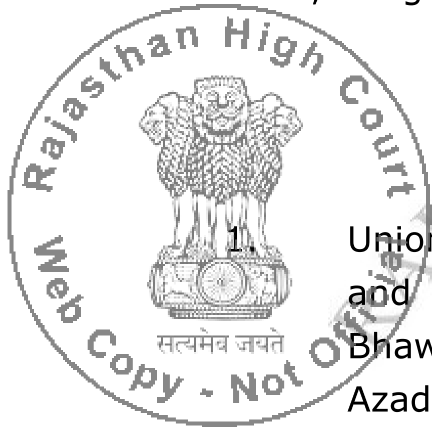
WWW.LIVELAW.IN

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 13535/2020

Deepesh Singh Beniwal S/o Late Shri Yashpal Singh Choudhary, aged about 42 Years, Resident of 31, Guru Pratap, Air Force Road, Bhagat Ki Kothi, Jodhpur.

----Petitioner



Versus

1. Union of India, through its Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, Near Udyog Bhawan Metro Station, Maulana Azad Road, New Delhi - 110011.
2. National Medical Commission, Through its Secretary, Pocket 14, Sector 8, Dwarka Phase I, New Delhi - 110077.
3. State of Rajasthan, Through The Principal Secretary, Department of Medical Education (Group-I), Government of Rajasthan, Jaipur.
4. Chairman, Neet UG Medical and Dental Admission/counselling-2020, Principal, Government Dental College, Subhash Nagar, Behind T.B. Hospital, Jaipur, Rajasthan.
5. Fee Regulatory Committee, Through its Member Secretary, Department of Medical Education (Group-I), Government of Rajasthan, Jaipur.
6. American Institute of Medical Sciences, Near Transport Nagar, Airport Road, Bedwas, Udaipur- 313001 through its Director/Principal.
7. Ananta Institute of Medical Sciences, NH-8, Village Kaliwas, Tehsil Nathdwara, District Rajsamand (Rajasthan) Through Its Director/Principal.
8. Geetanjali Medical Colllege, NH 8, Near Eklingpura Chouraha, Manwakhera, Udaipur Through its Director/Principal.
9. JNU Institute For Medical Sciences and Research Centre, Jaipur/ Jaipur National University, Institute for Medical

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

Sciences and Research Centre for Medical Sciences and Research Centre, JNU Main Campus, Jagatpura, Jaipur through its Director/principal.

10. Mahatama Gandhi Medical College, RIICO Institutional Area, Tonk Road, Sitapura, Jaipur - 302022 through its Director/Principal.

11. National Institute of Medical Sciences, Jaipur Delhi Highway, NH- 11C, Jaipur- 303121 (Rajasthan) through its Director/Principal.

12. Pacific Institute of Medical Sciences, Ambua Road Umarda Udaipur (Rajasthan)- 313015 through its Director/Principal.

13. Pacific Medical College and Hospital, Billo Ka Bedla, Amberi, NH-76, Udaipur - 313001, Rajasthan through its Director/Principal.

----Respondents

For Petitioner(s)	:	Mr. Deepesh Singh Beniwal, petitioner present in person
For Respondent(s)	:	Mr. Mukesh Rajpurohit, ASG with Mr. Navneet Singh Birkh for respondent no.1 Mr. R.S. Saluja, for respondent no.2 Mr. Manish Vyas, AAG with Mr. Kailash Choudhary, for respondent nos.3 & 5 Mr.Vikas Balia with Mr. Kunal Bishnoi, for respondent nos.6, 12 & 13 Mr. Hemant Dutt with Mr. Keshar Singh, for respondent no.7 Mr. Akhilesh Rajpurohit with Mr. Milap Chopra, for respondent no.8 Mr. Kamlakar Sharma, Sr. Advocate with Ms Alankrita Sharma, for respondent no.9 None present for the respondents No.10 & 11 despite service

---

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

Order

31st May, 2021

Per Hon'ble Mr. Sangeet Lodha,J.

Reportable

Rajasthan High Court Web Copy - Not Official

1. This writ petition (PIL) has been filed by the petitioner, an advocate by profession, challenging the condition imposed by the respondents private medical institutions that the students seeking admission to MBBS Course to submit bank guarantee against the annual fees for next 3½ years of course duration in addition to deposit of annual fee for the first year of the course, at the time of admission.

2. The relief clause contained in the writ petition reads as under:

> "(i) the respondent private medical colleges be directed to accept bond (in place of bank guarantee) and that too only from such students with regard to whom the institutions feel that any student/students might leave the Institutes midterm.
>
> (ii) the State and the private medical colleges be directed not to seek submission of bond/bank guarantee as a matter of course on the pretext of Judgment of Hon'ble Apex Court in the case of Islamic Academy of Education as no such directions have been given by the Hon'ble Apex Court.
>
> (iii) that the action of the respondents in calling upon the students to submit bond/bank guarantee at the time of admission against the tution fee for remaining course duration of three and half years be declared arbitrary, illegal and bad in the eyes of law.
>
> (iv) by an appropriate, writ or direction the respondent private medical colleges be directed to submit a chart as to in past five academic years how many students have submitted bonds or bank guarantees or advance fees for one or more years.

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

(v) by an appropriate, writ or direction the respondent number 5 be called upon to submit as to whether charging of advance tution fee as is being done by private medical colleges in the State of Rajasthan is approved by it and if not, then what action has it taken against such private medical colleges till today.

(vi) pass any other appropriate order or direction, which this Hon'ble Court considers just and proper in the interest of justice."

3. On 17.12.2020, while issuing notices to the respondents, an interim order was passed by this Court in the following terms:

"In the meanwhile and until the next date, the respondents no.6 to 13 are restrained for insisting upon furnishing of the bank guarantee by the respondents, who are granted admission to MBBS Course pursuant to NEET UG (Medical/Dental) Admission/Counselling 2020 (MBBS, BDS). However, the institutions shall be at liberty to direct the students admitted to furnish bond towards the fee of 3½ years in lieu of the bank guarantee.

It is made clear that the students admitted to the course shall be under an obligation to deposit the full fee of first year as stipulated but shall be provisionally exempted from furnishing the bank guarantee for remaining 3½ years, subject to outcome of present writ petition/stay petition."

4. Aggrieved by the interim order passed by this Court as aforesaid, the respondent Nos.6, 7, 9 & 13 preferred a Special Leave Petition ('SLP') (Civil) No. 15950/2020, wherein, the Hon'ble Supreme Court, on 24.12.2020, while issuing notices passed the interim order in the following terms:

"In the meanwhile, there will be a stay of the operation of the interim order dated 17.12.2020 passed by the High Court."

5. Later, vide order dated 4.1.2021, the SLP preferred was disposed of by the Hon'ble Supreme Court with the observations/ directions as under:

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

> "We are inclined to request the High Court to decide the writ petition finally within a period of one week from today in view of the admission process being at the final stage for the current academic year. The interim order passed by this Court on 24.12.2020 shall continue to operate till the disposal of the writ petition by the High Court.
>
> The parties are directed to appear before the High Court on 07.01.2020.
>
> The application for impleadment is allowed.
>
> The special leave petition is disposed of accordingly. Pending application (s), if any, shall also stand disposed of."

Rajasthan High Court Web Copy - Not Official

6. Pursuant to the directions of the Supreme Court, the matter was listed before this Court on 8.1.2021. It was noticed that the service of notices on respondents No. 1 to 6, 7, 8, 9 & 13 was still awaited. On behalf of respondents No. 1 to 6, 7, 8, 9 & 13, learned counsel put in appearance, however, as per office report, the notices of respondents No. 10, 11 & 13 were not received duly served. Besides, none of the respondents had filed reply to the writ petition. In this view of the matter, the matter could not be taken up for hearing immediately.

7. After service of the notices upon the remaining respondents and reply/counter to the petition being filed on behalf of the respondents appearing, the matter was finally heard.

8. Precisely, the grievance raised in the petition is that all the private medical institutions in the State of Rajasthan at the time of admission in MBBS Course, are insisting upon the students and/or their parents to submit bank guarantee against the fees for next 3½ years of the course duration. The submission of the bond/undertaking does not stand on the same footing as submission of the bank guarantee inasmuch as, generally, no bank guarantee is provided by the banks unless the adequate amount is deposited with the banks and thus, the students belonging to middle class families/low income groups are facing grave hardship

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

at the hands of private medical institutions. According to the petitioner, since the banks require cash margin for issuance of bank guarantee, the parents are required to manage the cash amount of the fees for entire period of MBBS Course in one go. That apart, the banks are charging upfront commission/fee which ranges between 2.5% to 3% per annum.

