Gujarat High Court

7 May 2012

Charutar Arogya Mandal

v

Parents Association For The Medical/Dental Students and others

Case No : Letters Patent Appeal No. 482 of 2008, Special Civil Application No. 25954 of 2007, Letters Patent Appeal No. 895 of 2008, Special Civil Application No. 25954 of 2007

Bench : V. M. Sahai, A. J. Desai

Citation : 2012 Indlaw GUJ 1451

Summary : Constitution - Bombay Public Trusts Act, 1950 - Constitution of India, 1950, arts. 142, 19(1)(g), 19(6), 226, 227 - Societies Registration Act, 1860 - Instant two Intra-Court Letters Patent Appeals have been filed challenging the judgment by which the learned Single Judge directed the matter be sent back to the Fee Committee to reconsider its decision fixing the fee structure including the aspect of surplus of NRI fees and finalize the fee structure at the earliest in light of the impugned judgment - The learned Single Judge had further directed the students to pay the fees of Rs. 1.80 Lacs for each academic year and they should pay the difference amount, if required, after the decision of Fee Committee, if any excess amount had been deposited by the students, the same should be refunded to them or adjusted in the next academic year if the students were to prosecute the study further for the remaining year - Letters Patent Appeal had been filed by the Parents Association for Medical/Dental Students, challenging the said judgment, to the extent it permits collection of hospital expenditure by way of fee from the medical students and to revise the rate of fee of all the students on the roll - Those two appeals were heard together - Whether, lower court was right in holding the impugned order - Held, that that in absence of any pleadings and relief claimed in the W.P., the learned Single Judge could not grant a relief which had not been claimed by the petitioners/respondents - Hence, the order of learned Single Judge deserved to be set aside - And that the learned Single Judge could not enter into accounts which had been accepted by the experts of Fee Regulation Committee and in absence of pleadings the learned Single Judge could not enter into depreciations or accounting method or the part of running cost of Hospital could be taken while computing cost of imparting education at the medical college - Hence, instant court was of the considered opinion that the learned Single Judge committed an error of law in entering into the accounting procedure and accounting method and in finding faults with the depreciation claimed by the appellants in absence of any pleading made in the W.P. - Again NRI surplus was not available as in the earlier years, there was no NRI seats reserved for NRI students - It was not open to the learned Single Judge to reappraise the evidence on record which was examined and approved by the experts of Fee Regulatory Committee and find faults with it in absence of any specific pleadings - Accordingly, instant court directed that, differential amount of fee deposited by the respondents - students before instant Court should be paid by the Registrar of instant Court to the appellants in the name of the appellant no. 2 i.e.

Pramukhswamy Medical College as per the amount deposited, by an account payee cheque within a period of six weeks from the date of instant judgment - Appeals disposed of.

The Judgment was delivered by : V. M. Sahai, J.

1. These two Intra-Court Letters Patent Appeals have been filed challenging the judgment dated 19-24.03.2008 passed by the learned Single Judge in Special Civil Application No.25954 of 2007 connected with other writ petitions by which the learned Single Judge directed the matter be sent back to the Fee Committee to reconsider its decision fixing the fee structure including the aspect of surplus of NRI fees and finalize the fee structure at the earliest in light of the impugned judgment. The learned Single Judge has further directed the students to pay the fees of Rs.1.80 Lacs for each academic year and they shall pay the difference amount, if required, after the decision of Fee Committee, if any excess amount has been deposited by the students, the same shall be refunded to them or adjusted in the next academic year if the students are to prosecute the study further for the remaining year.

2. Letters Patent Appeal No.895 of 2008 has been filed by the Parents Association for Medical/Dental Students, challenging the judgment dated 19/24.03.2008 passed by the learned Single Judge in Special Civil Application No.25954 of 2007 with Special Civil Application No.25955 of 2007 to Special Civil Application No.26054 of 2007, with Special Civil Application No.26055 of 2007 to Special Civil Application No.26152 of 2007 to the extent it permits collection of hospital expenditure by way of fee from the medical students and to revise the rate of fee of all the students on the roll.

3. These two appeals are heard together. Letters Patent Appeal No.482 of 2008 is treated to be the leading appeal and the other connected appeal would be governed by the judgment given in this appeal.

FACTS

4. Charutar Arogya Mandal, Anand is a Society and a Public Trust registered under the provisions of the Societies Registration Act, 1860 and the Bombay Public Trusts Act, 1950 (for short 'the Trust') is the appellant No.1 in this appeal. Appellant No.1 runs Pramukhswami Medical College, Anand (for short 'Medical College') which has been arrayed as appellant No.2 to this appeal.

5. the Trust runs the Medical College on the pattern of self-financing for the purpose of imparting education in the discipline of medicine at the level of graduation. The Medical College is recognized by Medical Council of India and is affiliated to Sardar Patel University, Vallabh Vidyanagar. The total intake capacity of the college for imparting education in medicine leading to MBBS degree is 100 students per annum. the Trust has also established a teaching hospital known as Shree Krishna Hospital which is attached to the Medical College as Medical Council of India requires that a Medical College must be attached to some teaching hospital. The said teaching hospital i.e. Shree Krishna Hospital is also managed and maintained by the Trust. Apart from the Medical College, the Trust also runs various other institutions, namely, K.M. Patel Institute of Physiotherapy, G.H. Patel School of Nursing, H.M. Patel Institute for Post-graduate students in the discipline of medicine.

6. The fee structure of the self-financing institutions has to be scrutinized by a Committee which is to be constituted by the State Government in pursuance of the directions of the Apex Court in Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697 2003 Indlaw SC 611. In compliance of the directions of the Apex Court for self-financing professional colleges in Gujarat, the State of Gujarat had constituted a Fee Committee. Justice R. J. Shah (Retired) is the Chairman of Fee Committee (Medical). The function of Fee Committee is to scrutinize the fee structure

evolved by the concerned self-financing institutions in the State of Gujarat in the field of medicine and para-medical courses at various levels and to verify as to whether the fee structure is based upon the cost of imparting education along with reasonable provision for future development. The Committee further has to scrutinize as to whether such fee structure contains any element of profiteering and capitation.

7. the Trust was required to evolve a fee structure in respect of the Medical College for the academic years 2006-07, 2007-08 and 2008-09 and to send the proposed fee structure for scrutiny before the Fee Regulatory Committee. the Trust engaged a Chartered Accountant's firm known as 'S.B. Billimoria & Company' for working out the cost of imparting education in the Medical College of the Trust. The basic purpose for engaging the aforesaid Chartered Accountant Company was to obtain an independent assessment of the cost for imparting education in Medical College keeping in mind the principles enunciated by the Apex Court in TMA Pai Foundation v. State of Karnataka, (2002) 8 SCC 181 2002 Indlaw SC 1375, Islamic Academy 2003 Indlaw SC 611 (supra) and P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 2005 Indlaw SC 463.

