

2022 LiveLaw (SC) 501

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
L. NAGESWARA RAO; B. R. GAVAI, JJ.
May 19, 2022

Rashtreeya Sikshana Samithi Trust Etc.
Versus

Committee for Fixation of Fee Structure of Private Professional Colleges & Ors. Etc.

Education - Private Medical Colleges - Capitation Fee - The management of private medical colleges are strictly prohibited from accepting payment of fees in cash, in order to avoid charging of capitation fee - Directions to curb capitation fee menace issued - A web-portal under the aegis of Supreme Court has to be set-up wherein any information about the private medical colleges charging capitation fees can be furnished by the students - While fixing fee, the Fee Fixation Committees of the States should take into account all the components of fee, leaving no scope for managements to charge any additional amounts apart from what has been prescribed by the fee fixation committee from time to time. (Para 13-15)

Civil Appeal Nos. 3978-3995 of 2017 with Civil Appeal Nos. 4051-4057 of 2017 Civil Appeal Nos.4076-4077 of 2017 Civil Appeal No.4067 of 2017 Civil Appeal Nos.4222-4239 of 2017 Civil Appeal Nos.3997-4004 of 2017 Civil Appeal Nos. 4058-4964 of 2017 Civil Appeal Nos.4084-4215 of 2017 Civil Appeal No. 4006 of 2017 Civil Appeal No. 4008 of 2017 Civil Appeal Nos.4015-4022 of 2017 Civil Appeal Nos.4024-4037 of 2017 Civil Appeal Nos.4040-4048 of 2017

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ORDER

1. Orders passed by Fee Fixation Committee for undergraduate medical courses for the academic years 2004-2005, 2005-2006 and 2006-2007 were challenged by the students and private medical colleges in the High Court. The High Court allowed the writ petitions filed by the students and dismissed the writ petitions filed by the management of private medical colleges. Notice was issued by this Court in the Special Leave Petition on 09.07.2010. On 16.08.2010, the judgment of the High Court was stayed subject to the condition that the private medical colleges would refund fee to the students in terms of the order of High Court and subject to the condition that the students furnish bank guarantees.

2. On 06.08.2014, this Court noticed its earlier judgments which have dealt with the imperative need to curb the practice of levying capitation fee. In spite of repeated directions issued by the Court to stop the menace of capitation fee, this Court observed that the hard reality of charging exorbitant capitation fee was very much prevalent. When it was brought to the notice of this Court that there is a legislation in the States of Karnataka, Tamil Nadu, Maharashtra and Andhra Pradesh to curb the menace of charging capitation fee, the Court expressed its concern that in spite of the legislations, the said practice has not been effectively stopped. In order to put in place effective measures to end the practice of charging capitation fee, Shri Salman Khurshid, learned senior counsel was appointed as Amicus Curiae to make a detailed analysis of the problem and suggest an appropriate mechanism by which the charging of capitation fee can be stalled. A direction was given to the States of Karnataka, Tamil Nadu, Andhra Pradesh and Maharashtra to furnish required information to the learned Amicus Curiae, especially regarding complaints received, action taken report and any other data available on the aspect of levying capitation fee. Shri. Mohit Kumar Shah, Advocate-on-Record was requested to assist the learned Amicus Curiae and was directed to create a website wherein email address and postal address could be furnished exclusively to gather more information from the public at large who were/are directly affected and who have relevant information relating to the collection of capitation fee. The State Governments were requested to assist the Advocate-onRecord for creation of the website and email address and get them published in the local newspapers, both vernacular and English. The learned Amicus Curiae was directed to place on record, a report based on the information gathered from public and other sources.

3. Pursuant to the order dated 06.08.2014, the learned Amicus Curiae filed an interim status report on 07.10.2014 in which it was stated that the situation in State of Karnataka has improved considerably subsequent to the directions and pronouncements of this Court. This Court was informed by the learned Amicus Curiae that a list of 20 queries

was forwarded to the States of Karnataka, Andhra Pradesh, Tamil Nadu and Maharashtra for their responses on certain material aspects. In the light of comments and reports of the State Governments, it was suggested by the learned Amicus Curiae that a response of the Medical Council of India and Dental Council of India to the comments of State Governments should be obtained. In the said Status Report, the learned Amicus Curiae stated as under: -

“From preliminary discussions it appears that the legal structure put in place as a result of the judgments of the Supreme Court continue to suffer some unregulated areas such as the admissions made by selffinancing colleges and Deemed universities. There is a feeling of lack of adequate transparency in the matter of entrance examinations conducted by groups of institutions that form associations for the purpose of conducting entrance examinations. Attempts to shed light on this such as a PIL filed before the Hon’ble Madras High Court did not reach any productive solution as no complainants were willing to come forward. This remains a major impediment in implementation of the legal regime as candidates do not wish to jeopardise their careers.”