9. It is averred in the petition that eight private medical institutions in the State of Rajasthan with an intake capacity of 1290 students are charging Rs.15 lacs per annum as minimum annual tution fee and thus, the parents are required to submit a minimum bank guarantee Rs.52.50 lacs for a period of 3½ years. The upfront commission which the bank would be charging on the said amount would come to Rs.4,59,375/- (calculated @ 2.5% of the bank guarantee amount). The total amount of bank guarantee would be Rs.6,77,25,00,000 and upfront commission to be paid by the parents would come to Rs.59,25,93,750. It is further averred that in view of the impossibility of the parents arranging the bank guarantee equivalent to the fees for 3½ years, the private medical institutions taking advantage of this position, are forcing them to deposit advance fee of 1½ years or at least 1 year in addition to the annual fee deposited for the first year and thus, according to the petitioner, the private medical institutions, which cannot charge any capitation fee or book profit, are creating a situation where the students/parents are left with no option but to deposit an advance fee of minimum period of 1 year. Relying upon the decisions of the Hon'ble Apex Court in *T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors.*: (2002) 8 SCC 481 and *Islamic Academy of Education vs. State of Karnataka*: (2003) 6 SCC 697, it is submitted that the educational institution can only charge

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

prescribed fees for one semester/year and even if an institution feels that any particular student may leave in midstream, then at the highest, it may require to give a bond/bank guarantee with the balance fees for the whole course would be received by the Institute even if the student left in the midstream. The grievance of the petitioner is that out of these two modes i.e. bond and bank guarantee provided for as aforesaid, the respondents are invariably insisting for furnishing of bank guarantee only, which is arbitrary and unfair.

10. A reply to the writ petition has been filed on behalf of the State of Rajasthan taking the stand that charging of bank guarantee/advance fee by the private medical institutions in the State of Rajasthan is not approved by the State. The Fee Regulatory Committee constituted has taken a decision that no private institution shall demand or take any kind of formal or informal fee from the students except the fee determined by the Committee and in case, any institution collect any kind of fee other than fixed by the Committee then the same will come under the definition of 'capitation fee' and accordingly, punitive action shall be taken. It is submitted that fee for Government medical colleges and two private medical institutions, American International Institute of Medical Sciences & Research Centre, Udaipur and Ananta Institute of Medical Sciences & Research Centre, Rajsamand, the respondent no.6 & 7 herein, is regulated by the respondent no.5-Fee Regulatory Committee and rest of the private medical institutions, the respondent nos. 8 to 13 are having their own fee structure as per the Fee Regulatory Committee constituted by themselves.

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

11. It is submitted that the action of the private medical institutions deciding their own fee was challenged in D.B.Civil Writ Petition (PIL) No.10632/12 (*Sachin Mehta vs. State of Rajasthan & Ors*.), wherein, the Division Bench vide order dated 25.10.13 allowed the petition and quashed the notification dated 13.7.12 issued by the private medical college-Mahatama Gandhi Medical College, the respondent no.10 herein. The said judgment dated 25.10.13 was challenged before the Hon'ble Supreme Court in SLP No.35001/13 (*Mahatma Gandhi University Medical Sciences & Tech. vs. Sachin Mehta & Ors*.) wherein, the Hon'ble Supreme Court passed an interim order dated 25.11.13 as under:

> "In the meanwhile, the petitioner may not refund any amount to the students pursuant to the impugned judgment passed by the High Court."

Further vide order dated 16.2.15, the university was permitted to fix the fee structure for three academic sessions. Thereafter, D.B.C.Writ Petition No.13414/16 (*Dr. Sharwan Ram vs. State of Rajasthan & Ors.*) was disposed of by this Court in terms of the order dated 16.2.15 passed by the Hon'ble Supreme Court in SLP No.35001/13. The respondents no. 8 to 13 being the Universities established and incorporated under the statute, are deciding their fee as per the Fee Regulatory Committee constituted under the relevant statute as per the order dated 16.2.15 and are not governed by the respondent no.5.

12. By way of an additional affidavit, it is brought on record by the State of Rajasthan that in Government Dental College i.e. RUHS College of Dental Sciences, Jaipur, the State has prescribed a bond of Rs.4 lacs and bank guarantee of Rs.1 lac from the

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

students admitted to BDS Course. The said condition of bank guarantee is implemented due to the fact that the students started to drop a course in the second year after securing seat in MBBS Course in medical college. It is averred that in 2011-12, complete batch left the college after first year whereas, in academic session 2012-13, only 5 students continued the course after first year. Further, the fee charged by RUHS College of Dental Science is too meagre as compared to private dental colleges and thus, would face great difficulties in a situation students left it after first year.

13. The private colleges, the respondents no.6, 7, 8, 9 & 13 have filed their separate reply/counter to the writ petition.

14. A preliminary objection has been raised on behalf of the private medical institutions that no public interest is involved in the present petition so as to permit the petitioner to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The writ petition is conspicuously silent as to whether the students or their parents have ever raised any grievance regarding the condition of bank guarantee before the private medical institutions or the state instrumentalities. According to the respondents, the writ petition filed by the petitioner without approaching the concerned authorities for redressal of the grievance deserves to be dismissed on this count alone.

15. The respondent no.6-American Institute of Medical Sciences and respondent no.13-Pacific Medical College and Hospital, in their separate reply filed, have taken the stand that the respondent institution is functioning in accordance with the directions and instructions issued by the Director, vide Information Booklet

(Downloaded on 01/06/2021 at 10:11:01 AM)

(Annexure 2) and as per the instructions, the respondents are free to either call for a bank guarantee or a bond from the students and thus, the institutions are acting merely in accordance with the directions and in strict compliance of the established rules and regulations and also the judgment rendered in *Islamic Academy*(supra). The Hon'ble Supreme Court has held in number of cases that the admissions in medical institutions are to be done by the State Authorities and the role of private players should be minimised. Thus, the private colleges have no other recourse except to seek bank guarantee from the students desiring admission. It is submitted that the respondent no.6 being a private self financed institution is not aided by the Government and thus, the fee structure in the college is based on amount spent substantially on the provision of infrastructure, employment of faculty, clinical material and other facilities for span of the whole course. That apart, the institute is charging the fee as fixed by the Fee Regulatory Committee appointed by the State, headed by a retired Hon'ble Judge.

16. The respondent no.7-Ananta Institute of Medical Sciences, in its counter to the writ petition submitted that the levy of fee by the respondent college is governed by Fee Regulatory Committee, Department of Medical Education, Government of Rajasthan. According to the respondent institution, in light of the law laid down by Supreme Court in *Islamic Academy*(supra), the institutions are permitted to receive the bank guarantee from the students for the balance fees for the whole course to secure the institution in the event the students leave in midstream. It is averred that the respondent medical college is a self financed institution and is receiving no aid from the Government authorities

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

and the fees charged from the students is the only amount utilized for the benefit/use of that educational institution and the institute is not charging either directly or indirectly any other amount except the amount fixed as fees. It is submitted that as already recognized by the Court that all medical admissions to institutions across the nation shall be done by the State Authorities, wherein the private institutions will have minimalistic roles, thus, disabling the institutions from receiving their fees from the students will affect the students community at large as well as the quality of education, in light of the fact that MBBS Course is for 4½ years and if students leave the course midstream, the college has to still sustain the expenses for that academic seat. It is submitted that many students after taking admission in a medical college and blocking their seats again appear in NEET Exams. in the next academic session and after securing admission in another college, leave their studies in midstream, wherein the medical colleges have to suffer the loss for the vacant seats. It is contended that the Dental Colleges run by the State Government are also insisting upon submission of the bond and bank guarantee, however, the petitioner has filed the petition only against the private medical institutions whereas he is conspicuously silent regarding the condition imposed by the medical college run by the State Government and thus, the PIL lacks bona fides.