The S.B. Billimoria & Company Chartered Accountant Firm submitted its report on 21.3.2006 wherein it had worked out the cost of imparting education along with reasonable provision for future development of the Medical College and quantified the cost at Rs.3.08 Lacs p.a. per student. This report was also overseen by Shri Y.H. Malegam whose name is known in the field at International level, is a Chartered Accountant of International repute. On the basis of report furnished by Chartered Accountant firm S.B. Billimoria & Company dated 21.3.2006, the Trust by its letter dated 27.3.2006 wrote to the Member Secretary of the Fee Committee conveying the cost of imparting education with reasonable future provision for future development at Rs.3.08 Lacs per student per annum. the Trust also informed the Member Secretary of the Fee Committee that the Trust would charge the students the fee at the rate of Rs.2.90 Lacs per student per annum for the academic years 2006-07, 2007-08 and 2008-09 and the differential amount of the cost of imparting education along with reasonable provision for future development at the Medical College would be contributed by the Trust from its own resources. Contribution of Rs.18,000/- was to be paid by the Trust from its own resources, as it volunteered on its own, so that the burden on the students may be reduced to the extent possible in the matter of payment of fees by them in a cost based system of education which is popularly known as self-financing pattern of education.

8. The Fee Committee directed the appellants to make a representation about the fee structure before them so that how the cost had been worked out could be explained and any query made by the Fee Committee with regard to the cost analysis for imparting education at the Medical College may be answered on behalf of the Trust. The Fee Committee permitted Shri Tehmasp Rustomji, Senior Director, S.B. Billimoria & Company working in the firm of Chartered Accountant to make representation before the Fee Committee. Several queries were raised by the Chartered Accountant Member of the Fee Committee on the aspect of methodology followed in working out the cost of imparting education at the Medical College by the firm S.B. Billimoria & Company which was answered by Shri Tehmasp Rustomji which satisfied the Fee Committee. The Fee Committee unanimously accepted the methodology evolved by the firm of Chartered Accountant for working out the cost of imparting education at the Medical College and by its order dated 20.6.2006, the Fee Committee approved the fee structure in respect of the Medical College at the rate of Rs.2.20 Lacs per student per annum for the academic years 2006-07, 2007-08 and 2008-09. the Trust was permitted to approach the Fee Committee in advance for revision in the fee structure approved at the rate of Rs.2.20 Lacs per student per annum if so warranted, on the basis of inflationary trend of the economy and actual capital expenditure incurred in the concerned preceding year by the Trust for development of the Medical College.

9. The fee structure approved by the Fee Committee for the academic year 2006-07 was made applicable to all the students on the roll of the Medical College irrespective of the academic year in which the students were first admitted to Medical College as the Fee Committee in its order dated 20.6.2006 has observed that increase in the cost of imparting education due to inflationary trend of the economy and other attending circumstances was not required to be shouldered only by the new entrants and thereupon, the increase in the cost of imparting education was distributed among all the students on the roll of the Medical College.

10. The decision of the Fee Committee dated 20.6.2006 was challenged by the Parents Association for Medical/Dental students (for short 'the Parents Association') by filing writ petition being Special Civil Application No.17856 of 2006 and some students wherein an interim order was passed by the learned Single Judge on 20.9.2006 to the effect that pending disposal of the writ petition against fee structure of Rs.2.20 Lacs per student per annum. Approved by the Fee Committee and adhoc fee structure of Rs.1.80 Lacs per student per annum be charged in the Medical College in respect of all the students on the roll of the Medical College for the academic year 2006-07 irrespective of the year to which the students were admitted for the first time in the Medical College subject to a rider that the Parents Association had to file an undertaking to the effect that it would abide by the ultimate decision in the writ petition and the students will pay the additional fee if so directed by the Court. However, liberty was granted to the Trust to insist for an individual undertaking on the same lines from the concerned students.

11. The writ petition being Special Civil Application No.17856 of 2006 was finally decided on 7.12.2006 by the learned Single Judge relying upon the judgment dated 7.12.2006 rendered in another writ petition being Special Civil Application No.13887 of 2006 preferred by the self-financing institutions The learned Single Judge remanded the matter back to the Fee Committee for decision afresh on the ground that the Fee Committee was required to decide the fee structure of Medical College for all the three academic years 2006-07, 2007-08 and 2008-09 and the decision taken by the Fee Committee was in violation of the decision of the Apex Court. It is also relevant to point out over here that while remanding the matter back to the Fee Committee in the judgment dated 7.12.2006, the learned Single Judge had declined to accept the plea of Parents Association that in the meantime the adhoc fee structure of Rs.1.80 Lacs per student per annum as prescribed by the interim order dated 20.9.2006 should hold the field. The learned Single Judge has specifically and categorically directed that pending fresh decision by the Fee Committee in the matter of fee structure, at the Medical College, the fee structure at the rate of Rs.2.20 Lacs per student per annum for the academic year 2006-07 approved by the Fee Committee shall continue to operate subject to the direction issued on the aspect of keeping the differential amount in a separate Bank account by the Trust and the Medical College.

12. The Fee Committee in view of judgment dated 7.12.2006 considered the matter again and after hearing the Parents Association, passed an order on 20.6.2007 by which for the academic years 2006-07, 2007-08 and 2008-09, the fee structure for the Medical College was approved and fixed at Rs.2.20 Lacs, Rs.2.45 Lacs, Rs.2.75 Lacs per annum respectively. It was also clarified by the Fee Committee that the fee structure should be made applicable to all the students who are found to be on the roll of the Medical College in the concerned academic years irrespective of the academic year in which the students were first enrolled as students of the Medical College.

13. The decision of the Fee Committee dated 20.6.2007 was challenged by the Parents Association and by students of the Medical College by filing writ petition being Special Civil Application No.25954 of 2007. The learned Single Judge allowed the writ petition by judgment dated 19-24.03.2008 The appellants challenged the said order of the learned Single Judge by filing the present Appeal. It is stated in paragraph 15 of the

memo of appeal that argument was heard by the learned Single Judge for about 10 days and the writ petitions were allowed by judgment dated 19-24.03.2008 and the order of the Fee Committee dated 20.6.2007 was quashed and the matter was remanded back to the Fee Committee for fresh consideration in light of the observations made in the judgment on the aspect of working out the cost of imparting education in the Medical College. Further direction was issued that the students of the Medical College would pay fee at Rs.1.80 Lacs per student per annum. With an undertaking that they would pay the differential amount of fee if required after the decision of the Fee Committee and if any amount is to be refunded, after the decision of the Fee Committee, the same shall be refunded.

