as well as private medical colleges including colleges/institutions run by religious and linguistic minorities affiliated to State Universities shall be conducted by the State Government or the authority designated by the State Government. The notification issued by the State Government intimating the students about the common counselling must specify that at the time of counselling the students belonging to minority community will be required to furnish the necessary proof regarding their minority status and submit in writing about their willingness to take admission in the minority college/institution concerned.

23.3. As per the judgment of this Hon'ble Court in Ashish Ranjan v. Union of India [Ashish Ranjan v. Union of India(2016) 11 SCC 225], there shall be only two rounds of common counselling each conducted by the DGHS/State Government or authority designated by the State Government for all-India quota (including deemed university) and State quota seats respectively."

[emphasis supplied]

69. The writ petitioner/institution is not claiming that it being a constituent college of the private university, cannot be compelled to admit the students through the common counselling when the university has autonomy for it. The direction of the Apex Court is to ensure higher standard of education in the medical courses and to ensure strict implementation of the judgments of the Apex Court, Regulation 5A of the Regulations on Graduate Medical Education, 1997 was brought into effect, which is quoted hereunder:

"The following shall be added, in terms of Gazette notification dated 10.03.2017.

5A Common Counseling.

(1) There shall be a common counseling for admission to MBBS course in all Medical Educational Institutions on the basis of merit list of the National Eligibility Entrance Test.

(2) The Designated Authority for counseling for the 15% All India Quota seats of the contributing States shall be the Directorate General of Health Services.

(3) The counseling for all admission to MBBS Course in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company shall be conducted by the State/Union Territory Government. Such common counseling shall be under the over-all superintendence, direction and control of the State/Union Territory Government.

The above sub-clause '5A' (2) and (3) as added vide notification dated 10/03/2017, shall be substituted with the following vide Gazette notification dated 27.06.2017:-

Clause 5A (2), shall be substituted as under:-

The Designated Authority for counseling for the 15% All India Quota seats of the contributing States and all MBBS seats of Medical Educational Institutions of the Central Government,

Universities established by an Act of Parliament and the Deemed Universities shall be the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India.

Clause 5A (3), shall be substituted as under:-

The counseling for admission to MBBS course in a State/Union Territory, including, Medical Educational Institutions established by the State Government, University established by an Act of State/Union Territory Legislature, Trust, Society, Minority Institutions, Municipal Bodies or a Company shall be conducted by the State/Union Territory Government.

The following shall be added in terms of notification published on 18.05.2018 in the Gazette of India

5A(4) - In order to prevent seat blocking in common counseling for admission to MBBS course and permissibility to exercise fresh choice during counseling, forfeiture of fee shall be in accordance with the Matrix contained in "Appendix - F".

[emphasis supplied]

70. The Regulation aforesaid contemplates admission through common counselling and it is not disputed by the writ petitioner/institution while challenging the government notification dated 3.1.2022. Since the admission would be out of the common counselling to be conducted by the State, the writ petitioner/ institution could not claim autonomy for admission in reference to the provisions of the TNPU Act of 2019. Thus, it is not that while a private university is established, it should be given liberty to regulate its affairs in ignorance of the provisions of the regulatory body or the judgments of the Apex Court. It is more so when the liberty to make admission and even regarding the powers of admission would be subject to the provisions of the University Grants Commission and other regulatory bodies, which include the National Medical Commission and the Tamil Nadu Dr.M.G.R. Medical University, having power of affiliation.

71. At this juncture, it is apt to refer to Regulation 5(7) of the Graduate Medical Education Regulations, 1997, which stipulates the procedure for selection to MBBS course:

"5. Procedure for selection to MBBS course shall be as follows:

(1) to (6)

(7) No authority/institution shall admit any

candidate to the MBBS course in contravention of the criteria/procedure as laid down by these Regulations and / or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission to any student in contravention / violation of the Regulations and / or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years."

[emphasis supplied]

72. The Regulation quoted above makes it clear that no candidate shall be admitted to MBBS course in contravention of the criteria/procedure laid down by the National Medical Commission or in violation of the judgments of the Apex Court.