17. The respondent no.8-Geetanjali Medical Colllege & Hospital questioning the declaration made by the petitioner in the writ petition that he is personally filing the present petition since the parents of the students does not want to prejudice the education prospects of their children, submitted that the contention raised by the petitioner is thoroughly misconceived and deserves to be

(Downloaded on 01/06/2021 at 10:11:01 AM)

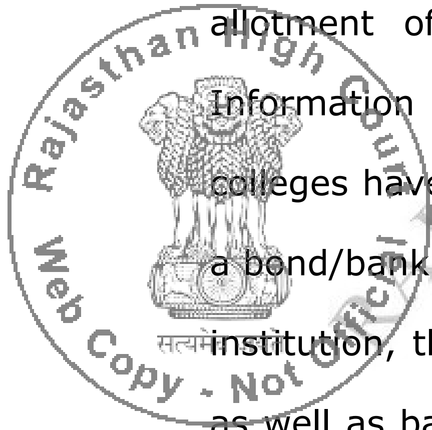
rejected for the reason that the parents of the students had filed an interlocutory application before the Hon'ble Supreme Court. The petition has been filed in a hasty manner without following the due process of law or ventilating any grievance before the State instrumentalities by way of representation. It is submitted that the Central Government enacted the National Medical Commission Act, 2019 with an intent to provide for a medical education system that improves access to quality and affordable medical education and the National Medical Commission constituted under the above referred Act, is required to undertake National Eligibility-cum-Entrance Test (NEET) for admission of students to the under graduate and post graduate courses in all the medical colleges across the India (including private medical colleges in the State of Rajasthan). Therefore, acting in furtherance to the directions issued by the National Medical Commission, detailed instructions were issued by the office of the Chairman, NEET 2020 in the State of Rajasthan. According to the respondent, in the instructions issued, it is clearly laid down that at the time of reporting, the selected candidates will have to submit a bond/bank guarantee as applicable and thus, the controversy alleged does not warrant any interference by this Court.

18. The respondent no.9-JNU Institute of Medical Sciences and Research Centre, while justifying that condition of bank guarantee relying upon the decision of the Hon'ble Supreme Court in case of *Islamic Academy*, contended that the prayer of the petitioner that the condition for requiring submission of bond will be insisted only from such student with regard to whom the institution feels that any student or students might leave the institution in the midstream is absolutely irrational and without any basis as at the

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

time of taking admission in MBBS Course, the private colleges have no means to comprehend and determine as to which student may or may not leave the MBBS Course midstream. It is submitted that UG Medical and Dental Admission Counseling Board has published an Information Booklet containing information regarding the eligibility criteria, application fees, procedure of allotment of seats, schedule of dates etc. Under the said Information Booklet, the condition applicable for the private colleges have been mentioned that 'the candidates have to submit a bond/bank guarantee as applicable'. According to the respondent institution, the words 'as applicable', suggest that both the bond as well as bank guarantee are to be submitted by the student at the time of admission wherever required. It is submitted that the bond has been provided in the said Information Booklet under Proforma-9, which is to be executed in the name of State Government to ensure the due compliance of the conditions mentioned therein. The bank guarantee on the other hand cannot be treated to similar to be bond for which the proforma has been provided. It is submitted that the private medical colleges are within their right to demand submission of bank guarantee and the said right has already been recognised and the rational behind the same has been upheld by the Hon'ble Supreme Court as well as various High Courts and thus, it cannot be said that the private medical colleges are indulged in mischievous practice. It is submitted that in case of submission of the bond where a student commits any default, the medical college will have no option but to undertake a long drawn process of releasing the money from the student through civil remedy before the Court of law and even thereafter, it would be difficult to recover the money from such

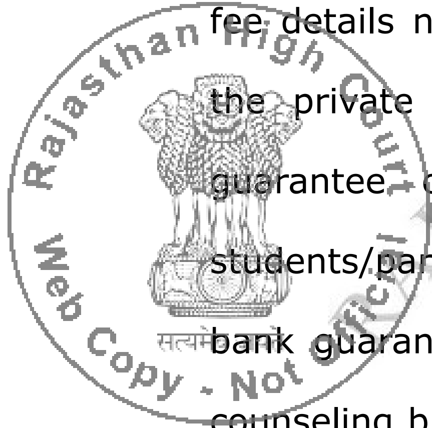


(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

student and therefore, instead of bond, the private medical colleges demand bank guarantee which duly ensures that no revenue loss would be caused to the medical college in case any student commits default.

19. The petitioner in his rejoinder to the reply filed on behalf of Respondent Nos. 3 to 5 submitted that Counseling Brochure and fee details notified by the counseling board had given leeway to the private medical colleges to insist on submission of bank guarantee only which resulted in a situation wherein the students/parents were forced to deposit advance fee in lieu of bank guarantee. It is submitted that the State has taken aid of counseling brochure to substantiate its contention but it has failed to note that how a well thought out illegal mechanism has been put to use by private medical colleges to force the parents to submit bank guarantee and if not possible then to snatch money from them as advance fees in lieu of bank guarantee. This is manifest from the official website of the Counseling Board where the option of submission of bond does not find mention. It is further submitted that the official representatives of the college at the time of counseling categorically directs parents/students to submit bank guarantee only and do not approve bond as a security to secure the fees of MBBS Course. According to the petitioner, the charging of advance fees is in the cognizance of State authorities as the payment of advance fee is accepted through bank accounts only and moreso the private medical colleges are required to submit their account to the Fee Determination Committee in order to seek revision of fees. Thus if genuine account books are submitted the fact of acceptance of advance fee is well within the knowledge of the State. According



(Downloaded on 01/06/2021 at 10:11:01 AM)

to the petitioner all the private medical colleges in the State of Rajasthan fall within the domain of State only (or for that matter Fee Determination Committee) and not merely the state run medical colleges and respondent no. 6 & 7 as contended by the respondent. The interlocutory order of Apex court cannot be equated with final order and it cannot be considered as precedent by the State or for that matter by private medical colleges so as to allow them to raise a baseless plea that respondents nos. 8 to 13 do not fall within the domain. According to the petitioner, even in case of the universities established under the statute, the State Fee Determination Committee shall be the final authority.

20. The petitioner has also preferred an application seeking directions to the respondents to submit their bank records.

21. Mr. Deepesh Singh Beniwal, the petitioner, contended that a constitutional Bench of the Hon'ble Supreme Court in *Islamic Academy*(supra), while dealing with the question 'whether the educational institutions are entitled to fix their own fee structure', categorically held that in educational institutions, there can be no profiteering motive and capitation fee cannot be charged. The institution cannot charge either directly or indirectly any other amount over and above the amount fixed as fees and if any amount is charged under any other head or guise e.g. donations, the same would amount to charging capitation fees. The Court further held that if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. The petitioner would submit that in terms of the directions issued by the Hon'ble Supreme Court, in no

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

manner, the private medical institutions can demand bond/bank guarantee from each and every student admitted to the course. That apart, the respondent institutions cannot insist upon furnishing of bank guarantee only and not the bond. The petitioner submitted that where the parents of the students are not in position to furnish the bank guarantee, the respondent institutions in addition to the annual tuition fee for the first year of the MBBS Course, are charging advance fee from the students for one more year, which is apparently, violative of the directions issued by the Supreme Court. The petitioner submitted that the advance fee charged is also not kept in a separate account and the interest accrued thereon is neither adjusted against the annual fee payable by the students for the subsequent years nor returned to them at the end of the course and thus, the respondent institutions are apparently indulged in profiteering and charging capitation fee in defiance of the directions issued by the Hon'ble Supreme Court. Reiterating the submissions made in the writ petition, the petitioner contended that submission of bond/undertaking does not stand on the same footing as submission of bank guarantee inasmuch as, generally, no bank guarantee is provided by the bank unless adequate amount is deposited in the bank and thus, on account of insistence of the respondent private medical institutions to furnish the bank guarantee compulsorily, grave hardship is caused to the students belonging to middle class families/low income groups. The petitioner contended that the writ petition preferred deserves to be allowed in light of the decision of the Supreme Court in *Islamic Academy*(supra) alone.