14. During the pendency of the appeal the Division Bench passed an interim order on the agreement arrived at between the parties that the difference amount, if any, shall be deposited by each student either by cheque or demand draft drawn in the name of the Registrar of the High Court of Gujarat and the same was required to be submitted before the appellant college who, in turn, was required to deposit the same before the Registry of this Court. Accordingly, pursuant to the interim order dated 23.5.2008 passed by this Court, the students have deposited the amount of difference in fee and it is not disputed that the entire amount had been deposited with the Registry of this Court.

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PARTIES.

15. We have heard Mr. Dhaval C. Dave, learned Senior Counsel assisted by Mr. P. A. Jadeja for the appellants, Mr. A. J. Yagnik, learned counsel appearing for respondent Nos.1 to 199 and 203, learned counsel Mr. Sunit S. Shah assisted by Mr. Dipen Desai, appearing for respondent No.200, Ms. Jirga Jhaveri, learned Assistant Government Pleader appearing for respondent No.201 and Mrs. V.D. Nanavati, learned counsel appearing for respondent No.202.

16. Mr. D.C. Dave, learned Counsel appearing for the appellants has challenged the order of the learned Single Judge and urged that the decision of the learned Single Judge is contrary to the dictum of law laid down by the Hon'ble Apex Court in the matter of T.M.A. Pai 1993 Indlaw SC 1056; Islamic Academy 2003 Indlaw SC 611; P.A. Inamdar 2005 Indlaw SC 463 and Cochin University and Science & Technology and Another v. Thomas P. John and Others, (2008) 8 SCC 82 2008 Indlaw SC 810. Mr. Dave has vehemently urged that if the fee structure of a college is based upon the cost of imparting education and reasonable provision for development, without any element of profiteering or capitation, the same is required to be accepted, by the Fee Regulatory Committee and, accordingly, the same was accepted by the Fee Regulatory Committee.

He further argued that once the Fee Regulatory Committee comes to the conclusion that the fee structure is based upon the cost of imparting education, then there is no scope of interference with the fee structure, inasmuch as, it is the fundamental right of the college guaranteed u/art. 19(1)(g) of the Constitution of India to frame the fee structure based upon the cost of imparting education and the provision for development. Learned Counsel for the appellants further urged that in a writ petition u/arts. 226 and 227 of the Constitution of India, it is not permissible for the writ court to re-appreciate the evidence and dislodge the finding of fact recorded by the Fee Regulatory Committee having the assistance of experts from the field of Chartered Accountant and Medical Council of India. learned Counsel for the appellant Mr. Dave has placed reliance on paras 30 to 38, 45, 49, 50, 70 and the Answer to Question No.11 at page 591 of the decision of the Apex Court in the matter of T.M.A. Pai ;on paras 6, 7, 147, 152, 153, 156, and 158 of the decision of the Apex Court in Islamic Academy ; on paras 20, 26, 27, 141, 144, 145, 147, 148, 149 and 150 of the decision of the Apex Court in the matter of P.A. Inamdar ; paras 11 to 16 of the decision of the Apex Court in the matter of

Cochin University ; Tata Cellular v. Union of India, (1994) 6 SCC 651 1994 Indlaw SC 17.

17. Mr. Dave, learned Counsel for the appellants, in support of his arguments, has also placed reliance on the decisions of the Apex Court in State of West Bengal v. Atul Krishna Shaw & Anr., AIR 1990 SC 2205 1990 Indlaw SC 405; Swaran Singh & Anr., v. State of Punjab & Ors., AIR 1976 232 1975 Indlaw SC 460; Champalal v. I.T. Commissioner, West Bengal, AIR 1970 SC 645 1969 Indlaw SC 330; Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Ltd. & Anr., (2011) 1 SCC 640 2010 Indlaw SC 1027; State of Tamil Nadu & Ors. v. K. Shyam Sundar & Ors., (2011) 8 SCC 737 2011 Indlaw SC 493;Basavaiah (Dr.) v. Dr. H.L. Ramesh, (2010) 8 SCC 372 2010 Indlaw SC 565.

18. Mr. Dave, learned Counsel for the appellants further urged that once a body like the Fee Regulatory Committee discharging a quasi judicial function, assisted by experts, has taken a broad view on fee structure, in that case, even if another view of the matter is possible, the same is not required to be substituted in exercise of powers conferred u/arts. 226 and 227 of the Constitution of India.

19. Mr. Dave, learned Counsel for the appellants has then urged that though, it is not the case of the original petitioners that depreciation was wrongly considered as the component of the cost of education in the report submitted by M/s S.B. Billimora & Co., Chartered Accountant firm, but, the learned Single Judge has proceeded on an assumption that there is a discrepancy in referring to the depreciation as the component of the cost of imparting education. In support of his contention, he has relied upon a decision of the Apex Court in the matter of Manohar Lal v. Ugrasen, (2010) 11 SCC 557 2010 Indlaw SC 423 and more particularly in para-13 of the said decision.

20. Mr. Dave, learned Counsel for the appellants has also urged that the learned Single Judge has travelled beyond the pleadings made in the writ petition by upsetting the findings of fact recorded by the Fee Regulatory Committee on the points which are neither urged nor pleaded in the writ petition. The learned Single Judge has travelled beyond the pleadings as much as the method adopted by the Chartered Accountant firm for working out the cost of imparting education in the Medical College of the Trust. The original petitioners have not challenged the method adopted by the Chartered Accountant and in that case, the learned Single Judge had no occasion to evaluate or compare two methods which are available in the field of auditing of the accounts of an individual or Trust etc.

21. Mr. Dave has lastly urged that so far as the NRI quota is concerned the appellants were required to submit the details of fee structure of the Academic Years 2003-04, 2004-05 and 2005-06 as it would demonstrate that in all these three years, there were no NRI students in the appellant college and, therefore, there was no question of submitting any data of NRI students of the appellant college to the Fee Regulatory Committee. He has further submitted that only after the decision of the Hon'ble Supreme Court of India in the matter of P.A. Inamdar, from the Academic Year 2006-07 NRI students were admitted by the appellant College.

22. Mr. A.J. Yagnik, learned Counsel, appearing for the respondents, has urged that the learned Single Judge has not travelled beyond the pleadings and the grounds raised in the writ petition in view of the arguments raised before the learned Single Judge, which was raised on the basis of the original records which were produced before the learned Single Judge. He has further argued that the standard accounting practice has not been followed by the appellant - college. After perusing the original records with the permission of the learned Counsel appearing for the appellants, the questions were asked to the Advocate appearing on behalf of the Committee and the parties were

aware about the contentions and arguments which were made on the basis of record and the learned Single Judge has recorded finding on the basis of the record. Therefore, it is not correct to say that in absence of the pleadings made in the writ petition, the learned Single Judge ought not to have decided the question of accounting or discrepancy in the accounting method.

