

W.P.No.14232 of 2017THE HON'BLE CHIEF JUSTICEandM.SUNDAR, J.

This writ petition registered as public interest litigation filed by Shri.V.B.R.Menon, an Advocate and a public spirited citizen, pertains to the admission of students to the Post Graduate Courses in Medical Colleges, which are self-financed deemed universities.

2. We are informed that there are seven Medical Colleges and a Dental College in the Union Territory of Puducherry of which four are self-financed Deemed Universities, who are impleaded as respondents 8 to 11.

3. In exercise of powers conferred by Section 26 of the University Grants Commission Act, 1956, the Central Government has framed UGC (Institutions Deemed to be Universities)

Regulations, 2016. Regulation 6 provides as follows:

“6.0 ADMISSIONS AND FEES STRUCTURE

6.1 No institution deemed to be university shall, for admission in respect of any course or programme of study conducted in such institution, accept payment towards admission fee and other fees and charges:-

(a) which is a capitation fee or donation in whatever nomenclature or form;

(b) other than such fee or charges for such admission, which has been declared by it in the prospectus for admission against any such seat, and on the website of the institution,

Provided if there are any fees prescribed in accordance with the Fee Regulations framed by the Government or by the Commission from time to time, then the fees or other charges for admission shall not exceed the same.

(c)

6.5 Every institution deemed to be university shall publish, before expiry of sixty days prior to the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the following for the

purposes of informing those persons intending to seek admission to such institution and the general public, namely:-

(i) each component of the fee, deposits and other charges payable by the students admitted to such institution for pursuing a course or a programme of study, and the other terms and conditions of such payment;

.....”

4. Admissions to all the above seven Medical Colleges are done through the Centralized Admission Committee (hereinafter referred to as “CENTAC”), Puducherry, through a common competitive admission test followed by counselling. The CENTAC carried out common counselling for admissions to the Post Graduate (MD) Course in all the seven Medical Colleges for the academic year 2017-2018. After two rounds of counselling, 219 out of 314 seats have been filled up.

5. According to the petitioner, the Fee Committee constituted by the Union Territory of Puducherry has determined

the fees for private Medical Colleges. The fees for Post Graduate Course in a private Medical College is Rs.5,50,000/- per annum in respect of students of the State quota and Rs.14.00 lakhs in respect of the students of the Management quota. This is not in dispute.

6. The Fee Committee has not determined and/or put any limit to the fees that can be charged by the self-financed Deemed Universities.

7. While the private colleges charge Rs.5,50,000/- per annum for the seats of the State quota and Rs.14.00 lakhs per annum for the seats of the Management quota, the Deemed Universities are charging fees of Rs.40 to Rs.50 lakhs per annum, for the same courses.

8. It has also been argued that in contravention of the requirement of law, the fees charged by the Deemed Universities was not notified at the time of common counselling.

9. By reason of prohibitive fees, many students who had cleared the admission process, undergone counselling and allowed provisional admission have not been able to join by reason of their inability to deposit Rs.40 to Rs.50 Lakhs at short notice and the seats in the Deemed Universities are lying vacant.

10. Mr.G.Masilamani, learned Senior Counsel appearing on behalf of respondent No.11 submitted that there was uniform cut- off date for admission to medical courses fixed by the Medical Council of India pursuant to the orders of the Hon'ble Supreme Court. The last date of admission to the Post Graduate Course in a Medical College is 31st May 2017. This Court ought not to pass any order directing admission of students as the last date for admission has already expired.

11. It is true that ordinarily the Court should not direct admission of students after the uniform cut-off date. However,

as held by the Hon'ble Supreme Court in *Asha v. PT.B.D.Sharma University of Health Sciences and others*, reported in (2012) 7 SCC 389, though the authorities cannot grant admission beyond the cut-off date which is specifically postulated, but when no fault is attributable to a candidate and a candidate is denied admission for arbitrary reasons, the cut-off date cannot be permitted to operate as a bar to admission, when adherence to the cut-off date would ruin the professional career of a meritorious candidate for no fault of his/hers.

12. This, in our view, is a fit case where the concerned students should be allowed to join after 31st May 2017. The classes started on 7th June, 2017. In this context, it would perhaps be pertinent to note that provisional admission was given prior to 31st May 2017 which was the cut-off date. However, the students concerned could not join for reasons not attributable to them.

13. The fee of Rs.40.00 lakhs to Rs.50.00 lakhs per annum

for a medical course, when as observed above, the fee fixed for private institutions is Rs.5,50,000/- per annum in respect of State quota and Rs.14.00 lakhs per annum in respect of the Management quota is *prima facie* unreasonably high, arbitrary and prohibitive. Furthermore, we are informed that the fee was not notified at the time of counselling as is required to be done.

14. We are of the *prima facie* view that a Fee Committee ought to be constituted by the University Grants Commission to fix the fee structure in self-financed deemed Universities upon a comprehensive study of all relevant factors including reasonable cost that might be incurred by the deemed university for education of each student. Both the Government of Puducherry and the Secretary to the Lieutenant Governor have filed separate affidavits observing that the fee structure in deemed Universities in Puducherry is exorbitant.

15. Mr.A.Gandhiraj, learned Government Pleader (Puducherry) appearing on behalf of the Union Territory of

Puducherry, as well as learned counsel appearing for the Union of India and the UGC all agree that there is need to constitute a Committee to regulate the fees chargeable by privately financed deemed Universities.

