

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: April 18, 2022

CWP-8214-2018

ADESH UNIVERSITY AND ANOTHER

...PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CWP-21794-2019

DR. AASHISH BANSAL AND OTHERS

...PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Gurminder Singh, Sr. Advocate,
with Mr. Jatinder Singh Gill, Advocate,
for the petitioners in CWP-8214-2018,
for respondent No. 3 in CWP-21794-2019.

Ms. Avin Kaur Sandhu, Advocate,
for the petitioners in CWP-21794-2019,
for respondents No. 3 to 7 in CWP-8214-2018.

Mr. V.M.Gupta, Additional Advocate General Punjab,
for respondents No. 1 and 2 in CWP-8214-2018,
for respondent No. 1 in CWP-21794-2019.

Mr. Saurabh Chawla, Advocate,
with Mr. Nitin Kaushal, Advocate,
for respondent No. 2 in CWP-21794-2019.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to consider and decide above-referred two writ petitions i.e. CWP No. 8214 of 2018 titled as **Adesh University and another vs. State of Punjab and others** and CWP No. 21794 of 2019 titled as **Dr. Aashish Bansal and others vs. State of Punjab and others**, whereby the University has challenged the

notification/letter dated 25.01.2018 (Annexure P-10) issued by the Government of Punjab, Department of Medical Education & Research (Health-III Branch) relating to admission to Post Graduate Degree/Diploma Courses in the State of Punjab for the Session 2018-2019 deleting the provision, by which the right of the petitioner-University from prescribing its own fee structure for the Post Graduate medical admission courses thereby taking away the said right, which has been conferred on the petitioner-University by way of Section 5 (viii) and (xxi) of the Adesh University Act No. 6 of 2012. Challenge has further been posed to List of Distribution of Seats for Admission to various Post Graduate Courses for the Session 2018-19 published on 28.03.2018 (Annexure P-14), whereby the State of Punjab had imposed a condition on the petitioner-University to distribute 50% of the seats in Government quota.

2. It is the contention of the learned senior counsel for the petitioners (in CWP No. 8214 of 2018) that the petitioner-University was created by virtue of Punjab Act No. 6, namely, The Adesh University Act, 2012 (hereinafter referred to as '2012 Act'). The said University is running various colleges in its campus. Appropriate sanctions and approvals from the competent authorities have been granted for not only the establishment of the colleges but for running the same. Prior to the said 2012 Act having been passed, State of Punjab framed the Punjab Private Universities Policy, 2010 (hereinafter referred to as '2010 Policy'). It is under this Policy that the University was established.

3. The State Government took a decision dated 07.12.2012 to govern the petitioner-University under the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and

Making of Reservation) Act, 2006 (hereinafter referred to as '2006 Act') for regulating the fee structure of the petitioner-Institute. This decision was challenged by the University by filing CWP No. 9215 of 2013 titled as Adesh University and another vs. State of Punjab and others, which was allowed on 01.05.2014, whereby order dated 07.12.2012 was quashed. The result thereof was that the University had the autonomy in terms of the 2012 Act to not only fix the fee but for admitting students to the Institution affiliated to the University as per the provisions of the 2012 Act. The said judgment was not challenged by the State of Punjab and, therefore, the senior counsel submits that the same has been accepted by the State.

4. As per the provisions of Section 5 of the 2012 Act, which deals with the powers and functions of the University, sub-sections (viii) and (xxi) thereof read as follows:-

“(viii)to demand such fees and other charges, as may be prescribed;

xxx xxx xxx xxx xxx

(xxi) to prescribe the fee structure for various categories of students;”

According to these provisions, the University has been given the power to prescribe the fee structure for various courses and the categories. Under the Statute and Ordinance of the University, which have been duly framed as per the provisions of the Act and approved by the governing body of the University, the same was sent for the assent/approval of the Government of Punjab, which has been approved by the Government of Punjab on 22.09.2014. As per para-43 of the Statute and para-14 of the Ordinance, the University has been given the power to prescribe the fees.