23. The second argument of Mr. Yagnik appearing for the respondents is that the statement of facts, as to what transpired at the time of hearing, recorded in the judgment and order of the learned Single Judge, are conclusive of the facts so stated and no one can contradict such statement in the appeal or before the higher court and, if, the appellants have any grievance against the recording of facts by the learned Single Judge, it will always be open for them to file a review petition. Mr. Yagnik, learned counsel for the respondents, in support of his contention, has placed reliance on the decisions of the Apex Court in the matter of State of Maharashtra v. Ramdas Shrinivas Nayak and Others, (1982) 2 SCC 463 1982 Indlaw SC 36 and in Bhavnagar University v. Palitana Sugar Mill (P) Ltd and Others, (2003) 2 SCC 111 2002 Indlaw SC 1454.

24. The third submission of Mr. Yagnik, learned Advocate for the respondents is that the error of fact can also be the subject matter of judicial review and the learned Single Judge did not commit any error in going into the facts, accounting and other details which were placed before him and borne out from the original records of the Committee. In support of his contention, Mr. Yagnik, has placed reliance on a decision of the Apex Court in Cholan Roadways Limited v. G. Thirugnanasambandam, (2005) 3 SCC 241 2004 Indlaw SC 1069; State of Haryanaand Others v. Devi Dutt and Others, (2006) 13 SCC 32 2006 Indlaw SC 1446; Mathura Prasad v. Union of India and Others, AIR 2007 SC 381 2006 Indlaw SC 734; Indian Airlines Limited v. Prabha D. Kanan, AIR 2007 SC 548 2006 Indlaw SC 1331 and Tata Cellular 1994 Indlaw SC 17 (supra).

25. Fourthly, Mr. Yagnik has argued that the learned Single Judge had not travelled beyond the scope and ambit of writ of certiorari while examining the decision of the Justice R.J. Shah Committee which is a quasi judicial authority. In support of his submission, he has placed reliance on the decision of the Apex Court in the matter of Tata Cellular 1994 Indlaw SC 17 (supra) and Surya Dev Rai v. Ram Chander Rai and Others, (2003) 6 SCC 675 2003 Indlaw SC 598.

26. Mr. Yagnik has further urged that Shree Krishna Hospital attached to Pramukhswamy Medical College is a hospital and the cost of running a hospital attached to the medical college is not distributed among the patients and the students as per the principle arrived at by the Committee itself and it is not 50:50 but it is distributed in the ratio of 75:25 i.e. 75% on the students and 25% on the patients. He has further argued that the time spent by the students in the hospital cannot be the yardstick to distribute the cost of running the hospital.

27. Mr. Yagnik has lastly submitted that merely because experts are there in the Committee, it does not mean that, the judicial review is not permissible. In support of his contention, he placed reliance on the decisions of the Apex Court in P.A. Inamdar and more particularly on paragraph 150 wherein the Apex Court observed that "we make it clear that in case of any individual institution, if any of the Committee 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."

CONSIDERATION OF ARGUMENT OF LEARNED COUNSEL FOR THE PARTIES.

28. The appellant No.1 is a Trust and appellant No.2 is a Medical College maintained and managed by the appellant No.1 the Trust. The dispute involved in the present

appeal is with regard to the fee structure for the Academic Years 2006-07, 2007-08 and 2008-09. For all these years, the fee structure was due for determination as per the law laid down by the Apex Court in the matter of Islamic Academy. The fee structure evolved by the appellant No.2 College is required to be placed before the Fee Regulatory Committee, constituted pursuant to the decision of the Apex Court, for the purpose of scrutiny thereof.

29. It is not disputed that the fee structure of the College was required to be fixed for the Academic Years 2006-07, 2007-08 and 2008-09. For the purpose of working out the cost of imparting education in the Medical College run by the Trust, the appellants have engaged M/s S.B. Billimora & Co., a Chartered Accountant firm. The Chartered Accounts has submitted its report to the appellants suggesting the cost of imparting education at Rs.3,09,000/- per student per annum for all these three years.

However, when the appellant No.2-College sent their proposal to Justice R.J. Shah's Committee, which had been constituted in pursuance of the directions, given by the Apex Court in Islamic Academy. The proposal sent by the appellant No.2-College was on the lower side than what was recommended by the S.B. Billimora & Company, the Chartered Accountant Firm. The appellant No.2-College sent its proposal that the fee structure would be Rs.2,90,000/- per student per annum for all the three years by stating that the difference amount as pointed out by the Chartered Accountant Firm would be borne by the College itself. Thereafter, the Fee Regulatory Committee, headed by Justice R.J. Shah and assisted by the Chartered Account Mr.V.M.Shah and a representative of the Medical Council of India, examined the proposal sent by the appellants. After hearing the appellants as well as the students, the Fee Regulatory Committee recommended the fee structure of Rs.2,20,000/- per student per annum for the Academic Year 2006-07, Rs.2,45,000/- per student per annum for the Academic Years 2007-08 and Rs. 2,75,000/- per student per annum for the Academic Year 2008-09. The fee structure fixed by the Committee was accepted by the appellants.

30. The fee structure fixed by the Justice R.J. Shah Committee was challenged by the Parents Association as well as some of the students by filing writ petitions, being Special Civil Application No.25954 of 2007 and other connected matters. The learned Single had admitted the writ petitions and was of the opinion that there were various discrepancies in accounting procedure adopted by the Fee Regulatory Committee and the report of the Committee was not in accordance with the accounting principles.

The other reason given by the learned Single Judge was that the method adopted by the Fee Regulatory Committee for the purpose of working out the cost of imparting education in the medical college by taking into consideration the cost of running a teaching hospital was not proper, as cost of running of the hospital could not be included in the fee structure fixed by the Committee. The arguments of the parents association and students found favour with the learned Single Judge. The learned Single Judge allowed the writ petitions by judgment and order dated 19/24.03.2008 and set aside the fee structure fixed by the Fee Regulatory Committee and remanded the matter back to the Fee Regulatory Committee to reconsider the matter in light of the observations made by the court in the judgment and to finalize the fee structure as early as possible and further direction was issued that Rs.1,80,000/- would be paid by all the students for all the three years till the matter was finally decided by the Committee and the undertaking was required to be submitted by the students that any difference in the fee fixed by the Fee Regulatory Committee shall be paid by the students.

31. The Apex Court in T.M.A. Pai considered the decision in J.P. Unnikrishnan vs. State of A.P. (1993) 1 SCC 645 1993 Indlaw SC 1056 and held in paragraph-45 that the decision in Unnikrishnan in so far as it permits the scheme relating to grant of admission and fixing of the fee, was not correct, and to that extent, the decision in Unnikrishnan

and the directions given to UGC, AICTE, the Medical Council of India, the Central and State Government were overruled.