22. Relying upon paras 154 & 155 of decision of the Supreme Court in *Islamic Academy*(supra), it is submitted that though the

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

fee structure in relation to each and every college must be determined separately keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan of expansion and betterment of the educational standard etc., the management of the institution would not be entitled to charge anything more than the fee determined by an appropriate committee and thus, the contention sought to be raised by the State that except the colleges run by the State and the respondent nos.6 & 7 herein, the fee structure in remaining institutions is open to be determined by the committee constituted by the private institutions and they are free to ask for bond/bank guarantee as applicable from the students towards 3½ years of the course duration, is apparently in violation of the directions issued by the Supreme Court. According to the petitioner, the issue that no private University/Medical Institutions can charge the fee more than as may be finally determined by the Fee Regulatory Committee constituted by the State, stands settled by a Bench of this Court vide decision dated 25.10.13 rendered in *Sachin Mehta's* case (supra), against which SLP preferred by the respondent no.10 herein is pending consideration before the Hon'ble Supreme Court. It is submitted that as laid down by the Supreme Court in *Islamic Academy*(supra), charging of the fee by any institution other than the fee prescribed by the appropriate committee entails a penalty 10 to 15 times of the amount so collected and such institution may also lose its recognition or affiliation. The petitioner submitted that ordinarily, the management should insist for a bond from the concerned student and not the bank guarantee. In this regard, the attention of the

(Downloaded on 01/06/2021 at 10:11:01 AM)

WWW.LIVELAW.IN

Court is drawn to para 163 of the decision in *Islamic Academy* (supra). It is submitted that if the bank accounts of the respondent institutions are requisitioned, it will make abundantly clear that they are charging huge amount from the students towards the advance fee in addition to the amount of fee to be deposited for first year of MBBS Course.

23. On the other hand, Mr. Manish Vyas, Additional Advocate General, reiterating the stand taken by the State in reply to the writ petition, submitted that charging of the bank guarantee/advance fee is not approved by the State. However, it is submitted that for Government medical colleges and two private medical institutions, the respondents no.6 & 7 herein, the fee payable by the students admitted to the course is determined by the Fee Regulatory Committee constituted by the State pursuant to the directions of the Supreme Court, but in the institutions run by the universities established under the statute, fee structure is determined through the committees constituted in conformity with the relevant provisions of the statute. Learned AAG submitted that if any institution is collecting any amount other than the annual fee determined by the concerned committee then the same will come under the definition of 'capitation fee' and accordingly, punitive action shall be taken. Drawing the attention of the Court to the factual position summarised in additional affidavit filed, learned AAG submitted that taking into consideration the fact that the students started to drop the course in second year of BDS, the answering respondents have imposed a condition upon the students admitted to the course of furnishing bank guarantee of Rs.1 lac and bond of Rs.4 lacs, which cannot be said to be capricious.

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

24. Mr. R.S.Saluja, learned counsel appearing for respondent no.2-National Medical Commission submitted that in *T.M.A. Pai Foundation's* case (supra), the Supreme Court categorically held that there should be no commercialisation or profiteering by the educational institutions, which was reiterated in *P.A.Inamdar vs. State of Maharashtra*: (2005) 6 SCC 537 and thus, keeping in view the said objective in *Islamic Academy*(supra), the Supreme Court mandated setting up of regulatory committees to oversee the process of admissions and fee regulations and thus, none of the institutions can claim that the fee structure in the medical colleges run by them shall not be governed by the Fee Regulatory Committee constituted by the State pursuant to the directions issued by the Supreme Court. Learned counsel submitted that the law laid down in *T.M.A. Pai Foundation's* case, *Islamic Academy* case and *T.A.Inamdar's* case has been further affirmed by a constitution Bench of Supreme Court in *Modern Dental College and Research Centre & Ors. vs. State of Madhya Pradesh & Ors*.: (2016) 7 SCC 353. Learned counsel submitted that relying upon the aforesaid decisions of the Supreme Court, a Bench of this Court has upheld the provisions incorporated by the State Legislature in Rajasthan Schools (Regulation of Fee) Act, 2016, holding that the provisions incorporated being regulatory in nature with the solemn object of preventing profiteering and commercialisation in school education are intra vires of the Constitution not being in violation of Article 13 (2) and 19(1)(g) of the Constitution of India. Accordingly, learned counsel submitted that the respondent institutions cannot be permitted to collect advance fee and insist for bank guarantee towards the amount of fee for entire course duration.

(Downloaded on 01/06/2021 at 10:11:02 AM)

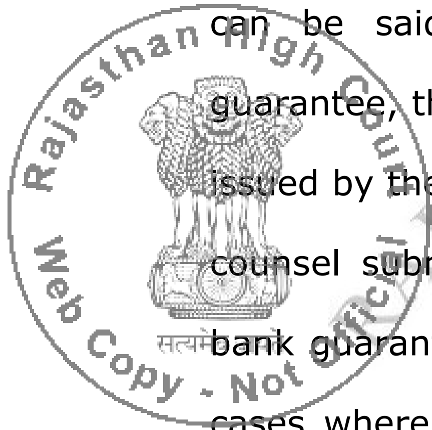
WWW.LIVELAW.IN

25. Mr. Vikas Balia, learned counsel appearing for the respondents no.6, 12 & 13 raising objections regarding maintainability of the PIL, submitted that the petitioner being not an aggrieved party, the petition filed is not maintainable. It is submitted that if the petitioner intended to espouse the common cause by way of PIL, it should have been filed on behalf of the persons aggrieved. Learned counsel submitted that the stand sought to be taken by the petitioner that the parents of the students have not approached the court inasmuch as, they do not want to prejudice the education prospects of their children, is absolutely false inasmuch as, at least, three parents had made application before the Supreme Court for intervention in the SLP filed arising out of the interim order passed by this Court in the present writ petition. Regarding the application preferred by the petitioner seeking directions to the respondent institutions to produce their bank accounts, learned counsel submitted that in the present petition, the petitioner has only questioned the insistence for bank guarantee/advance fee and thus, the question of this Court entering into a roving and fishing inquiry at the instance of the petitioner, does not arise. Reliance in this regard is placed on decisions of the Supreme Court in the matters of *Ashok Kumar Pandey vs. State of W.B.*: (2004) 3 SCC 349 and *Purushottam Kumar Jha vs. State of Jharkhand & Anr.*: (2006) 9 SCC 458. Learned counsel submitted that the petition filed lacks bona fide inasmuch as, while questioning the action of the respondent institutions in insisting for furnishing bank guarantee towards the fees for 3½ years, the petitioner has not chosen to implead the dental colleges run by the Government and other private institutions, which are similarly situated qua the

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

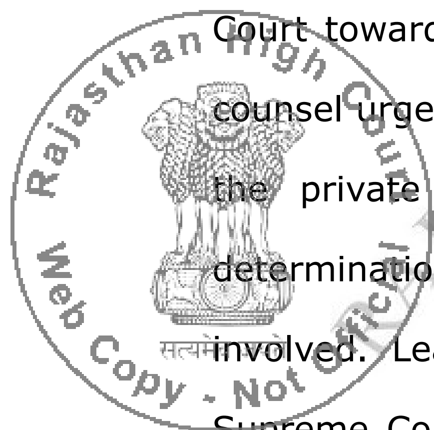
respondent private medical institutions. Learned counsel submitted that the respondent institutions are functioning in accordance with the directions and instructions issued by the Director vide Information Booklet. As per instructions issued, the respondent medical institutions are free to either call for a bank guarantee or a bond from the students and thus, in no manner, it can be said that while insisting upon to furnish the bank guarantee, the respondent institutions have violated the directions issued by the Supreme Court in *Islamic Academy* (supra). Learned counsel submitted that the advance fee for one year in lieu of bank guarantee is accepted by the respondent institutions only in cases where the students or their parents are not in position to furnish the bank guarantee. No institution is receiving the advance fee for entire course duration. However, learned counsel fairly submitted that the advance fee if any, deposited by the students, is neither kept in separate account nor the interest accrued thereon is refunded to the students at the end of the course or adjusted against the fee payable for the final year. According to the learned counsel in case of advance fee being deposited, some concession is given to the students. It is submitted that in case the students furnishing the bond commit default, the respondent institutions will have to undertake the long process for realization of the money through remedy under the civil law and thus, the action of the respondent institutions in demanding bank guarantee to save themselves from loss of money, cannot be faulted with. Learned counsel submitted that admittedly, the State Government is also insisting for furnishing of bank guarantee of Rs. 1 lac and bond for Rs. 4 lacs in case of admission to BDS Course and thus, the respondent institutions cannot be compelled to accept the