This, according to the senior counsel for the petitioners, makes it amply clear that the petitioner-University has the power to fix the fee for various courses and the respondents have no authority to interfere in it. During the continuance of these provisions, the State Government cannot by issuing notification alter/change the conditions of the Act.

5. Similar would be the position with regard to the Government quota, which has been imposed by the Government vide communication/prescription regarding the List of Distribution of Seats for Admission to Various Post Graduate Courses for the Session 2018-19 published on 28.03.2018 (Annexure P-14). Learned senior counsel asserts that the said distribution of seats has already been approved by the State Government as per the Statute and Ordinance approved by the Government of Punjab, as referred to above. He, accordingly, prays that the action of the State is in violation of the judgment passed by this Court in CWP No. 9215 of 2013, referred to above. Prayer has, thus, been made for setting aside the impugned notifications dated 25.01.2018 and 28.03.2018, Annexures P-10 and P-14 respectively.

6. It has also been conceded in the affidavits which have been filed by the State in response to the writ petition that as per the 2012 Act, Adesh University was authorized to make admissions, distribute the seats and demand fee. The factum with regard to the challenge by the petitioner-University to the decision dated 07.12.2012 of the State Government in CWP No. 9215 of 2013 and the quashing thereof vide order dated 01.05.2014 (Annexure A-3) stands admitted. It has also been conceded that in pursuance to the said judgment, for the year 2015-16, 2016-17 and 2017-18, the petitioner-University proceeded to fix its own fee and decide its

admission process in view of the High Court judgment dated 01.05.2014, referred to above. It has been stated that for the session 2018-19, admission in MBBS and BDS Courses, the fee structure and distribution of seats of private institutions of the State including the institutions under the Punjab Private Universities Policy, 2010 was sought to be done as per the provisions of the 2006 Act vide Notification dated 06.02.2018 (Annexure A-4).

7. The objections were raised by the private universities including the petitioner-University. The opinion of the Advocate General, Punjab was sought, wherein the Advocate General opined that the Act of 2006 should be amended to include Universities within the definition of Institutions. The said Act would not be applicable to the private Universities established under the Statute. The State of Punjab is in the process of amending the said Act as per the opinion given by the Advocate General, Punjab. This stand of the Government of Punjab is being sought to be projected in a manner by the counsel by stating that the petitioner-Institute cannot run away from its liability.

8. Learned counsel for the State, on the other hand, has informed us that the said amendment process has been concluded and a notification issued on 17.04.2020, from which date it has been made applicable. He has conceded the fact, in the light of the affidavits filed by the Director, Research & Medical Education, Punjab, wherein it has been admitted that the private universities have the power and mandate to fix their own fee structure as well as the distribution of the seats. This fact has been acknowledged and accepted in the Corrigendum dated 02.07.2018 (Annexure R-1) issued by the Government of Punjab. The Government, in

these affidavits, has also admitted that it does not dispute that the Act of 2012 permits the University to fix its own fee, however, these powers are not unfettered as the various judgments of the Hon'ble Supreme Court point out that the private institutes cannot charge capitation or exorbitant fee nor can they commercialize education. It cannot be a purely commercial venture and the fee has to commensurate with the infrastructure provided and the expenditure incurred by the private institutions.

9. The private respondents, who have been impleaded as respondents No. 3 to 7 in pursuance to the order passed in CM-15813-CWP-2019 dated 04.11.2020, are the students who had taken admission in the petitioner-University for the Session 2018-2019 and are pursuing their MD Course. They have taken the stand that they had, in pursuance to the central counselling being carried out by Baba Farid University which has published its prospectus for the Session 2018-2019 inviting applications for admission to MD/MS Course and other Post Graduate medical courses, taken admission under a belief that they are being admitted against the students earmarked for the Government quota. They have taken admission, as per the said prospectus, for the Session 2018-2019 issued by Baba Farid University and, therefore, they are not liable to pay the fee, as has been fixed by the petitioner-University.