32. The unaided professional educational institutions, both minority and non-minority, filed writ petitions before the Apex Court for clarification of the judgment in T.M.A. Pai and the arguments were advanced on four questions as mentioned in paragraph-6 in Islamic Academy. In these Letters Patent Appeals, we are only concerned with the question whether the educational institutions are entitled to fix their own fee structure. Answer to this question was given in Islamic Academy in paragraph-7 wherein it was held that each institute must have freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and provide facilities necessary for the benefit of the students. The institutions must also be able to generate surplus which must be used for the betterment and growth of that educational institution. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, further plans for expansion and/or betterment of the institution. It was clearly held that there can be no profiteering and capitation fee can be charged. The Apex Court in Islamic Academy directed the State Governments/concerned authorities to set up in each state the Committee headed by a Retired High Court Judge who shall be nominated by the Chief Justice of that State.

The other Member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. The representative of the Medical Council of India or All India Council for Technical Education, depending upon the type of the institution, shall also be a member. The Secretary of the State Government, Incharge of medical education or technical education, as the case may be, shall be a member and Secretary of the Committee. The committee shall be free to nominate or co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institution must place before the 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 to decide whether fee proposed by that institute was justified and was not profiteering or charging capitation fee.

The Committee would be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of the period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the Institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. In paragraph-156, the Apex Court held that reasonable surplus should ordinarily vary from 06 % to 15%, as surplus, would be utilized for expansion of the system and development of education. It was further provided that the institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course.

33. The Fee Committee for fixing fee structure constituted by the Apex Court in Unnikrishnan was overruled in T.M.A. Pai. The observation made in paragraph 56 in T.M.A. Pai was explained clarified by the Apex Court in Islamic Academy and a Fee Committee was constituted which was challenged before the Apex Court in P.A. Inamdar. The Apex Court was required to consider and decide as to whether the explanation or clarification given in Islamic Academy was counter to or in conflict with T.M.A. Pai. Three questions were referred with regard to unaided minority and non-minority institutions imparting professional education. In this case we are concerned with questions as mentioned in paragraph-26 (iii) of the decision in P.A. Inamdar, about the fee structure. The Apex Court reformulated the questions referred to

it and spelled out four questions. We are concerned with questions no.3 and 4 of paragraph 27 of the Islamic Academy's case of the Apex Court as to whether guidelines could be issued in the matter regulating the fee payable by the students to the educational institutions and whether the fee structure could be regulated by the Fee Regulatory Committee ordered to be constituted in Islamic Academy case.

34. In P.A. Inamdar paragraphs 141, 144, 145, 147, 148, 149 and 150, the Apex Court considered the question of fee regulation and held that every institution was free to device its own fee structure but the same can be regulated in the interest of the preventing profiteering. No capitation fee can be charged. It was further held that the Committee for determining fee structure in the judgment of Islamic Academy was permissible as regulatory measures aimed at protecting the interest of the students community as a whole as also the minorities themselves, in maintaining the required standard of professional education on non-exploitative terms of their institutions. Legal provision made by the State Legislature or the scheme evolved by the court for monitoring fees do not violate the right of the minorities u/art. 30(1) or the right of minorities and non-minorities u/art. 19(1)(g) of the Constitution. It was held that the regulatory measures were reasonable restrictions in the interest of minority institutions permissible u/art. 30(1) and in the interest of the general public u/art. 19(6) of the Constitution.

The fixing of fee was required to be regulated and controlled at the initial stage, to curb the evil of unfair practice guided by the paying capacity of the candidates. The Committee framed by the Apex Court for regulating fee structure in Islamic Academy cannot be faulted either on the ground of alleged infringement of Art. 19(1)(g) in case of unaided professional educational institutions of both the categories and Art. 19(1)(g) read with Art. 30 in case of unaided professional institutions of minorities. The Apex Court had power u/art. 142 of the Constitution that till a suitable legislation or regulation is framed by the State to constitute a Committee as stop gap or ad hoc arrangement and such a Committee could not be equated with Unnikrishnan Committee. The Apex Court clarified in paragraph 150 that in case of any individual institution if any of the committees is found to have exceeded its power by unduly unfair in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi judicial in nature, would also be subject to judicial review.

35. The Apex Court in Cochin University of Science and Technology and another v. Thomas P. John and others (2008) 8 SCC, 82 2008 Indlaw SC 810 considered T.M.A.Pai, Islamic Academy and P.A.Inamdar on the question of fee structure and in paragraph 7 and 11 held as under:-

"7 ...We are also of the opinion that the matter relating to the fixation of a fee is a part of the administration of an educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision. The Supreme Court has laid down several broad principles with regard to the fixation of fees and as of today, those principles are being adopted by the committees set up for the purpose. It must be understood at the outset that an educational institution chalks out its own program year wise on the basis of the projected receipts and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. From this, however, it should not be understood that the educational institution has a carte blanche to fix any fee that it likes but substantial autonomy must be left to it...

11. A reading of the aforesaid judgments would reveal that the broad principle is that an educational institution must be left to its own devices in the matter of fixation of fee though profiteering or the imposition of capitation fee is to be ruled out and that some amount towards surplus funds available to an institution must be permitted and

visualized but it has also been laid down by inference that if the broad principles with regard to fixation of fee are adopted, an educational institution cannot be called upon to explain the receipts and the expenses as before a Chartered Accountant..."

In view of the aforesaid decisions we hold that the medical college is not under an onus to prove the accounts and levy of fee structure with mathematical precision as it would be difficult for medical college to discharge the onus with accuracy.

36. It is also relevant to point out over here that in paragraph 150 the Apex Court in P.A.Inamdar, the right to challenge the fee structure fixed by the Fee Regulatory Committee is available to the institutions if the Committee exceeds its powers by unnecessarily in the administrative and financial matters of the unaided private professional colleges.

37. So far as direction given by the learned Single Judge to consider also the surplus of NRI fee is concerned, it has been made without any basis as prior to the fixation of the present fee structure for the three years, there was no NRI seat in the Medical College and, therefore, there was no data available with regard to fee structure of NRI students for the previous three years, namely, 2003-04, 2004-05 and 2005-06. In fact, when a contention was raised before the learned Single Judge on the premise that concerned decision on the part of the Fee Regulatory Committee does not make any provision for determining the fees for admissions to NRI category, it was contended on behalf of the Parents Association and also on behalf of students that they are not representing the students admitted to NRI category. Further, when there does not exist State quota or Management quota in view of the decision of the Apex Court in the case of P.A. Inamdar 2005 Indlaw SC 463 (supra), the question pressed into service by the learned Single Judge in sub-paragraph (2) of paragraph 18 of the impugned judgment pales into absolute insignificance.