(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

bonds and not to ask for bank guarantee. Learned counsel submitted that as a matter of fact, the demand of bank guarantee by the private medical institutions in light of the decisions of the Supreme Court, has been upheld by the learned Single Judge of this Court at Jaipur Bench in *Harshvardhan Singh Vs. Coordinator, PCPMT & Ors*. decided on 24.11.15. Drawing the attention of the Court towards the decision in *Islamic Academy* (supra), learned counsel urged that the Supreme Court has nowhere laid down that the private institutions has no autonomy in the matter of determination of the fee and there should not be any profiteering involved. Learned counsel urged that as a matter of fact, the Supreme Court has categorically laid down that in the matter of determination of the fee structure, unaided institutions exercise greater autonomy and they are like other citizen carrying on an occupation, must be held to be entitled for reasonable surplus for development of education and expansion of institution. Drawing the attention of the Court to para 8 of the decision in *Islamic Academy* (supra), learned counsel submitted that the institution has been given option that if an institution feels that any particular student may leave in midstream, then it may require that student to give bond/bank guarantee towards the balance fee for the whole course and thus, the respondent institutions are free to ask the students to furnish either bond or bank guarantee. Learned counsel submitted that when even the bank would not issue the bank guarantee without collateral security, then why, the respondent institutions should take financial risk by accepting bond and not the bank guarantee. Learned counsel submitted that the condition of furnishing bank guarantee in no manner amounts to profiteering and thus, the contention sought to be raised by the



(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

petitioner that the action of the respondents is in violation of the directions issued by the Supreme Court in *Islamic Academy* (supra), is absolutely devoid of any merit. Learned counsel urged that as per the institutions issued by the State Government, the respondent institutions are entitled to ask for bond/bank guarantee as applicable, which is not under challenge in the instant petition and thus, the petition filed by the petitioner without setting out the relevant facts in regard to each of the institutions, just on the basis of imaginary facts, deserves to be dismissed on this count alone.

26. Mr. K.K.Sharma, learned Senior Advocate appearing for the respondent no.9-JNU Institute of Medical Sciences & Research Centre, Jaipur, contended that a lawyer cannot be permitted to espouse the cause of their clients by filing a petition in their behalf and thus, the petitioner who is not an aggrieved person, cannot maintain the petition invoking PIL jurisdiction of this Court. It is submitted that the petition filed is absolutely laconic and vague inasmuch as, the petitioner without setting out the necessary facts and figures pertaining to individual institution. Thus, the abstract issues raised without foundation of facts, cannot be entertained by this Court. Learned counsel submitted that in *Islamic Academy*, Hon'ble Supreme Court has permitted the unaided institutions to ask for bond/bank guarantee and therefore, the institutions are free to decide as to which mode should be adopted to ensure the realisation of the fee for entire course duration. Learned senior counsel submitted that the private colleges have no means to comprehend and determine as to which student may or may not leave the MBBS Course in the midstream. Relying on the condition incorporated in the Information Booklet, learned counsel

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

submitted that even as per the instructions of the Government, the candidates have to submit a bond/bank guarantee as applicable, which suggest that students are required to submit the bond/bank guarantee as required. Thus, the private colleges are well within their right to demand bank guarantee which has already been recognized by the various High Courts and the Hon'ble Supreme Court. Relying upon the decisions in *T.M.A.Pai Foundation's* case (supra) and *State of Bihar vs. Project Uchha Vidhya Shishak Sangh*: (2006)2 SCC 545, learned counsel submitted that right to manage an institution is also a right to property and has been held to be a part of fundamental right being a right of occupation envisaged under Article 19(1)(g) of the Constitution of India and therefore, the conditions imposed by the private institutions while entering into contract with the students cannot be said to be invalid and no restriction can be imposed except by way of appropriate legislation. Learned counsel submitted that regarding the capitation fee, the petitioner has only levelled general allegations and therefore, no adjudication can be made on the issue by this Court on the basis of such pleadings. Learned counsel submitted that no case has been set out by the petitioner against any institution collecting excess money or diverting the same to other use. It is submitted that the bank guarantee is called when a student is admitted and the decisions of the Supreme Court in this regard has to be read keeping in view the practical aspects pointed out by the private institutions. Reiterating the contention raised by the learned counsel Mr. Vikas Balia, learned counsel submitted that even the candidates selected in Government Dental College (RUHS) College of Dental Sciences are required to submit a bond of Rs.4 lacs in

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

favour of the Principal of the said college alongwith bank guarantee of Rs.1 lac, which are liable to be forfeited if the candidate leaves the course after second round of counseling and thus, the petition preferred by the petitioner challenging the condition of bank guarantee only qua the private institutions, apparently lacks bonafides. Learned counsel submitted that as per the college fee details for Medical UG Admissions notified, the respondent institutions are asking to the candidates admitted to the course for bank guarantee equivalent to 2 years' fees alongwith post dated cheques of remaining 1.5 years' fee. It is submitted that bank guarantee cannot be treated similar to bond for which the proforma has been provided by the State Government in Information Booklet. According to the learned counsel in case of submission of the bank guarantee, if the candidate commits default, the private medical college will have no option but to undertake long drawn process for releasing the money to civil remedy before the Court and even thereafter, it would be difficult to realise the money and thus, the insistence of the private medical colleges for submission of bank guarantee to ensure the realisation of the fee for entire duration of course cannot be faulted with. Regarding the fee structure, learned counsel submitted that in the respondent institutions, the fee structure is determined by the University which is approved by the committee constituted for the purpose as per the provisions of Section 33 of Jaipur National University, Jaipur Act, 2008 and thus, the contention raised by the petitioner without any foundation of facts regarding the fee structure is absolutely baseless.

(Downloaded on 01/06/2021 at 10:11:02 AM)

27. Learned counsel appearing for other private institutions have adopted the arguments advanced by learned counsel Mr. Vikas Balia and Senior Advocate Mr. K.K.Sharma.

28. Replying the arguments of the learned counsel appearing for the respondents, the petitioner Mr.Deepesh Beniwal submitted that it is absolutely incorrect to state that the petitioner has claimed relief only against the private medical institutions. Drawing the attention of the Court to the relief clause in the petition, it is submitted that the prayer is made against the colleges run by the State as well. According to the petitioner, the strict rule of locus standi is not applicable in PIL. It is submitted that the material facts are not even disputed by the respondent institutions and it is only the matter with regard the implementation of the directions issued by the Supreme Court in *Islamic Academy* (supra) and other subsequent decisions of this Court and the Supreme Court and thus, there is no reason as to why the issues raised by the petitioner out of public spirit espousing the cause of the students admitted to MBBS Course should not be entertained and adjudicated upon by this Court. Reliance is placed in this regard on the decisions of the Supreme Court in *Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi & Ors.*: (1987) 1 SCC 227 and *Guruvayoor Devaswom Managing Committee & Anr. vs. C.K.Rajan & Ors.*: (2003) 7 SCC 546. It is submitted that in Kerala, the condition regarding furnishing of bank guarantee for payment of the fees for entire course was deleted by the State Government which has been upheld by a Bench of Kerala High Court in *Kerala Private Medical College Managements Association & Ors. vs. State of Kerala & Ors.*: AIR

(Downloaded on 01/06/2021 at 10:11:02 AM)

2019 Kerala 96, though the SLP against the said judgment is pending before the Supreme Court.

29. We have considered the rival submissions and gone through the decisions cited at the bar.

30. At the outset, it would be appropriate to deal with the preliminary objection raised on behalf of the respondents against the maintainability of this PIL filed by the petitioner, an advocate by profession, espousing the cause of students who intend to pursue medical course.

31. Indubitably, the strict rule of *locus standi* does not apply to PILs. As a matter of fact, in appropriate case even where the petitioner might have moved a Court in private interest, if such litigation assumes the character of the Public Interest Litigation, the inquiry into the state of affairs of the subject of litigation by the Court, necessary and essential for the administration of justice, cannot be avoided. [*vide Shivajirao Nilangekar Patil's* case (supra)]. Wherever injustice is meted out to a large number of people, the Court cannot hesitate in stepping in. When the Court is prima facie satisfied about the violation of any constitutional right of a disadvantaged group of the people, it may not allow the respondents from raising the question as to maintainability of the petition. [*vide Guruvayoor Devaswom Managing Committee's* case (supra) and *Bandhua Mukti Morcha v. Union of India:* (1984) 3 SCC 161].

32. There cannot be any quarrel with the proposition that the Court will not enter into a roving and fishing inquiry into the question of facts where the information given by the petitioner regarding subject matter of PIL is inadequate, vague or indefinite.

