IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1235 of 2007 with CWP No. 384 of 2008.
Reserved on: 19.06.2013.
Pronounced on: 17.09.2013

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1. **CWP No. 1235 of 2007**

Bhojia Dental College & Hospital & another ...Petitioners.

Versus

State of Himachal Pradesh through Principal Secretary & another.
...Respondents.

2. **CWP No. 384 of 2008**

Bhojia Charitable Trust & another. ....Petitioners

Versus

State of Himachal Pradesh and others. ....Respondents.

Coram:

The Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice
The Hon'ble Mr. Justice Kuldip Singh, Judge

Whether approved for reporting? Yes.

For the petitioner(s): Mr. Rajnish Maniktala, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General with Mr. Romesh Verma, Additional Advocate General and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 & 2.

Mr. Ajay Mohan Goel, Advocate, for respondents No. 4, 6, 8, 9, 11, 12, 14, 16, 17, 19 to 21, 23 & 24.

Justice A.M.Khanwilkar, C.J.

Both these petitions are filed by the Management of Bhojia Dental College and Hospital, Chandigarh-Nalagarh road at Bhud (Baddi). In the former writ petition (CWP No. 1235 of 2007), the petitioners have challenged the validity of the Himachal Pradesh Unaided Dental Colleges (Regulations of Admissions and

Fixation of Fee for Academic Year 2003-04) Act, 2006, which has come into force w.e.f. 15.9.2003 and in particular, Section 4 thereof. It is further prayed that the tuition fees as was notified by the State and upheld by this Court in relation to academic session 2003-04 be held to be applicable qua the petitioner-College. Alternatively, the fees prescribed as per notification dated 15.9.2003, may be held to be applicable in respect of both the categories of students. In the second petition (CWP No. 384 of 2008), it is prayed that the order dated 8.12.2006 (Annexure P-9) issued under the signature of Additional Secretary (Health) Government of Himachal Pradesh, as also the decision taken in the meeting of the Review Committee held on 13.5.2008, notified under the signature of Additional Secretary (Health)-cum- Principal Secretary, Review Committee, dated 2.6.2008 (Annexure P-11) and any other consequent order passed by the State of Himachal Pradesh on the basis of the said recommendation, be quashed and set aside. It is further prayed that the fee structure, as was fixed by the respondents, vide communication dated 28.7.2005 (Annexure P-6) be restored.

2. To put it differently, the first petition is filed in relation to fees determined for academic session 2003-04 under the Act of 2006, which in turn validates the notification dated 15.9.2003, allowing the College to collect fees as prescribed therein from its students admitted against merit seats. The second petition, however, pertains to the fee structure determined by the Review Committee, in relation to academic years 2004-05 and 2005-06 to be collected by the College from its students pursuing BDS courses.

3. In the first petition, after adverting to the exposition of the Constitution Bench of the Apex Court in ***TMA Pai Foundation and others versus State of Karnataka and others***[1], and the subsequent Constitution Bench

[1] (2002) 8 SCC 481

decision in ***Islamic Academy of Education versus State of Karnataka***[2], it has been asserted that the proposal regarding fee structure of the petitioner-Private Dental College, which is un-aided and non-minority College, was placed before the Fee Structure Committee alongwith all the relevant documents and books of accounts. It is stated that prior to issuance of notification dated 13.2.2004 (Annexure P-1) constituting the Fee Structure Committee for Private Dental Colleges and after the later judgment of the Supreme Court was delivered, the State of Himachal Pradesh issued notification dated 15.9.2003, whereby the fee structure for Private Dental Colleges for academic session 2003-04 was determined. The relevant portion of the said notification reads thus:

> "Government of Himachal Pradesh
> Department of Medical Education
>
> No.HFW-B(F)5-10/94-loose
> Dated:Shimla-171002, the 15-9-2003
>
> **NOTIFICATION**
>
> In pursuance to the judgment delivered by the Hon'ble Supreme Court of India in Writ Petition (Civil) No.350 of 1993 i.e. Islamic Academy of Education and another Vs. State of Karnataka and others on dated 14.8.2003, the Governor, Himachal Pradesh is pleased to notify the Fee Structure/Admission Procedure for the academic session 2003-2004 in respect of BDS Courses for Private Dental Colleges in Himachal Pradesh as under:-
>
> 1. 50% seats for Government sponsored Candidates out of merit list. (Free Merit seats) — Rs.20,000/- per student per annum Including all charges except refundable security.
> 2. 50% seats for management quota (payment seats) — Rs.2.5 lacs per student per annum Including all charges except refundable security.
>
> ……."