38. The learned Single Judge in exercise of his powers u/art. 226 and 227 of the Constitution could not interfere with the decision of the Fee Regulatory Committee by re-appreciating the evidence and record his own findings by entering into the accounting details. He could not act as an appellate authority. The Apex Court in State of W.B. v. Atul Krishna Shaw and another, AIR 1990 SC 2205 1990 Indlaw SC 405 had held in paragraph 7 as under:-

"7. It is indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

39. In another decision the Apex Court in Swaran Singh and another v. State of Punjab and others, AIR 1976 SC 232 1975 Indlaw SC 460 in paragraph 12 it held as below:-

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings u/art. 226. It is well settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of

Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Art. 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (AIR 1964 SC 477 1963 Indlaw SC 153*) (supra) "this limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be."*

40. In Champalal Binani v. The Commissioner of Income Tax W.B. And others, AIR 1970 SC 645 1969 Indlaw SC 330 in paragraph 5 it was held as under:-

"5 A writ of certiorari is discretionary; it is not issued merely because it is lawful to do so. Where the party, feeling aggrieved by an order of an Authority under the Income-tax Act *has an adequate alternative remedy which he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case to be made out for entertaining a petition for a writ. Where the aggrieved party has an alternative remedy the High Court would be slow to entertain a petition challenging an order of a taxing authority which is ex facie with jurisdiction. A petition for a writ of certiorari may lie to the High Court, where the order is on the face of it erroneous or raises question of jurisdiction or of infringement of fundamental rights of the petitioner."*

41. The Apex Court in Ritesh Tiwari and another v. State of U.P. and other (2010) 10 SCC 677 2010 Indlaw SC 766 held in paragraph 26 as below:-

"26. The power u/art. 226 of the Constitution *is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. the Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court.*

However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide Champalal Binani v. The Commissioner of Income Tax, West Bengal and Ors., AIR 1970 SC 645 1969 Indlaw SC 330*; Chimajirao Kanhojirao Shrike and Anr. v. Oriental Fire and General Insurance Co. Ltd., AIR 2000 SC 2532 : (2000 AIR SCW 2759* 2000 Indlaw SC 382*); LIC of India v. Smt. Asha Goel and Anr., AIR 2001 SC 549 : (2001 AIR SCW 161* 2000 Indlaw SC 2720*); The State Financial Corporation and Anr. v. M/s. Jagdamba Oil Mills and Anr., AIR 2002 SC 834 : (2002 AIR SCW 500* 2002 Indlaw SC 61*); Chandra Singh v. State of Rajasthan and Anr., AIR 2003 SC 2889 : (2003 AIR SCW 3518* 2003 Indlaw SC 541*); and Punjab Roadways, Moga through its General Manager v. Punjab Sahib Bus and Transport Co. and Ors, (2010) 5 SCC 235) : (2010 AIR SCW 3842* 2010 Indlaw SC 356*]."*

42. In view of law laid down by the Apex Court it is clear that a writ of certiorari is discretionary. Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals or where the order is on the face of it erroneous or raises question of jurisdiction or of infringement of fundamental rights of

the petitioner. Disturbance of findings of fact by re-appreciation of evidence is impermissible. The decision of the Apex Court, paragraph 35, relied by the learned counsel for the respondent in Cholan Roadways Ltd. v. G. Thirgnanasambandam (2005) 3 SCC 241 2004 Indlaw SC 1069that errors of facts can also be a subject matter of judicial review is not applicable to the facts of the instant case. Writ of certiorari u/art. 226 is issued for correcting errors of jurisdiction, where the inferior court or tribunal had overstepped or crossed the limits of jurisdiction or where the inferior court or tribunal had acted in disregard of law or the rules of procedure or acted in violation of principles of natural justice.

A writ u/art. 227 is issued under the supervisory jurisdiction for keeping the subordinate courts or tribunal within the bounds of their jurisdiction. The learned Single Judge has unilaterally had undertaken a fact finding inquiry dehors the pleadings made in the writ petition and rejoinder affidavit which was impermissible. After appreciating the relevant accounting data and other evidence and attending circumstances, the Fee Committee had come to a specific conclusion and has approved the fee structure in respect of the Medical College for three academic years 2006-07, 2007-08 and 2008-09 without any element of profiteering or capitation. It could not be interfered by this Court u/art. 226 of the Constitution of India at the instance of the respondents - the original petitioners in absence of any challenge that the fee structure contains an element of profiteering or capitation.

EXPERT OPINION

43. The question whether particular expenses incurred by the Trust for running the Medical College would qualify as part and parcel of the cost of imparting education at the Medical College or not, would fall within the domain of Fee Committee as it is a body of experts and once the Fee Committee on an appreciation of relevant facts and material had come to a conclusion and approved the fee structure, then the conclusion arrived at by the Fee Committee could not be objected, by the respondents the original petitioners, that such an expense would not qualify as the component of the cost of imparting education at the Medical College.

44. The report of the Chartered Accountant's firm S. B. Billimoria & Company would reveal that 50% of the total cost of running Shree Krishna Hospital would qualify as a teaching hospital has not been taken into consideration while computing the cost of imparting education at the Medical College. As a matter of fact, only 50% of the total cost of running the said teaching hospital was attributable to the medical education as opposed to the medical care had been considered in computing the cost of imparting education at the Medical College. A student in the Medical College spends only 50% of his time in the teaching hospital and, therefore, 50% of the cost of running the said teaching hospital was attributable to medical education as opposed to medical care should go to contribute towards the cost of imparting education at the Medical College. In cl. 9.2 of the report of the Chartered Accountant Firm, the arithmetical analysis of the relevant accounting data clearly records that only on an average 37% of total cost of running the said teaching hospital allocated to the cost of imparting education at the Medical College.

45. The learned Single Judge has held that the Trust is not charging any rent from the Medical College towards the building in which the Medical College was being run. No rent is charged by the Trust from the Medical College. The building in which the Medical College has been running has to be considered for the purposes of depreciation thereon for determining the cost of imparting education at Medical College. The Fee Committee which is also having a Chartered Accountant Member who is an expert in the field of accounting had not found depreciation claimed by the appellants to be objectionable. The expert's opinion could not be challenged by the respondents in the writ petition and

the learned Single Judge committed an error in interfering with the report of experts.

46. The law had been settled by the Apex Court that normally the Court does not interfere with the opinion of experts. Fee structure of medical college is finalized by experts in the field accountancy and medical education. The Court does not have the technical and administrative expertise in this respect. There should be judicial restraint in fiscal and economic regulatory measures. The Apex Court in Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and another, (2011) 1 SCC 640 2010 Indlaw SC 1027 in paragraphs 40 to 45 held as under:-

"40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or Press Note.

41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

42. In Prag Ice & Oil Mills vs. Union of India the Supreme Court observed:

"We do not think that it is the function of the Court to sit in judgment over such matters of economic policy as must necessarily be left to the government of the day to decide. Many of them are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."