10. It is contended by the counsel for the private respondents that the prospectus has the force of law and is binding upon the parties and, therefore, the private respondents cannot be forced to pay the fee, as is being charged by the petitioner-University. As per the prospectus issued by the Baba Farid University, the tuition fee prescribed was Rs. 6,50,000/- per annum whereas the petitioner-University is claiming an amount of

Rs. 14,90,000/- for the 1st year. He contends that they are, therefore, not liable to pay the said fee as is being charged from them by the petitioner-Adesh University.

11. Counsel for the private respondents has referred to CWP No.21794 of 2019 titled as Dr. Aashish Bansal and others vs. State of Punjab and others, to contend that the private respondents are forced to approach this Court by way of this writ petition when they were called upon to deposit the fee for the 2nd instalment to the tune of Rs. 14,90,000/-. It is contended that this fee would amount to capitation fee and commercialization of the education which is not permissible in law. However, the factum with regard to the statutory provisions, as contained under the 2012 Act, the judgment of this Court in CWP No. 9215 of 2013 titled as Adesh University and another vs. State of Punjab and others as also the stand of the Government of Punjab, could not be controverted by the counsel or shaken in any manner under the statutory provisions. What has been insisted upon is that the students would not be bound to pay the fee, as has been prescribed by the Adesh University.

12. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings and the records of the case.

13. The facts, as have been incorporated above, make it amply clear especially the judgment of this Court in CWP No. 9215 of 2013 titled as Adesh University and another vs. State of Punjab and others, decided on 01.05.2014 (Annexure A-3), wherein it has been settled that, the petitioner-University having been established under the 2012 Act, is entitled to fix its own fee for the courses and also to regulate admission thereto. This aspect

stands admitted by the State in its reply especially the affidavit dated 21.10.2019 filed by the Director, Research & Medical Education, Punjab, wherein it has been conceded by the State that after the decision of this Court in CWP No. 9215 of 2013 preferred by the Adesh University, wherein decision of the State of Punjab dated 07.12.2012 bringing the University under the regulation and procedure for admission through the 2006 Act, stood quashed by holding that the 2006 Act being a general act will have to give way to the special statute enacted qua the petitioner-University for the year 2012, would govern the field, which enabled the petitioner-University to not only fix its own fee but also to decide its admission process.

14. As per the said judgment, for the years 2015-16, 2016-17 and 2017-18, petitioners were given a free hand in this regard. For the Session 2018-19 also, the State has conceded that it did not have the power in this regard, rather a Corrigendum dated 02.07.2018 has also been issued by the Government of Punjab, wherein the private institutions have been exempted from the provisions of 2006 Act. This corrigendum has been issued in the light of the opinion given by the Advocate General, Punjab, to whom the matter was referred to on the objections being raised by the private universities including the petitioner-University, who had opined that the Act of 2006 should be amended to include Universities within the definition of Institutions so that the 2006 Act clearly applies to Universities. It was further opined that a non-obstante clause should be added to the 2006 Act providing that notwithstanding anything contained in the respective University Statue or Act, it is the provision of the 2006 Act which shall prevail.

15. The process for amendment of the Statute had been followed

and now it has been amended vide Notification dated 17.04.2020. According to the said Notification, this amendment has been made applicable with effect from the date of publication in the official Gazette i.e. 17.04.2020, meaning thereby that notifications under challenge dated 25.01.2018 (Annexure P-10) and 28.03.2018 (Annexure P-14) in the writ petition preferred by the petitioner-Adesh University cannot subsist qua the aspect dealing with the regulations of the fee and quota of the petitioner-Institute as the same is without any statutory power conferred upon the State Government.