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

33. It is noticed that in the instant case, the petitioner has challenged the action of the State and the private medical institutions in insisting for submission of the bank guarantee or advance fee against the annual fees for 3½ years of course duration in addition to deposit of annual fee for the first year of the course from the students seeking admission to MBBS Course, alleging it to be in violation of the directions issued by the Hon'ble Supreme Court in *Islamic Academy* (supra). There is nothing on record suggesting that the petitioner, an advocate by profession, has filed the present petition identifying himself with the interest of his clients. Merely because, the petitioner is an advocate by profession, it cannot be assumed that he must have filed the present petition espousing the cause of his clients and not for the protection of larger interest of students intending to pursue the studies of medical courses. As noticed above, in the petition filed, essentially, the petitioner has only sought implementation of the directions issued by the Hon'ble Supreme Court. The respondents must appreciate the tangible binding force embodied in directions issued by the Hon'ble Supreme Court and it goes without saying that if the action of the respondents in demanding bank guarantee or the advance fees, is found to be in violation of the directions issued by the Hon'ble Supreme Court, the same has to be set at naught. Thus, on the facts and in the circumstances of the case, we are not inclined to non suit the petitioner on the ground of locus standi to maintain the PIL petition espousing the cause of student community intending to pursue the medical courses in the State of Rajasthan. Accordingly, the preliminary objection raised on behalf of the respondents questioning the maintainability of the writ petition is rejected.

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

34. The issues raised by the petitioner essentially rolls around the decision of the Hon'ble Supreme Court in *Islamic Academy* (supra) but, so as to appreciate the controversy raised in correct perspective, it would be appropriate to travel through the history of the judicial pronouncements of the Hon'ble Supreme Court germane to the issues raised.

35. In the first instance, the issue regarding charging of capitation fee in consideration of admission to educational institutions came up for consideration before the Hon'ble Supreme Court of India in the matter of *Mohini Jain (Miss) vs. State of Karnataka & Ors.*: (1992) 3 SCC 666. The petitioner therein challenged the notification issued by the State of Karnataka, in exercise of the power conferred under Section 5(1) of the Karnataka Educational Institution (Prohibition of Capitation Fee) Act, 1984, permitting the Private Medical Colleges in the State of Karnataka to charge exorbitant tution fee from the students other than those admitted to the 'Government seat'. After due consideration of the constitutional scheme, the Court held therein that the 'right to education' is concomitant to the fundamental rights enshrined under Part III of the Constitution and it flows directly from 'Right to life' enshrined under Article 21 of the Constitution. Emphasizing the constitutional obligation of the State to establish educational institutions to enable the citizens to enjoy the right to education, the Court held :

> "17. We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

> fulfil its obligation under the Constitution. The students are given admission to the educational institutions-whether state-owned or state-recognised- in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution." (emphasis supplied)

36. Accordingly, the Court declared that charging of capitation fee by the private educational institutions as a consideration for admission wholly illegal and not permissible.

37. In *Unni Krishnan J.P. & Ors. vs. State of Andhra Pradesh & Ors.*:(1993) 1 SCC 645, a Constitution Bench of Hon'ble Supreme Court while upholding the declaration made in *Mohini Jain's* case (supra) that "the right to education flows directly from right to life guaranteed under Article 21", held that it must be construed in light of directive principles enshrined under Part IV of the Constitution. The Court held that a child (citizen) has a fundamental right to free education upto the age of 14 years. Thereafter, the obligation of the State to provide education is subject to limits of its economic capacity and development of the State. The Court rejected the argument that right to establish an educational institution is an activity which could be classified as 'profession' and deemed fit to treat the same equivalent to an 'occupation'. Regarding the capitation fee, the Court observed that *Mohini Jain's* case was not right in saying that the charging of any amount, by whatever name it is called, over and above the fee charged by the Government in its colleges, must be described as capitation fee. Regarding the capitation fee, the Court observed that the 'Capitation fee' means charging or collecting amount beyond what is permitted by law. The Court observed that "We must strive to bring about a situation where there is no room or

Rajasthan High Court Web Copy - Not Official

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

occasion for the management or anyone on its behalf to demand or collect any amount beyond what is permitted. We must clarify that charging the permitted fees by the private educational institutions - which is bound to be higher than the fee charged in similar governmental institutions by itself cannot be characterised as capitation fees." The Court evolved a scheme in the nature of guidelines wherein while emphasizing that 50% seats in every professional college shall be filled by the nominees of the Government or University, as the case may be, which were referred to as 'free seats' to be filled in from amongst the students selected on the basis of the merit determined on the basis of a common entrance examination where it is held or in the absence of an entrance examination by such criteria as may be determined by the competent authority or the appropriate authority, it permitted filling of remaining 50% seats referred to as 'payment seats' by those candidates who are prepared to pay fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing of cash security/bank guarantee for the balance of the amount. It was further laid down that the fee chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent court.

38. The decision in *Unni Krishnan's* case (supra) was reconsidered by eleven-Judge Bench of Hon'ble Supreme Court in *T.M.A. Pai Foundation's* case (supra). The Court held :

> "20. Article 19(1)(g) employs four expressions viz. Profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is *per se* regarded as an activity that is charitable in nature (see State of Bombay v. R.M.D. Chamarbaugwala).

(Downloaded on 01/06/2021 at 10:11:02 AM)

Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation". Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In *Webster's Third New International Dictionary,* at p.1650, "occupation" is, *inter alia,* defined as "an activity in which one engages" or "a craft, trade, profession or other means of earning a living."

……..xxxxxx……

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. <u>The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment of nominating students for admissions would be unacceptable restrictions.</u>

………..xxxx……………

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an education institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an education institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

…...xxxxxxx………..

68. It would be unfair to apply the same rules and regulations regulating on to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.

69. In such professional unaided institutions, the management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/university subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.” (emphasis supplied)

The scheme framed by the Supreme Court in *Unni Krishnan’s* case (supra) and the directions to impose the same except where it holds that the primary education is a fundamental right was declared unconstitutional. However, principle that there should not be capitation or profiteering was upheld. It was observed that reasonable surplus to meet cost of expansion and augmentation of facilities does not amount to profiteering.

39. After the decision in *T.M.A. Pai Foundation’s* case (supra), the issue *inter alia* regarding the extent of autonomy in fixing the fee structure, came up for consideration before the Hon’ble Supreme Court in *Islamic Academy* (supra), wherein the Court while noticing the fact that some of the educational institutions

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

are collecting in advance the fees for the entire course i.e. for all the years, observed:

> "8. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. <u>In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.</u> (emphasis supplied)
>
> ...xxxx…..xxxxxx
>
> 147. On a bare reading of the relevant paragraphs of the judgment, some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizen carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investment. As stated in paragraph 56, economic forces have a role to play. They, thus, indisputably have no plan their investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is : (a) capitation fee, and (b) profiteering.
>
> ………….xxxxx……….
>
> 154. <u>The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors, including facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee.</u> For

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

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

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

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

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

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

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

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

160. The respective institutions, however, for the aforementioned purpose must file an appropriate application before the Committee and place before it all documents and books of accounts in support of its case.

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

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

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

40. Thus, in *Islamic Academy* (supra), the Supreme Court held that there is autonomy with the institution in fixing the fee structure but there cannot be any profiteering motive and no advance fee could be charged. The Court required setting up of

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

the Committee by each of the State to decide whether fee structure proposed by the institution was justified. In respect of any particular student which may leave the course in the mainstream, the Court observed that such student may be required to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute. However, it was emphasized that in such cases, ordinarily, the management would insist for a bond from the concerned student.