43. In Shri Sitaram Sugar Co. Ltd. vs. Union of India 1990 Indlaw SC 740*, the Supreme Court observed:*

"Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the view of experts by its own views."

It must be remembered that certain matters are by their nature such as best be left to experts in the field. This Court does not have the technical and administrative expertise in this respect.

44. In the words of Chief Justice Neely:

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

45. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless

they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution*, encroach into this field."*

47. In another decision the Apex Court in State of Tamil Nadu and others vs. K.Shyam Sunder and others, (2011) 8 SCC 737 2011 Indlaw SC 493 in paragraph 42 held as below:-

"42. Undoubtedly, the Court lacks expertise especially in disputes relating to policies of pure academic, educational matters. Therefore, generally it should abide by the opinion of the Expert Body. the Constitution Bench of this Court in The University of Mysore v. C.D. Govinda Rao AIR 1965 SC 491 1963 Indlaw SC 169 *held that "normally the courts should be slow to interfere with the opinions expressed by the experts." It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be." This view has consistently been reiterated by this Court in Km. Neelima Misra v. Dr. Harinder Kaur Paintal (1990) 2 SCC 746* 1990 Indlaw SC 760*; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732* 2010 Indlaw SC 166*; Dr. Basavaiah v. Dr. H.L. Ramesh (2010) 8 SCC 372* 2010 Indlaw SC 565*; and State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh, (2011) 6 SCC 597* 2011 Indlaw SC 274*."*

48. In Basavaiah (Dr.) v. Dr. H.L. Ramesh and Others,(2010) 8 SCC 372 2010 Indlaw SC 565 the Apex Court in paragraph 25 to 39 held as under:-

"25. The teaching experience of foreign teaching institutions can be taken into consideration if it is from the recognized and institution of repute. It cannot be said that the State University of New York at Buffalo, where appellant no.2 served as an Assistant Professor would not be an institution of repute. The experts aiding and advising the Commission must be quite aware of institutions in which the teaching experience was acquired by him and this one is a reputed University. According to the experts of the Selection Board, both the appellants had requisite qualification and were eligible for appointment. If they were selected by the Commission and appointed by the Government, no fault can be found in the same. The High Court interfered and set aside the selections made by the experts committee. This Court while setting aside the judgment of the High Court reminded the High Court that it would normally be prudent and safe for the courts to leave the decision of academic matters to experts. The Court observed as under: [M.C. Gupta (Dr.)]

"7. ....When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be..."

26. In Dr. J. P. Kulshrestha & Others v. Chancellor,Allahabad University & Others the court observed that the court should not substitute its judgment for that of academicians:

17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts

should hesitate to dislodge decisions of academic bodies. "

27. In Maharashtra State Board of Secondary and Higher Secondary Education & Another v. Paritosh Bhupeshkumar Sheth & Others, the court observed thus

"29. ... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. "

28. In Neelima Misra v. Harinder Kaur Paintal & Others 1990 Indlaw SC 760*, the court relied on the judgment in University of Mysore* 1963 Indlaw SC 169 *(supra) and observed that in the matter of appointments in the academic field, the court generally does not interfere. The court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.*

29. In Bhushan Uttam Khare v. Dean, B.J. Medical College & Others 1992 Indlaw SC 868*, the court placed reliance on the Constitution Bench decision in University of Mysore* 1963 Indlaw SC 169 *(supra) and reiterated the same legal position and observed as under:*

8. ... the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

30. In Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305 1989 Indlaw SC 172*, the court in some what similar matter observed thus:*

"12. ...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

31. The Chancellor & Another etc. v. Dr. Bijayananda Kar & Others 1993 Indlaw SC 257 *, the court observed thus:*

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection."

32. In Chairman J & K State Board of Education v. Feyaz Ahmed Malik 2000 Indlaw SC 122*, the court while stressing on the importance of the functions of the expert body observed that the expert body consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience*

and were entrusted with the duty of maintaining higher standards of education. The decision of such an expert body should be given due weightage by courts.

33. In Dental Council of India v. Subharti K.K.B.Charitable Trust 2001 Indlaw SC 20153*, the court reminded the High Courts that the court's jurisdiction to interfere with the discretion exercised by the expert body is extremely limited.*

34. In Medical Council of India v. Sarang 2001 Indlaw SC 43*, the court again reiterated the legal principle that the court should not normally interfere or interpret the rules and should instead leave the matter to the experts in the field.*

35. In B.C. Mylarappa v. Dr.R. Venkatasubbaiah 2008 Indlaw SC 2152*, the court again reiterated legal principles and observed regarding importance of the recommendations made by the expert committees.*

36. In Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University 2008 Indlaw SC 2251*, the court reminded that it is not appropriate for the Supreme Court to sit in appeal over the opinion of the experts.*

37. In All India Council for Technical Education v. Surinder Kumar Dhawan 2009 Indlaw SC 2026*, again the legal position has been reiterated that it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.*

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

39. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single Judge of the High Court."

PLEADINGS

49. Before the learned Single Judge, the records were produced. The learned Single Judge has entered into the accounting data submitted by the appellants before the Fee Committee and had found discrepancies in the accounting data though there was no pleading in the writ petition filed by the respondents that the accounting data which was submitted by the appellants before the Fee Committee suffered from any discrepancy. In absence of any pleading, the learned Single Judge illegally and unilaterally went into a fact finding inquiry to arrive at a conclusion that there were discrepancies in the accounting data. The learned Single Judge without being an expert in the field of accountancy held that there were discrepancies in the depreciation mentioned in the audited books of accounts which had been submitted by the appellants for the purpose of working out the cost of imparting education in the Medical College.

The learned Single Judge further committed an error in considering as to whether straight line method or written down value method of accountancy is to be followed for the purpose of working out the component of depreciation as part and parcel of the cost of imparting education. We are of the considered opinion that the learned Single Judge was not an expert in the field of accountancy and he could not interfere with the accounting data submitted by the appellants before the Fee Regulatory Committee which had been accepted by the experts and to arrive at a different conclusion or to find

fault with the accounting data on the basis of which the Fee Regulatory Committee, had fixed the fee structure. The learned Single Judge should not have entered into the accounting data in absence of any pleadings made in the writ petition and, therefore, the order passed by the learned Single Judge is wholly illegal and cannot be maintained as the learned Single Judge has travelled beyond the scope of the pleadings made in the writ petition.