4. Later on, the Fee Structure Committee constituted in terms of notification dated 13.2.2004, submitted its provisional fee structure for the academic session 2004-05, which was notified under the signature of Additional

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[2] (2003) 6 SCC 697

Secretary (Health) to the Government of Himachal Pradesh on 16.7.2004. The same reads thus:

"No.HFW-B(A)3-4/2004
Government of Himachal Pradesh
Department of Medical Education

From

Secretary (Health) to the
Government of Himachal Pradesh

To

The Registrar,
HP University, Summer Hill,
Shimla-5.
Dated Shimla-2 the

Subject: Provisional Fee Structure in r/o Private Un-aided Dental Colleges in HP for the academic session 2004-05.

Sir,

I am directed to inform you that a meeting of the Fee Structure Committee constituted as per the directions of Hon'ble Supreme Court of India in the IA of Education Vs State of Karnataka was held on 13.7.2004 at 2:00 P.M. under the Chairmanship of Hon'ble Mr.Justice V.P. Bhatnagar, (Retired) wherein the Fee Structure Committee has adopted the following Provisional Fee Structure in r/o Private Un-aided Dental Colleges in HP for the academic session 2004-05.

Fee Structure

Name of the Institution	Provisional Annual Fee for the academic session 2004-05	Remarks.
Bhojia Dental College, Budh, Nalagarh, HP	Rs.85,000/-	1. The provisional fees will include all fee payable by a student for a year except hostel fees and mess charges (wherever applicable), University registration fee and examination fees. 2. the institution SHALL NOT collect from students any amount in addition to this fee including contribution to funds and/or security deposits 3. This fee structure will be applicable to both the State & Management quotas.
Himachal Dental College, Sundernagar HP	Rs.85,000/-	
Himachal Institute of Dental Sciences, Paonta Sahib, HP	Rs.90,000/-	
MN DAV Dental College, Tatul, Solan	Rs.1,00,000/-	

Note: This Provisional Fee Structure has been adopted subject to the condition that these fees will be suitably adjusted when the Committee gives its final decision.

Yours faithfully,

Addl.Secretary (Health) to the
Government of Himachal Pradesh."
(emphasis supplied)

5. The said provisional fee structure was subject-matter of challenge in Writ Petition No. 22 of 2004 and connected petitions. The Division Bench of this Court disposed of the said Writ Petitions vide decision dated 22.12.2004. This Court noted that consensus was reached amongst all the parties that the Fee Structure Committee may be directed to re-assess, re-evaluate, re-examine and re-consider the entire gamut of the fee structure and all issues relating thereto with a view to find out, determine and ultimately prescribe a final fee structure, totally un-influenced by the provisional fee structure already adopted/assessed by it. Based on the said agreement, the Court issued direction to the Fee Structure Committee to determine the final fee structure and submit its recommendation to the State Government, who, in turn would notify the fee structure, to be made applicable institution-wise for the relevant academic sessions. The Division Bench also noted that the Fee Structure Committee must pass a speaking order while determining the final fee structure. The aggrieved party was given liberty to take recourse to appropriate legal proceedings. The Court also noted that the Committee while determining the final fee structure shall also consider the cases of students who were admitted prior to the academic session 2004-05 and in the light of law on the subject including all the Supreme Court judgments, the Committee shall specifically and categorically decide whether the students admitted before the academic session 2004-05 would be liable to pay fee as was prevalent at the time of their admission or they would be regulated by the fee structure as would be prescribed by the Committee in the ultimate analysis. The Court disposed of the writ petitions on the abovesaid basis.

6. Consequent to the direction issued by the High Court, the Fee Structure Committee submitted its recommendation to the State Government, who, in turn, issued communication dated 28.7.2005 prescribing the fees for academic sessions 2003-04, 2004-05 and 2005-06. As regards the petitioner-College, the final fees fixed by the Fee Structure Committee, following the directions of the High Court was made uniform at Rs.84,000/- for both the categories of students admitted in the College i.e. free seats and management seats. The said fee structure published vide communication dated 28.7.2005 was challenged by the students pertaining to academic session 2003-04, by way of Civil Writ Petition No. 856 of 2005. According to them, the fees for free seats had already been prescribed at Rs. 20,000/- per year and there was no justification to increase the same to Rs. 84,000/-. They also asserted that as per the decision of the Apex Court, the fee structure for State sponsored seats as well as the management seats could not be different. The said Writ Petition was disposed of on 6.12.2005. The Court rejected the said challenge and upheld the determination of fees by the Committee enhancing it to Rs.84,000/- per session in respect of students admitted against merit seats in academic session 2003-04. The Division Bench of this Court held that the Committee had taken into account all aspects of the matter for determining the fee structure and no judicial review of that decision was possible. That decision attained finality.