73. The issue that further needs to be analysed is in reference to the judgment of the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra. The judgment aforesaid has been heavily relied by learned Single Judge.

74. In Maharishi Markandeshwar Medical College and Hospital and Others, supra, the amendment brought to Section 3(6-a) of the Himachal Pradesh Private Medical Education Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 was challenged. The said provision was mandating that the Himachal Pradesh University shall be having the exclusive power to affiliate private medical educational institutions set up in the State. The provision aforesaid was held to be unconstitutional. Whereas, in the present case, there is no challenge to Section 6 (1) of the Act of 1987 giving exclusive power to the Tamil Nadu Dr.M.G.R.Medical University for affiliation. The aforesaid distinguishing fact was not taken note of by the learned Single Judge while applying the judgment in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra. It is also without analyzing that Section 3(6-a) was considered by the Apex Court in reference to the amendment in Section 2(j) of the Act of 2006 and for that purpose, the Apex Court analysed the scheme and purpose of the Act of 2006. It was for regulation and admission and fixation of fee in private medical colleges in the State. Finding it to be for limited purpose of admission and fixation of fee in the private medical colleges,

it was found that an amendment in Section 2(j) of the Act of 2006 to include private medical institution established by or affiliated to a private university could not have been given effect to bring a provision to require affiliation of the college under Himachal Pradesh University. Making a reference of the purpose of the Act of 2006, the judgment was rendered. It is no doubt true that, while dealing with the issue, it was observed by the Apex Court that the independent special State legislation to bring private universities by the Maharishi Markandeshwar University (Establishment and Regulation) Act of 2010 in the State of Himachal Pradesh, inter alia, includes granting affiliation to its constituent college, which is one of the facets of the autonomy of the University. The grant of affiliation to the college could not have been the subject matter under the Act of 2006 and, therefore, an amendment in Section Section 3(6-a) of the Act of 2006 was struck down, whereas in these cases, there is no challenge to the similar provision and otherwise it was not brought under the Act to regulate admission and fee of medical college and institution which was the case before the Apex Court.

75. The distinguishing fact was required to be considered because by virtue of Section 3(6-a) of the Act of 2006, the autonomy of the college/university was affected and, therefore, struck down. However, similar challenge to Section 6(1) of the Act of 1987 is not before the Court and it is settled proposition of law that the court cannot rule de hors the statutory provision, unless the same is challenged and struck down.

76. At this stage, we may further refer to the provisions referred by the Apex Court in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra, which is specifically Section 7 of the Himachal Pradesh University Act, 1970. A finding has been recorded after taking into consideration the provisions of the Himachal Pradesh University Act, 1970 vis-a-vis the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010, to hold that the special legislation of the Act of 2010 would march over the general legislation under the Act of 1970.

77. In the instant case, the Act of 1987 is a special legislation in regard to medical courses, whereas the TNPU Act of 2019 is general legislation. It has been agreed by the learned Single Judge that special legislation would prevail over the general legislation and if the analogy aforesaid is accepted, then the distinguishing fact in the case decided by the Apex Court in Maharishi Markandeshwar Medical College and Hospital and Others, supra, would be that the Himachal Pradesh University Act, 1970 was not a special legislation for the

medical course and, therefore, the subsequent legislation, namely the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010, was taken to be special. Whereas in the instant case, the position is reverse. The Act of 1987 is the special legislation for medical courses, while the TNPU Act of 2019 is the general legislation for the educational courses. The special legislation would prevail over the general, in the light of the judgment of Apex Court in the case of Maya Mathew v. State of Kerala, (2010) 4 SCC 498, we find reason to agree with the argument of learned Advocate General. Paragraph (12) of the judgment are quoted hereunder:

"12. The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

(ii) When two provisions of law—one being a general law and the other being a special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law."