50. The Apex Court in Ritesh Tiwari v. State of U.P. and others (2010) 10 SCC 677 2010 Indlaw SC 766, in paragraph 24 and 25 held as under:-

"24. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In Bharat Singh v. State of Haryana (1988) 4 SCC 534 1988 Indlaw SC 619*, this Court has observed as under: :-*

"13. ... In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure *and a writ petition or a counter- affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."*

(Emphasis added)

(See also Vithal N. Shetti v. Prakash N. Rudrakar (2003) 1 SCC 18 2002 Indlaw SC 1428*; Devasahayam v. P. Savithramma (2005) 7 SCC 653* 2005 Indlaw SC 586 *; Sait Nagjee Purushotham and Co. Ltd. v. Vimalabai Prabhulal (2005) 8 SCC 252* 2005 Indlaw SC 596 *and Rajasthan Pradesh V. S. Sardarshahar v. Union of India (2010) 12 SCC 609* 2010 Indlaw SC 422.*)*

25. The present appeal definitely does not contain pleadings required for proper adjudication of the case. A party is bound to plead and prove the facts properly. In absence of the same, the court should not entertain the point."

51. The Apex Court in National Textile Corporation Limited v. Nareshkumar Badrikumar Jagad and others (2011) 12 SCC 695 2011 Indlaw SC 561 in paragraph 12 to 19 held as under:-

"12. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: M/s. Trojan & Co. v. Nagappa Chettiar, AIR 1953 SC 235 1953 Indlaw SC 6*; State of Maharashtra v. M/s. Hindustan Construction Co. Ltd., (2010) 4 SCC 518* 2010 Indlaw SC 238*; and Kalyan Singh Chouhan v. C.P. Joshi, (2011) 11 SCC 786* 2011 Indlaw SC 56*).*

13. In Ram Sarup Gupta v. Bishun Narain Inter College (1987) 2 SCC 555 1987 Indlaw

SC 28351*, this Court held as under: "6...... in the absence of pleadings, evidence if any, produced by the parties cannot be considered...... no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."*

Similar view has been reiterated in Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491 2008 Indlaw SC 2111.

14. In Kashi Nath v. Jaganath, (2003) 8 SCC 740 2003 Indlaw SC 942*, this Court held that where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. Same remain the object for framing the issues under Order XIV* CPC *and the court should not decide a suit on a matter/point on which no issue has been framed. (Vide: Biswanath Agarwalla v. Sabitri Bera (2009) 15 SCC 693* 2009 Indlaw SC 1087*; and Kalyan Singh Chouhan* 2011 Indlaw SC 56 *(supra).*

15. In Syed and Co. v. State of J & K, 1995 Supp (4) SCC 422 1992 Indlaw SC 760*, this Court held as under:*

"7...Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading.

8. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

16. In Chinta Lingam v. The Govt. of India (1970) 3 SCC 768 1970 Indlaw SC 298*, this Court held that unless factual foundation has been laid in the pleadings no argument is permissible to be raised on that particular point.*

17. In J. Jermons v. Aliammal (1999) 7 SCC 382 1999 Indlaw SC 1248*, while dealing with a similar issue, this Court held as under:*

31. .... there is a fundamental difference between a case of raising additional grounds based on the pleadings and the material available on record and a case of taking a new plea not borne out of the pleadings. In the former case no amendment of pleading is required, whereas in the latter it is necessary to amend the pleadings...

32. ...The respondents cannot be permitted to make out a new case by seeking permission to raise additional grounds in revision."

18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. (See : M/s Sanghvi Reconditioners Pvt. Ltd. v. Union of India (2010) 2 SCC 733 2010 Indlaw SC 85*; and Greater Mohali Area Development Authority v. Manju Jain (2010) 9 SCC 157* 2010 Indlaw SC 648*]."*

RELIEF

52. We have gone through the relief claimed in the writ petition. We do not find that there was any relief claimed in the writ petition for setting aside the accounting data furnished by the appellants or for setting aside the fee structure based on the accounting data furnished by the appellants or the fee structure fixed by the Fee

Regulatory Committee.

53. In State of Orissa and another v. Mamata Mohanty (2011) 3 SCC 436 2011 Indlaw SC 96 the Apex Court in paragraph 55 held as below:-

"55. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted."

Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho (1897-98) 25 Ind. App. 195 (PC) ; Trojan & Co. v. Nagappa Chettiar, AIR 1953 SC 235 1953 Indlaw SC 6 *; Ishwar Dutt v. Land Acquisition Collector (2005) 7 SCC 190* 2005 Indlaw SC 445 *; and State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518* 2010 Indlaw SC 238*)."*

54. The Apex Court in Manohar Lal v. Urgasen and others (2010) 11 SCC 557 2010 Indlaw SC 423 has held in paragraph 30 as under:-

"30 In Trojan & Co. v. Nagappa Chettiar 1953 Indlaw SC 6*, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under; [AIR p. 240, para 22]*

"22..... It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

55. In view of the aforesaid decisions of the Apex Court, it is clear that in absence of any pleadings and relief claimed in the writ petition, the learned Single Judge could not grant a relief which had not been claimed by the petitioners/respondents. Therefore, the order of learned Single Judge deserves to be set aside.

56. We have held while deciding Letters Patent Appeal No.482 of 2008 that the learned Single Judge could not enter into accounts which had been accepted by the experts of Fee Regulation Committee and in absence of pleadings the learned Single Judge could not enter into depreciations or accounting method or the part of running cost of Shri Krishna Hospital could be taken while computing cost of imparting education at the medical college.

57. For the reasons given above, we are of the considered opinion that the learned Single Judge committed an error of law in entering into the accounting procedure and accounting method and in finding faults with the depreciation claimed by the appellants in absence of any pleading made in the writ petition. We are further of the opinion that NRI surplus was not available as in the earlier years, there was no NRI seats reserved for NRI students. It was not open to the learned Single Judge to reappraise the evidence on record which was examined and approved by the experts of Fee Regulatory Committee and find faults with it in absence of any specific pleadings.

CONCLUSION

58. For the reasons given above, Letters Patent Appeal No.482 of 2008 succeeds and is allowed, the judgment dated 19-24.03.2008 passed by the learned Single Judge in Special Civil Application No.25954 of 2007 is set aside. The differential amount of fee

deposited by the respondents - students before this Court shall be paid by the Registrar of this Court to the appellants in the name of the appellant No.2 of Letters Patent Appeals No.482 of 2008 i.e. Pramukhswamy Medical College as per the amount deposited, by an account payee cheque within a period of six weeks from the date of this judgment. Letters Patent Appeal No.895 of 2008 fails and is, therefore, dismissed. Parties shall bear their own costs in all the appeals.

59. After the judgment was pronounced, Mr. A. J. Yagnik, learned counsel for the respondent Nos.1 to 199 in Letters Patent Appeal No.482 of 2008 made an oral prayer that the operation of the judgment delivered today may be stayed as he wants to file SLP before the Apex Court. Since question involved in this appeal is settled by various decisions of Apex Court, we are not inclined to grant the oral request made by learned counsel for the respondents for staying our judgment. The oral request is rejected.

Appeals disposed of

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