7. The State Legislature then enacted the Act of 2006 (hereinafter referred to as the First Act of 2006), which received the assent of the Governor on 7.3.2006. The said Act reads thus:

> **"THE HIMACHAL PRADESH PRIVATE UNAIDED DENTAL COLLEGES (REGULATION OF ADMISSION AND FIXATION OF FEE FOR ACADEMIC YEAR 2003-2004) ACT, 2006**
> **ARRANGEMENT OF SECTIONS**
> Sections:
> 1. Short title and commencement.
> 2. Application.
> 3. Definitions.

THE HIMACHAL PRADESH PRIVATE UNAIDED DENTAL COLLEGES (REGULATION OF ADMISSION AND FIXATION OF FEE FOR ACADEMIC YEAR 2003-2004) ACT, 2006
(Act No. 4 of 2006)1

(Received the assent of the Governor on 7th March, 2006 and published in Hindi and English in R.H.P. Extra., dated 8th March, 2006 at pages 7661-7663 and 7664-7666.)

An Act to provide for the regulation and fixation of fee in Private Unaided Dental Colleges in the State of Himachal Pradesh for the academic session 2003-2004 in respect of students admitted against State Government Quota (merit seats) and the matters connected therewith or incidental thereto;

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-Seventh Year of the Republic of India, as follows:-

1. Short title and commencement.- (1) This Act may be called the Himachal Pradesh Private Unaided Dental Colleges (Regulation of Admission and Fixation of Fee for the academic year 2003-2004) Act, 2006.

(2) It shall be deemed to have come into force on the 15th day of September, 2003.

2. Application.- This Act shall apply to the Private Unaided Dental Colleges affiliated to Himachal Pradesh University established under section 2(f) of the University Grants Commission Act, 1956.

3. Definitions.- In this Act, unless the context otherwise requires,- 1 Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see R.H.P. Extra., dated 22-2-2006, P. 7111 & 7116.

2(a) "Official Gazette" means the Rajpatra of Himachal Pradesh;

(b) "Private Unaided Dental College" means a college or a school or an institution by whatever name called, imparting professional education in Dental Surgery approved by or recognized by the concerned statutory body and affiliated to the Himachal Pradesh University and not receiving financial aid or assistance in whole or in part from the Central or State Government or from anybody, under the control of Central or State Government;

(c) "State" means State of Himachal Pradesh; and

(d) "State Government" or "Government" means the Government of Himachal Pradesh.

4. Fixation and regulation of fee.- Notwithstanding anything contained in any order or judgment passed by any competent court or any order, notification or instructions issued, the students admitted against Government Quota (merit seats) during the academic year 2003-04 in Private Unaided Dental Colleges in the State shall continue to pay fee for the academic year 2003-2004 according to the fee structure issued vide Notification No. HFW-B(F)5-10/94-loose, dated 15-9-2003 for the entire academic course of Bachelor of Dental Surgery.

5. Power to make rules.- (1) The State Government may, by notification published in the Official Gazette, make rules for carrying out the provisions of this Act.

> (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislative Assembly while it is in session, for a total period of ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of session in which it is so laid or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule, or agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

8. The State Legislature enacted another Act titled as the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (hereinafter referred to as the Second Act of 2006), which received assent of the Governor on 27th September, 2006. This Act is to provide for regulation of admission and fixation of fee in Private Medical Educational Institutions in the State of Himachal Pradesh and for the matters connected therewith or incidental thereto. Section 3 of this Act, no doubt, speaks about "fix fee" in the Private Medical Institutions, which, however, will have to be understood as "regulating the fees" determined by the Private Unaided Medical Institutions on the touchstone of parameters specified in Section 7 of that Act. In these petitions, however, we are not concerned with the efficacy of provisions of that Act. For, the present set of petitions pertains to fees determined for academic sessions 2003-04; 2004-05; and 2005-06.

9. Be that as it may, by virtue of the First Act of 2006, the decision rendered by the Division Bench of this Court dated 6.12.2005 in CWP No. 856 of 2005, and including the communication dated 28.7.2005 prescribing the fees of students admitted against the merit/free seats for academic year 2003-04 came to be overturned. Instead, the notification dated 15.9.2003 was revived. In other words, by virtue of this enactment, the students admitted against 50% free seats during the academic year 2003-04 in BDS courses of the Private Dental Colleges in Himachal Pradesh and including in the petitioner-College became liable to pay only a sum of Rs.20,000/- per annum including all charges except refundable security;

as against the fee of Rs.84,000/- per student per annum inclusive of all charges, except refundable security to be paid by students admitted against 50% seats of management quota (payment seats) in the same College as per Notification dated 28th July, 2005.