16. The issue of whether guidelines can be issued in the matter of regulating the fee payable by the students of educational institutions and whether admission procedure and the fee structure can be regulated by constitution of a Committee were considered by the Hon'ble Supreme Court in *P.A. Inamdar v. State of Maharashtra*, reported in (2005) 6 SCC 537. The Hon'ble Supreme Court held:

“146. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving

admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure.

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

148. A fortiori, we do not see any impediment to the constitution of the

Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with *Unni Krishnan*[(1993) 1 SCC 645] Committees which were supposed to be permanent in nature.

151. On Question 4, our conclusion, therefore, is that the judgment in *Islamic Academy* (2003) 6 SCC 697] insofar as it evolves the scheme of the two Committees, one each for *admission* and *fee structure*, does not go beyond the law laid down in *Pai Foundation*[(2002) 8 SCC 481] and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of the two Committees in accordance with the decision in *Islamic Academy* [(2003) 6 SCC 697] therefore, fails. However, the observation by way of clarification, contained in the latter part of para 19 of

Islamic Academy [(2003) 6 SCC 697] which speaks of quota and fixation of percentage by the State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question 1.”

17. In *P.A. Inamdar* supra, the Hon'ble Supreme Court deprecated profiteering and exploitation of students and held that it is permissible to regulate admission and fee structure for achieving the purpose. The Hon'ble Supreme Court in effect held that even though an institution might be free to devise its own fee structure, the same could be regulated in the interest of preventing profiteering and exploitation of students.

18. As observed above, by reason of the exorbitant fees notified by the deemed Universities, there are still seats going vacant. The students who have duly competed and succeeded in clearing the admission tests and have undergone counselling are

being deprived of an opportunity to pursue their higher studies by reason of prohibitive fees which is *prima facie* unsustainable in law.

19. Counsel appearing on behalf of the deemed universities submit that no order should be passed on the petition of a so called public spirited citizen in a public interest litigation when no candidate has actually come forward.

20. Counsel appearing on behalf of the deemed Universities submit that the students of deemed Universities are provided additional facilities, education of better standard and the fee charged is commensurate with the expenditure incurred by such Universities. However, when self-financed private medical colleges can survive charging fees of Rs.5,50,000/- per annum from the students of the State quota and Rs.14.00 lakhs from students of the Management quota which is 50% of the total seats, we find it difficult to accept that fee of Rs.40.00 lakhs to Rs.50.00 lakhs per annum is reasonable. The observations are

however *prima facie* observations and will not influence the decision of the Fee Committee.

21. The admission of students in medical institutions as also fee charged by such medical institutions are *ex-facie* the matters of immense public importance. This Court cannot shut its eyes to impediments in the way of individual litigation by young students. This Court can take note of the facts pleaded by a public spirited citizen in a public interest litigation and *suo motu* pass orders to redress the grievances of the student community. Moreover, we are informed that separate writ petitions have also been filed by and/or on behalf of affected candidates.

22. We, therefore, deem it appropriate to pass an interim order directing the deemed Universities to admit the students provisionally selected and successful in the admission tests/counselling to the vacant seats in order of their merit, subject to the condition that the students shall each deposit Rs.10.00 lakhs at the time of admission towards the annual fee

for the first year with CENTAC (third respondent) and subject to the further condition that in the event the fees determined by the Fee Committee that may be constituted by the University Grants Commission (seventh respondent) and Ministry of Human Resource Development (sixth respondent) to study the fee structure of the deemed Universities is higher, they shall pay the differential amount. Needless to mention that those students who have already taken admission by depositing the full fees will, if necessary, be entitled to refund/adjustment of the difference between the fees that might be determined by the Committee and the amount paid by them. Such admission shall be effected within 5 P.M. on 19th June 2017 and the students will be allowed to provisionally attend their classes from 20th June 2017. Needless to mention that the admission of students pursuant to this interim order shall abide by the result of the writ petition.

23. We are informed that there are some non-clinical courses in the deemed universities for which the fees varies

between Rs.3 to 4 Lakhs. In such case, the students will be required to pay the amount of fees charged and not Rs.10 Lakhs.

24. Considering that the future of the students who are admitted pursuant to this interim order remains uncertain, there is an immense urgency and we expect that the University Grants Commission (seventh respondent) and Ministry of Human Resource Development (sixth respondent) shall forthwith constitute a Committee to regulate the fees chargeable by the self-financed deemed Universities, after giving all stakeholders including the Universities adequate opportunity of representation. The decision of the Fee Committee shall abide by the result of the writ petition.

25. Counter-affidavits be filed within two weeks.

26. Rejoinder thereto, if any, be filed within one week thereafter.

27. List on 14.07.2017.

28. CENTAC (third respondent) shall communicate this order to the students individually. The learned Government Pleader (Puducherry) appearing for the Union Territory of Puducherry and CENTAC undertakes to notify this order by publication in the print and electronic media also. The petitioner also undertakes to communicate this order.

(I.B., CJ.) (M.S.,J.)
16.06.2017

Index : Yes/No
Internet : Yes

Note to Registry:
Issue order copy today itself.

bbr/sasi

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR, J.

bbr/sasi

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