This Court on 16.08.2016 examined the Interim Status Report in detail, and directed the Registry to furnish a copy of the Report to the Chief Secretaries / Administrator of the respective States / Union Territories and to the representative of the students who were directed to forward their responses to the Amicus Curiae directly. The appeals were directed to be listed for further directions on the Interim Status Report thereafter.

4. The matter was listed for hearing on 20.04.2022 when this Court requested Ms. Lubna Naaz to substitute Mr. Mohit Kumar Shah, who has been elevated as Judge of Patna High Court, for carrying out the directions relating to the creation of the website with the assistance of the Registry. The learned Amicus Curiae was requested to give suggestions regarding the steps to be taken for effective compliance of the directions that were already given by this Court on 06.08.2014.

5. Notice was issued to the National Informatic Centre (‘NIC’) on 28.04.2022 for facilitating the creation of website. On the same day, notice was also issued to Ministry of Electronics and Information Technology and the State of Telangana was also directed to be the impleaded as a party-respondent. These appeals were directed to be listed on 04.05.2022 on which day submissions of the learned Amicus Curiae, learned counsel appearing for the State Governments and private medical colleges were heard. The learned Amicus Curiae was directed to take note of the submissions made by the learned counsel for curbing the illegal practice of charging capitation fee and submit a note along with the suggestions. The learned Amicus Curiae has compiled all the suggestions made by the counsel appearing for medical colleges and State Governments and also given his comments.

6. Before we proceed to deal with the suggestions made for effectively stopping the practice of charging capitation fee by medical colleges, it is necessary to refer to how this Court has previously dealt with the evil practice of charging capitation fee and the immediate need to stop the practice of collection of capitation fee by private medical

colleges. In **TMA Pai Foundation & Ors. v. State of Karnataka**¹, this court observed that a rational model 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 there is no profiteering, though a reasonable surplus for the furtherance of education is permissible.

7. While clarifying the judgment of this Court in **TMA Pai Foundation**², this Court in **Islamic Academy of Education and Anr. v. State of Karnataka and Ors.**³ observed that once fee is fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fee. If any other amount is charged, under any other head or guise, e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering, that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation. In the said judgment, this Court took note of the fact that the States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh have enacted statutes prohibiting collection of capitation fee and regulating admission process in professional colleges. In terms of the provisions of the said Acts, the management of the professional colleges were prohibited from charging any amount other than fee determined under the said Acts. This Court further observed that the expression “capitation fee” does not have any fixed meaning. It referred to the definition of capitation fee in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, which is as follows: -

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

8. Lastly, in **P.A. Inamdar v. State of Maharashtra**⁴, this Court held that capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. This Court observed that it cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts. This Court was of the opinion that the method of admission has to be regulated so that the admissions are based on merit and transparency if the charging of capitation fee and profiteering has to be kept in check.

9. In spite of the State Governments enacting legislations prohibiting the practice of charging capitation fee and making it an offence, the stark reality which cannot be ignored is that capitation fee being charged for admission to medical colleges is prevalent even today. For the present, by this Order, we are only concerned with the suggestions that are made by the learned Amicus Curiae for curbing the menace of capitation fee, after taking note of the suggestions and comments of learned counsel appearing for the

¹ (2002) 8 SCC 481.

² Supra

³ (2003) 6 SCC 697.

⁴ (2005) 6 SCC 537.

States, medical colleges and National Medical Council for the issuance of appropriate directions.

10. Pursuant to orders dated 6.08.2014 and 20.04.2022, Shri Hargurvarinder S. Jaggi, Officer on Special Duty in the Supreme Court of India, has been nominated for rendering assistance to learned Amicus Curiae in the matter of setting up a web portal which would serve as a platform for the aggrieved persons to provide information relating to any demand of capitation fee made by the private medical colleges. Though, we are informed that no complaint has been received by any State Government regarding charging of capitation fee, it was suggested that a web portal under the aegis of Supreme Court would provide confidence in the public to furnish any information relating to capitation fee being charged by private medical colleges. The Ld. Amicus Curiae further suggested that all candidates taking the National Eligibility-cum-Entrance Test (NEET) for undergraduate, postgraduate and super speciality courses should be informed about the web-portal wherein complaints with respect to charging of capitation fee can be registered. In addition, a pamphlet should also be issued to the students and parents regarding the existence of website at the time of counselling. The Chief Secretaries of the State Governments and Union Territories should ensure that the details of the website are published in English as well as vernacular newspapers to spread awareness amongst the public at large. This website could be maintained by the National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology.