16. This being the admitted position on the part of the State, which is in accordance with the statutory provisions, there is no reason as to why the present writ petition should not succeed especially when the objections, which are being sought to be raised by the counsel for the private respondents, cannot be accepted which would be contrary to the statutory provisions. The principle of estoppel would not be applicable as far as the petitioner-University is concerned and in any case, principle of estoppel cannot be invoked or enforced in derogation to and in violation of the statutory provisions.

17. As regards the plea of the private respondents (students), who are petitioners in CWP No. 21794 of 2019, that they have taken admission on the basis of the prospectus issued by Baba Farid University and have participated in the central counselling which had taken place, suffice it to say that in CWP No. 8214 of 2018, which has been preferred by the Adesh University, this Court on 06.04.2018 had passed the following order:-

“ Let the records of the Committee's deliberations on the fee fixation be produced before us in the original as also in the

shape of an affidavit.

Learned counsel for the State on instructions from Dr. Jasbir Singh, Nodal Officer of DRME, Punjab states that there is absolutely no restriction as per the number of seats to be filled up. No restriction by the State or a prescribed quota by it restricting the right of the institution to fill up the post graduate medical seats. What is intended by the impugned notification is that the institution shall abide by the general instructions of institution preference and admission qua the general category seats and the State would have no objection if they are filled up in the open merit.

Adjourned to 25.04.2018.

Students be put to notice about the pendency of the instant writ petitions and the orders passed therein.

A photocopy of this order be placed on the file of the connected case numbered above.”

It is not disputed by the counsel for the parties that the private respondents (students), at the time of their admission, were made aware of the fact of pendency of the writ petition.

18. It may be added here that in CWP No. 21794 of 2019, which has been preferred by the students, on 30.08.2019, following order was passed:-

“ Learned counsel for the petitioners submits that in the first year, the fee was deposited in two instalments but in the second year, the fees to the tune of Rs. 14,90,000/- has been demanded along with arrears of first year. On this ground, the

petitioners are being threatened not to attend the classes.

In spite of service, none is present on behalf of respondent No. 3.

Let this case be adjourned to 25.09.2019.

Meanwhile, the petitioners are directed to continue to deposit the fees, as has been deposited in the first year, as per requirement of the notification and the same shall be subject to outcome of this petition.

Respondent No. 3 is also directed to allow the petitioners to attend the classes.”

19. Counsel for the petitioner-University has informed that an affidavit has also been submitted by the students undertaking therein that they would pay the fee and other charges, as decided by the High Court in CWP No. 8214 of 2018. Reference in this regard has been made to the copies of the affidavits, which have been appended along with the reply filed by the Adesh University to CWP No. 21794 of 2019.

20. In view of the above, we allow CWP No. 8214 of 2018 titled as Adesh University and another vs. State of Punjab and others by quashing the impugned notification/letter dated 25.01.2018 (Annexure P-10) for admission to the Post Graduate Courses to the extent it restricts the rights of the petitioner-University from prescribing its own fee structure for the Post Graduate medical admission for the Session 2018-19 and the List of Distribution of Seats for Post Graduate Courses for the Session 2018-19 published on 28.03.2018 (Annexure P-14), whereby the State Government had imposed a condition on the petitioner-University to distribute 50% of the seats in Government quota, being in violation of the Statutes and the

Ordinances of the Adesh University and the Adesh University Act, 2012 and dismiss CWP No. 21794 of 2019 titled as Dr. Aashish Bansal and others vs. State of Punjab and others.

21. As a consequence of the above, the petitioner-University is held entitled to fix its own fee and is also held entitled to distribute its seats. The private respondents (students), who are petitioners in CWP No. 21794 of 2019, would have to deposit the fee, as has been fixed by the Adesh University for the Session 2018-19 and 2019-20 in the light of the fact that the notification amending the 2006 Act has come into force w.e.f. 17.04.2020.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

April 18, 2022
pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No