41. In *P.A Inamdar's* case (supra), a larger Bench of seven-Judges of Hon'ble Supreme Court, after due consideration of the earlier decision in *T.M.A. Foundation*, while dealing with the issue of capitation fee, held:

> "140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. "Profession" has to be distinguished from "business" or a mere "occupation". While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.
>
> 141. Our answer to Question 3 is that every institution is fee to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged." (emphasis supplied)

Rajasthan High Court Web Copy - Not Official
RAJASTHAN HIGH COURT

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

42. The Court categorically held that on the basis of judgment in *T.M.A. Pai Foundation* and various previous judgments, the scheme evolved out of setting up of two Committees for regulating admission and determining fee structure by the judgment in *Islamic Academy* (supra), 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 institution of minorities. The Court further observed that there is no impediment in constitution of the Committees as stop-gap or adhoc arrangement made in exercise of the power conferred under Article 142 of the Constitution until suitable legislation or regulation framed by the State steps in. However, while dealing with the criticism to the decisions of the Committees, the Court cautioned the Committees with observations as under:

> "149. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by *Islamic Academy*. Certain decisions of some of the Committees were subject to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their jobs and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalising fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

150. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review." (emphasis supplied)

43. In *Modern Dental College's* case (supra), arising out of decision of the High Court of Madhya Pradesh, repelling the challenge to Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 and Admissions Rules, 2008 and the Madhya Pradesh Private Medical and Dental Postgraduate Course Entrance Examination Rules, 2009, the Hon'ble Supreme Court while discussing the law laid down in the matters of *Unni Krishnan, T.M.A. Pai Foundation, Islamic Academy* and *P.A.Inamdar,* rejected the contention of the private medical colleges that they had absolute right to make admission or fix fee. The Court observed:

"49. Thus, the contention raised on behalf of the appellants that the private medical colleges had absolute right to make admissions or to fix fee is not consistent with the earlier decisions of this Court. Neither merit could be compromised in admissions to professional institutions nor capitation fee could be permitted. To achieve these objects it is open to the State to introduce regulatory measures. We are unable to accept the submission that the State could intervene only after proving that merit was compromised or capitation fee was being charged. As observed in the earlier decisions of this Court, post-audit measures would not meet the regulatory requirements. Control was required at the initial stage itself. Therefore, our answer to the first question is that though "occupation" is a fundamental right, which gives right to the educational institutions to admit the students and also fix the fee, at the same time, scope of such rights has been discussed and limitations imposed thereupon by the aforesaid judgments themselves explaining the nature of limitations on these rights.

....xxxxx......

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

74. The principles enunciated in *T.M.A.* Pai Foundation and *P.A. Inamdar* were applied in *Islamic Academy of Education* where a challenge was mounted against the directions issued by the Director of Education to the recognised unaided schools under Section 24(3) read with Sections 18(4) and 18(5) of the Delhi School Education Act, 1973, inter alia directing that no fee/funds collected from parent/students would be transferred from the recognised unaided school fund to a society or trust or any other institution. After examining the directions and the accounting principles in detail, this Court upheld the said directions on the ground that it was open for the State to regulate the fee in such a manner so as to ensure that no profiteering or commercialisation of education takes place.

75. To put it in a nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of education provided by each of such institutions, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same." (emphasis supplied)

44. Keeping in view the discussion above, the settled legal position emerging from various decisions of the Supreme Court, may be summarised thus: The education is essentially a charitable activity, which cannot be regarded as profession, trade or business rather, it will fall within the meaning of expression "occupation" under Article 19(1)(g) of the Constitution of India. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. In establishment of the education institutions, there cannot be a

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

profiteering motive but it is permissible for such institution to generate a reasonable revenue surplus for the purpose of development of education and expansion of the institution. Each and every educational institution is free to determine fee structure keeping in view several factors including facilities available, investment made, future plan for expansion and betterment of educational standard etc. There is autonomy with the institution in fixing the fee structure but it has to be rational and there cannot be any profiteering motive and no capitation fee could be charged. Until the suitable legislation or regulation framed by the State, the fee structure in various institutions shall be determined by the Committee separately having regard to relevant factor and the management is not entitled to charge anything more. It is permissible for the institutions to charge fee only for one year in accordance with the rules and not the fee for the entire course. As laid down in *Islamic Academy* (supra), if an educational institution feels that any particular student may leave in midstream then at the highest it may require that student to give bond/bank guarantee that the balance fee for the whole course would be received by the institution if the student left in midstream, however, in such situation, ordinarily, the management should insist a bond from the concerned student and thus, the management of the educational institution cannot insist upon each and every student to furnish a bank guarantee as a matter of course and the advance fee cannot be charged in addition to annual fee for more than one year.

45. In the backdrop of legal position settled as above, adverting to the facts of the present case, it is pertinent to note that the

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

factum of the respondent private medical institutions insisting upon each and every student admitted to the professional course to deposit the fee for one year and to furnish bank guarantee towards the fee for remaining duration of the course, is not even disputed before this Court. Rather, some of the institutions have even admitted that in addition to the fee for one year, the advance fee is being accepted generally for one more year, which is not kept in separate account and the interest accrued thereon is also not credited to the fee account of the concerned student or refunded to him at the time of completion of the course.

46. The respondent private educational institutions imparting medical education, inherently with a charitable purpose, must always take care of the students belonging to lower echelons of the society or to a middle income group admitted to the medical courses on being found meritorious and must ensure that they are not deprived from pursuing the medical course merely on account of their inability to deposit advance fee in addition to the annual fee for one year or the bank guarantee for remaining 3½ years duration of the medical course.

47. As noticed above, the charging of advance fee for more than one year is apparently in defiance of the directions issued by the Hon'ble Supreme Court in *Islamic Academy* (supra) in terms that the institution shall charge fee only for one year in accordance with the rules and shall not charge the fee for the entire course and thus, the attempt of the respondent institutions in justifying the levy of advance fee in addition to the annual fee for one year on the pretext that it is being charged only where the students/parents are not in position to give the bank guarantee,

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

cannot be countenanced by this Court. It is common knowledge that unsecured bank guarantee at the instance of an individual is not extended by the banks and the bank guarantee could be obtained only on furnishing collateral security or fixed deposits. As a matter of fact, as a rule, banks are discouraged from giving unsecured guarantee even by the Reserve Bank of India. Thus, insisting upon the students who are otherwise eligible to be admitted to the course being meritorious but are not in position to arrange the requisite funds to procure a bank guarantee towards the fees for entire course duration would be absolutely unjustified. As discussed hereinabove, the directions issued by the Hon'ble Supreme Court in *Islamic Academy* are quite unequivocal that if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. Further, ordinarily, the management should insist for a bond from the concerned student. (Vide para 163 - *Islamic Academy*). In this view of the matter, as a rule the respondent institutions including the medical/dental colleges run by the State Government must ordinarily accept the bond towards the fee for the 3½ years duration of the course in addition to fee for one year and a bank guarantee from a particular student should only be insisted upon for specific reason as an exception.

48. In view of the discussion above, the view taken by the learned Single Judge of this Court in *Harshvardhan Singh's* case (supra) laying down in general that the demand of the bank guarantee by the private medical institutions is not illegal as it has

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

been recognised as valid condition by the Apex Court, without referring to the law laid down in *Islamic Academy's* case (supra) discussed above, is not correct.

49. Coming to the incorporation in the Information Booklet issued by the State Government laying down that at the time of of reporting, the selected candidates will have to submit a bond/bank guarantee as applicable, suffice it to say that the same has to be construed in light of the directions issued by the Hon'ble Supreme Court in *Islamic Academy* (supra) and in no manner it could be inferred therefrom that the private institution has the absolute choice to ask for either bond or the bank guarantee. The reason assigned by the private medical institutions for insistence of the bank guarantee instead of bond that for enforcement of the liability under the bond executed, they will have to enter into litigation in the realm of civil law also cannot be accepted as valid reason by this Court.

50. There is yet another aspect of the matter. Ordinarily, no student who has already deposited the huge fee for one year and pursued the studies would leave the course in midstream. Besides the fact that no bank guarantee is generally issued by the bank without collateral security or fixed deposits, the banks are charging huge commission for issuing bank guarantee in favour of the individuals which according to the petitioner may vary from 2.5% to 3% of the guarantee amount per annum and thus, the insistence for furnishing bank guarantee towards the fee for entire duration of the course upon each and every student, merely because some of the students may leave the course in midstream, appears to be unreasonable and unfair for this reason also.