11. The other suggestions relate to the steps to be taken by the concerned authorities to prevent the practice of charging capitation fee. One important suggestion in this regard is the completion of all rounds of counselling, including stray vacancies round, at least two weeks before the last date for completion of the admission process as per the schedule fixed by the National Medical Council and Dental Council of India. It was brought to our notice that names of ten students for each seat which remains to be filled in stray vacancies round are sent by the competent authority from which the private medical colleges are given liberty to make admissions on the basis of merit. For the purpose of ensuring transparency in the process, the names of students which are recommended by the authority for admission in the stray round vacancy have to be made public along with the rank allotted to them in the NEET exam. It was suggested that the admissions should be made strictly on the basis of merit and in the event of any admission to the contrary, suitable action shall be taken against the private medical colleges. We are in agreement with the suggestions made by the learned Amicus Curiae.

12. Another point made by the learned counsel relates to fee that is charged by the private medical colleges in the guise of additional charges such as establishment fee, room rents/hostel fee, mess fee, bus fee, library fee, laboratory fee, internet charges, special posting fee etc. It was suggested that the Fee Fixation Committees in the State should fix a price band for different expenses and the colleges should be directed not to charge any amount from students in addition to the prices that are fixed by the Fee Fixation Committee. We see force in the submission made by the learned counsel on this behalf. The Fee Fixation Committees have to fix the fee without leaving any scope for the managements of private medical colleges to charge any additional fee which is

not part of fee fixed by the Committees. We make it clear that the Fee Fixation Committees have to take into account all components of fee proposed to be charged by the Management while determining the fee to be paid by the students. For this purpose, assistance can be sought from the report of Hon'ble Mr. Justice B.N. Srikrishna dated 26.08.2021 for reviewing the existing fee structure and for fixing the norms and guidelines for charging tuition and other fees in which the Committee has prescribed the parameters and guidelines for the types of fees to be charged by the institutions recognized by the AICTE. The report also prescribes the minimum and maximum fees which includes the tuition fee, development fee, examination fee and other fees.

13. It was submitted that the managements of private medical colleges should be directed not to receive fee through cash payment and to prohibit certain private medical colleges from insisting on payment of fee for entire course in advance. The latter issue of payment of fee for the entire course in advance is the subject matter of another SLP bearing SLP (C) No. 11296 of 2021 titled JNU Institute for Medical Sciences and Research Centre & Ors. v. Deepesh Singh Beniwal & Ors., in which this Court on 23.09.2021 had directed the Ministry of Health and Family Welfare, Government of India to conduct a meeting with all the stakeholders to find a solution to the issue. For the former issue, we are in agreement with the suggestion that the managements of private medical colleges should not accept any fees in cash in order to avoid the charging of capitation fee. It has also been suggested that the Director General of Health Services and other concerned authorities of the State Governments should ensure that the All-India Quota and State Quota round of counselling is completed strictly in accordance with the time schedule that is fixed. The regulatory authorities should be directed to consider fixing a schedule by which the last round of counselling, that is stray round, is completed at least two weeks before the last date of closure of admissions.

14. The conspectus of the above discussion would lead us to the following conclusions: -

- (a) A web-portal under the aegis of Supreme Court has to be set-up wherein any information about the private medical colleges charging capitation fees can be furnished by the students. The webportal has to be maintained and regulated by the National Informatics Centre (NIC) under the Ministry of Electronics and Information Technology;
- (b) The Chief Secretaries of the States and Union Territories are directed to publish the details about the web-portal in the English as well as vernacular newspapers at the time of admission. In addition, a pamphlet should be compulsorily given to the students and their parents at the time of counselling informing them about the availability of the web-portal;
- (c) While fixing the schedule for the admission process, the National Medical Commission and the Dental Council of India have to make sure that the counselling for all the rounds, including the stray vacancy round, is completed at least two weeks before the last date of admission;
- (d) The names of students who are recommended by the authority for admission in the stray round vacancy have to be made public along with rank allotted to them in the

NEET exam. The admissions should be made strictly on the basis of merit and in the event of any admission to the contrary, suitable action shall be taken against the private medical colleges;

(e) While fixing fee, the Fee Fixation Committees of the States should take into account all the components of fee, leaving no scope for managements to charge any additional amounts apart from what has been prescribed by the fee fixation committee from time to time. In the event that the management intends to charge additional amounts over and above the price band fixed by the Fee Fixation Committee, or for any component not included in the structure fixed by the Fee Fixation Committee, the same can only be done with the concurrence of the Fee Fixation Committee;

(f) The management of private medical colleges are strictly prohibited from accepting payment of fees in cash, in order to avoid charging of capitation fee. The students or any other aggrieved persons are at liberty to report on the web-portal regarding collection of fees in cash by any medical colleges;

(g) The Director General of Health Services and other concerned authorities to the State Governments should ensure that the All-India Quota and State Quota rounds of counselling are completed strictly in accordance with the time schedule that is fixed.

15. The aforementioned suggestions of the Amicus Curiae and the learned Counsel for the States and National Medical Council are accepted and directions are issued accordingly.

16. List these Civil Appeals in July, 2022 for further hearing.