[emphasis supplied]

78. The proposition of law laid down in the case supra is on the issue that if there is repugnancy between two enactments, which should prevail. It has been held that the prior special law would prevail in spite of the subsequent general law and, in the instant case, the special law regarding medical education was brought under the Act of 1987, while the general law, i.e., the TNPU Act of 2019, was enacted subsequently to establish private universities. The private universities are not to provide only specialised courses in medicine, but they are given power and authority to provide courses in different disciplines and, therefore, it becomes clear that in the instant case the general law cannot prevail upon the Act of 1987. It is also held that the subsequent law would not repeal the earlier law and there can be no presumption to repeal the earlier law, unless so specifically provided. Thus, the subsequent law of 2019 would not repeal the earlier law and in view of the above also the finding of the learned Single Judge needs to be interfered.

79. We, therefore, hold that there are many distinguishable facts in the case of Maharishi Markandeshwar Medical College and Hospital and Others, supra, than the facts in the case on hand. It is also settled law that a judgment of the court need not be applied if it has distinguishable facts and otherwise going against the statutory provisions. In the instant case, the rigour of Section 6(1) of the Act of 1987 comes in the way of the writ petitioner/ institution and otherwise the writ petitions were not filed by the university seeking autonomy, but were filed only by the writ petitioner/ institution, which is a constituent college. It is more so when we have given elaborate interpretation to the provisions of the TNPU Act of 2019 to cover even the private universities by the regulatory bodies. The similar provisions were not before the Apex Court. Therefore, we have made elaborate discussion of the issue in regard to the requirement of affiliation of the writ petitioner/ institution.

80. The issue that now remains is about the fee for which also a direction has been given by the learned Single Judge. It seems that the facts relevant to it were not brought before the court, not only regarding the seat sharing ratio, but about the recent office memorandum dated 3.2.2022 issued by the National Medical Commission under Section 10 of the NMC Act of 2019. In the instant case, out of 100 seats, 35% seats are of management quota and 65% seats are of government quota. As otherwise it remains 50:50 for minority institution. The fee structure of the course to the extent of 50% seats of the government quota would be in accordance with office memorandum dated 3.2.2022

issued under Section 10(1) of the NMC Act of 2019. For ready reference, Section 10(1) of the NMC Act of 2019 is quoted hereunder:

"10. Powers and function of Commission.-

(1) The Commission shall perform the following functions, namely:-

(a) lay down policies for maintaining a high quality and high standards in medical education and make necessary regulations in this behalf;

(b) lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf;

(c) assess the requirements in healthcare, including human resources for health and healthcare infrastructure and develop a road map for meeting such requirements;

(d) promote, co-ordinate and frame guidelines and lay down policies by making necessary regulations for the proper functioning of the Commission, the Autonomous Boards and the State Medical Councils;

(e) ensure co-ordination among the Autonomous Boards;

(f) take such measures, as may be necessary, to ensure compliance by the State Medical Councils of the guidelines framed and regulations made under this Act for their effective functioning under this Act;

(g) exercise appellate jurisdiction with respect to the decisions of the Autonomous Boards;

(h) lay down policies and codes to ensure observance of professional ethics in medical profession and to promote ethical conduct during the provision of care by medical practitioners;

(i) frame guidelines for determination of fees and all other charges in respect of fifty per cent. of seats in private medical institutions and deemed to be universities which are governed under the provisions of this Act;

(j) exercise such other powers and perform such other functions as may be prescribed."

[emphasis supplied]

81. The provision quoted above was not brought to the notice of the learned Single Judge so as the Guidelines issued pursuant to it laying down the mechanism for fixation of fee. This apart, the fee is to be determined by the Fee Fixation Committee constituted in each State pursuant to the judgment of the Apex Court in the case of Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697. Paragraph (7) of the said

judgment is quoted hereunder:

"7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in T.M.A. Pai case [(2002) 8 SCC 481] the respective State Governments/ concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the

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

[emphasis supplied]

82. A reference of the judgment in the case of P.A.Inamdar v. State of Maharashtra, (2005) 6 SCC 537, would also be relevant. Paragraphs 142 to 147 of the said judgment are quoted hereunder:

"Q. 4. Committees formed pursuant to Islamic Academy 142. Most vehement attack was laid by all the learned counsel appearing for the petitioner applicants on that part of Islamic Academy [(2003) 6 SCC 697] which has directed the constitution of two Committees dealing with admissions and fee structure. Attention of the Court was invited to paras 35, 37, 38, 45 and 161 (answer to Question 9) of Pai Foundation [(2002) 8 SCC 481] wherein similar scheme framed in Unni Krishnan [(1993) 1 SCC 645] was specifically struck down. Vide para 45, Chief Justice Kirpal has clearly ruled that the

decision in Unni Krishnan [(1993) 1 SCC 645] insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent the said decision and the consequent directions given to UGC, AICTE, MCI, the Central and the State Governments, etc. are overruled. Vide para 161, Pai Foundation [(2002) 8 SCC 481] upheld Unni Krishnan [(1993) 1 SCC 645] to the extent to which it holds the right to primary education as a fundamental right, but the scheme was overruled. However, the principle that there should not be capitation fee or profiteering was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. It was submitted that Islamic Academy [(2003) 6 SCC 697] has once again restored such Committees which were done away with by Pai Foundation [(2002) 8 SCC 481] .

143. The learned Senior Counsel appearing for different private professional institutions, who have questioned the scheme of permanent Committees set up in the judgment of Islamic Academy [(2003) 6 SCC 697] very fairly do not dispute that even unaided minority institutions can be subjected to regulatory measures with a view to curb commercialisation of education, profiteering in it and exploitation of students. Policing is permissible but not nationalisation or total takeover, submitted Shri Harish Salve, the learned Senior Counsel. Regulatory measures to ensure fairness and transparency in admission procedures to be based on merit have not been opposed as objectionable though a mechanism other than formation of Committees in terms of Islamic Academy [(2003) 6 SCC 697] was insisted on and pressed for. Similarly, it was urged that regulatory measures, to the extent permissible, may form part of conditions of recognition and affiliation by the university concerned and/or MCI and AICTE for maintaining standards of excellence in professional education. Such measures have also not been questioned as violative of the educational rights of either minorities or non-minorities.

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 purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

146 [Ed.: Para 146 corrected vide letter dated 31-8-2005.] . Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure.

147. In our considered view, on the basis of judgment in *Pai Foundation* [(2002) 8 SCC 481] and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved out of setting up the two Committees for regulating admissions and determining fee structure by the judgment in *Islamic Academy* [(2003) 6 SCC 697] cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities."

[emphasis supplied]

83. As per the direction given by the Apex Court, the fee of the private medical college for management quota is to be fixed by the Fee Fixation Committee. However, It is seen that the judgments aforesaid were not referred before the learned Single Judge. Therefore, the direction for fee fixation only in respect of 35% of seats leaving remaining 65% seats at the discretion of the medical college cannot sustain and is thus interfered. It is to be re-emphasised that fixation of fee is not left to the discretion of the medical colleges, but is to be fixed by the mechanism evolved by the Apex Court and, therefore, the fee for government seats and management seats is to be fixed accordingly.

Resultantly, the writ appeals are allowed and the judgment of the learned Single Judge is set aside. There will be no order as to costs. Consequently, C.M.P.Nos.8976 and 8977 of 2022 are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sasi

To:

1.The Secretary,
Union of India,
Ministry of Health and Family Welfare,
Room No.156-A, 'A' Wing,
Nirman Bhavan, New Delhi-110 011.

- 2.The Director General,
Directorate General of Health Services,
Nirman Bhawan, Maula Azad Road,
New Delhi-110 011.
- 3.The Secretary,
National Medical Commission,
Pocket-14, Section-9, Dwarka Phase-1,
New Delhi-110 077.
- 4.The Member Secretary,
University Grants Commission (UGC),
Bahadurshah Zafar Marg,
New Delhi-110 002.
- 5.The Additional Director of Medical Education/
Secretary, Selection Committee,
Directorate of Medical Education,
Chennai - 600 10.
- 6.The Secretary,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

+2cc to Mr.Abishek Jenasenan, Advocate, S.R.No.45477
+1cc to Mr.K.Srinivasa Murthy, Advocate, S.R.No.45128
+1cc to Mr.P.R.Gopinathan, Advocate, S.R.No.45335
+1cc to the Government Pleader, S.R.No.46280

W.A.Nos.1398 and 1399 of 2022

PMK(CO)
SB(14/07/2022)