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

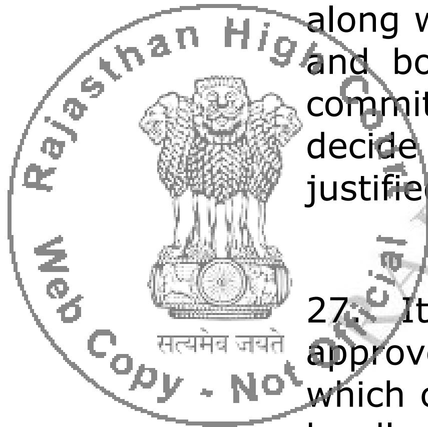
51. Coming to the ancillary issue raised regarding the authority of the University established by the enactment of the State legislation to constitute the 'Fee Fixation Committee' and not to be governed by the 'Fee Regulatory Committee' constituted by the State Government pursuant to the directions issued by the Hon'ble Supreme Court in *Islamic Academy* (supra), the said issue already stand settled by a Bench decision of this Court in *Sachin Mehta's* case (supra). The petitioner therein had challenged the action of Mahatma Gandhi University of Medical Sciences & Technology, the respondent no.10 herein, in notifying fee structure decided by the 'Fee Fixation Committee' of the said University for the students admitted to MBBS and BDS Courses. Precisely, it was contended that the University having been established under the provisions of the Mahatma Gandhi University of Medical Sciences & Technology, Jaipur Act, 2011 ('the Act of 2011') passed by the Legislative Assembly of State of Rajasthan, it is entitled to fix its own fee structure, which is approved by 'Fee Fixation Committee' constituted under the provisions of the Act of 2011. The Court categorically held that the University could not have put in place a 'Fee Fixation Committee' to prepare its own fee structure in exercise of the power conferred under Section 28 and/or 33 of the Act of 2011. Referring to the decisions of the Supreme Court in *T.M.A. Pai Foundation* and *Islamic Academy*, the Court held:

> "26. In order to give effect to the directions issued in the judgment of TMA PAI's case (surpa), the Honourable Supreme Court, directed the respective State Governments/concerned authority to set up, in each State, a committee headed by a retired High Court judge, nominated by the Chief Justice of that State. The directions further stipulated that the other members, who shall be nominated by the Judge so nominated by the Chief Justice of that State,

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

must include a Chartered Accountant of repute and further a representative of the Medical Council of India or the All India Council for Technical Education, depending on the type of private educational institution involved with reference to determination of the fee structure . Further, 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 so formed has been also vested with the discretion to nominate/co-opt another independent members of repute. Each educational institute is obliged 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.



27. It has been left to the discretion of the Committee to approve the fee structure or to propose some other fee which can be charged by the private educational institute. It hardly needs to be emphasised that the fee fixed by the committee shall be binding for a period of three years and thereafter the institute would be at liberty to apply for a 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 i.e. donations the same would amount to charging of capitation fee. The Government/appropriate authorities should consider framing appropriate regulations, if not already, framed, and if an institution is found of charging capitation fees or profiteering that institution can be appropriately penalised and also face loss of recognition/affiliation. Thus, from a bare perusal of the nature of directions issued by the honourable Supreme Court, as aforesaid, it is apparent on the face of record that the matter for determination of fee structure is within the exclusive domain of the 'Fee Regulatory Committee' to be put in place by the concerned State.

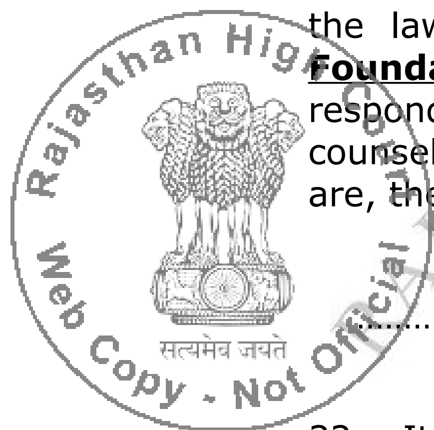
….xxxxxxxxx….

29. There cannot be two views on the established proposition of law that even the non-minority unaided professional educational institutions can be subject to similar restrictions which are found reasonable and in the interest of the public at large and student community in particular. In our considered view, on the basis of the judgment in ***Pai Foundation*** (supra), and various other judgments of the Hon'ble Supreme Court, the scheme evolved for setting up the Committees for regulatory admissions as well as for determination of fee structure by the judgment in the case of

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

Islamic Academy (supra), cannot be faulted on the ground of alleged infringement of Article 19 (1) (g) in case of unaided professional educational institutions. As has been observed by the Hon'ble Supreme Court the 'Fee Regulation Committee' is headed by Retired High Court Judge, who is assisted by experts in accounts and management fields and the committee have also the advantage of hearing the contending parties while determining the fee structure. Therefore, in our considered conclusion the judgment delivered by the Hon'ble Supreme Court in the case of ***Islamic Academy***, as regards setting up of committee with reference to and **fee structure**, is not in any way beyond the law declared by the Hon'ble Supreme Court in **Pai Foundation**(supra), as projected on behalf of the respondent-University. The contentions of the learned senior counsel, on those counts do not have much substance and are, therefore, rejected.



…………xxxxxx…………

32. It is not in dispute that the Hon'ble Supreme Court with reference to the issue of fixation of fee structure to various professional courses in the country including MBBS and BDS Course, directed all the States to the fix fee structure through a Committee as per the directions issued in the case of Islamic Academic of Education (supra). It is also not in dispute that 'Fee Regulatory Committee' was constituted by the Government of Rajasthan, in the backdrop of the verdict of the Hon'ble Supreme Court and directions issued in case of Vipul Garg (supra). Further, from the material available on record, it is also evident that the fee structure is determined by the Fee Regulatory Committee of Rajasthan, is the criterion for payment to the Private Medical College(s), as pointed out by the learned Additional Advocate General in the light of the specific condition stipulated while allotting 127 students consequent to RAJASTHAN PRE-MEDICAL TEST-2012 to Mahatma Gandhi Medical College (a constituent professional education institution of the respondent-University).

33. From the facts, circumstances and material brought on record in the writ applications, it is evident the respondent-University had no jurisdiction and/or authority to alter the conditions relating to fee structure once the process of admission to the MBPS and/or BDS Courses commenced which indicated the fee to be charged from the students as one determined by the Fee Regulatory Committee of the State, once the RAJASTHAN PRE-MEDICAL TEST-2012 for admission to MBBS had been conducted and the results had been declared and a selected list had also been prepared on that basis and students allotted to the institutes including the medical college of the respondent-University. In other

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

words, once the process of selection had started on the basis of the terms and conditions spelt out in the INFORMATION BOOKLET and further detailed out while allotting the students to the concerned colleges, including the constant medical College of the respondent-University, then it was not within the jurisdiction and competence of the respondent-University to effect any changes in the criterion relating to fee structure contrary to one which has been determined by the 'Fee Regulatory Committee' constituted by the State of Rajasthan."

Accordingly, the fee structure determined by the 'Fee Fixation Committee' constituted by the respondent University in supersession of fee structure already proposed by the 'Fee Regulatory Committee' constituted by the State of Rajasthan pursuant to the directions of the Supreme Court was held not sustainable in the eyes of law.

52. As a matter of fact, the question with regard to the determination of fee structure is not directly raised before us in the present petition and therefore, we are not required to delve into the said questions any further moreso when the special leave petition preferred by the respondent no.10 herein, against the Bench decision of this Court in *Sachin Mehta's* case (supra), is pending consideration before the Supreme Court.

53. For the aforementioned reasons, the writ petition deserves to be allowed.

54. Accordingly, the writ petition is allowed. The action of the respondent private institutions and the medical/dental institutions run by the State Government in levying advance fee in addition to annual fee for one year from the students admitted to the medical courses and insisting upon each and every student to submit the bank guarantee at the time of admission equivalent to the fee for 3½ years of course duration, is declared illegal. The respondent

(Downloaded on 01/06/2021 at 10:11:02 AM)

WWW.LIVELAW.IN

private institutions and the institutions run by the State Government are restrained from recovering any amount as advance fee in addition to the fee for one year from any student admitted to the course. The respondent private institutions and the State Government are directed not to insist upon furnishing of bank guarantee towards the fee for entire duration of the course from each and every student. The respondent private medical institutions shall be at liberty to ask for the bond/bank guarantee from a particular student in conformity with the directions issued by the Hon'ble Supreme Court in *Islamic Academy's* case (supra) as discussed/explained hereinabove by this Court. The advance fee in addition to the fee for one year already recovered by any of the private institutions from the students admitted to the medical courses shall be kept in a fixed deposit in a nationalized bank against which no loan or advance may be granted. The advance fee deposited as aforesaid shall carry interest at the rate equivalent to the rate of interest admissible on fixed deposit by the nationalized bank. The interest already accrued and the future interest on the amount of advance fee shall be paid to the students from whom the advance fees were collected at the time of admission. The State Government is directed to ensure the compliance of the directions issued by this Court as aforesaid. No order as to costs.

(RAMESHWAR VYAS),J **(SANGEET LODHA),J**

Aditya/-

(Downloaded on 01/06/2021 at 10:11:02 AM)