10. According to the petitioners, the First Act of 2006 does not refer to the fees to be charged from the students admitted against the management quota. As a result, the fees prescribed as per notification dated 15.9.2003 for management quota being Rs.2.5 lacs per annum, per session, which stood modified to Rs.84,000/- by virtue of notification dated 28.7.2005 (Annexure P-5) also stood revived. In other words, the said Act explicitly deals with the students admitted against free seats and is silent about fees to be charged from students admitted against management quota. The petitioners being aggrieved by the consequences flowing from the First Act of 2006, have filed the first writ petition on 6.8.2007 for the reliefs, as referred to earlier. According to the petitioners, the First Act of 2006 is contrary to the exposition of the Apex Court in TMA Pai's and Islamic Academy's case and including the decision of the Division Bench of this Court in CWP No. 856 of 2005 dated 6.12.2005. The petitioners contend that the fees prescribed by the Fee Structure Committee was Rs. 84,000/- for all students, irrespective of their category, for academic year 2003-04. The students who were admitted in the said academic session would complete their course in the year 2006-07. Thus, the petitioners would suffer huge financial loss which has been demonstrated in the calculations provided in the tabular form as follows:

"Number of students taken as per actual position. Amount in lacs of rupees.

Years	2003-04	2004-05	2005-06	2006-07	Total
i) Tuition fee @ Rs.20,000/ % Rs.2,50,000/- as per Govt. notification dt.	30x0.20= 6.00 26x2.50= 65.50 Total= 81.50	29x0.20= 5.80 25x2.50= 62.50 Total= 68.30	29x0.20=5.80 25x2.50= 62.50 Total= 68.30	29x0.20= 5.80 25x2.50= 62.50 Total= 63.40	286.40

15.9.03					
ii) Uniform tuition fee @ Rs.84,000/- fixed by the Fee Structure Committee	56x0.84= 47.04	54x0.84= 45.36	54x0.84= 45.36	54x0.84= 45.36	183.12
iii) Tuition fee as per Act (vide Bill No.2 of 2006) @ Rs.20,000/- for Free Seats and Rs.84,000/- for payment seats being claimed by the petitioners)	30x0.20= 6.00 26x0.84= 21.84 Total= 27.84	29x0.20= 5.80 25x0.84= 21.00 Total= 26.80	29x0.20= 5.80 25x0.84= 21.00 Total= 26.80	29x0.20= 5.80 25x0.84= 21.00 Total= 26.80	108.24
Less by way of difference (286.40-108.24 = 178.16) Average loss per year = 178.16/4 = 44.54					178.16 44.54"

11. Relying on the figures reproduced above, the petitioners have asserted that the fees fixed by the Fee Structure Committee at uniform rate of Rs.84000/-, would generate only Rs.183.12 lacs. The Management of the College, therefore, has no option but to incur that expenditure without any profits. If the petitioners, however, were to charge Rs. 20,000/- from the students admitted against free seats and Rs. 84,000/- from the students admitted against the payment seats, in that case the total amount to be generated will be only Rs.108.24 lacs. That amount will not be enough even to meet the actual expenses incurred by the College to impart education to its students. The petitioners submit that in the second situation emanating from the First Act of 2006, the petitioners could charge only Rs.20,000/- from students admitted against free seats and Rs. 2.5 lacs from students admitted against payment seats, as per the fee structure notified in terms of notification dated 15.9.2003 (Annexure P-2) - as Section 4 does not advert to the students admitted against the payment seats. Any other view

would render the legislation unreasonable and invalid. The petitioners assert that the decisions of the Apex Court in TMA Pai and Islamic Academy (supra) have done away with the distinction of fees between free seats and payment seats. The fee structure in respect of both the categories must, therefore, be uniform. By virtue of the First Act of 2006, the said distinction will be revived as the College will be forced to collect different scale of fees from the students admitted against the payment seats. The students admitted against the free seats, however, would end up in paying only Rs. 20,000/- per annum. The petitioners assert that the validating Act can be enacted by the Legislature only to remove the deficiencies pointed out by the Court. Whereas, the First Act of 2006, is in excess of that power as it virtually over rules the judgments of the Court. Even, for that reason, it is invalid and illegal. Lastly, it is urged by the petitioners that as Section 4 refers only to free seats, the petitioners must be free to collect fees from the students admitted against the payment seats at least on the basis of the recommendation of the Fee Structure Committee at Rs. 84,000/- per annum, per student.

12. Reverting to the second petition (CWP No.384 of 2008), it is filed on 29th June, 2008, initially, praying for quashing and setting aside of the communication, dated 8th December, 2006, and for restoring the dispensation specified in communication, dated 28th July, 2005. However, during the pendency of this petition, the Review Committee constituted to review the fee structure of Private Unaided Dental Colleges in the State for academic years 2004-05 and 2005-06, determined the fee structure. Even this recommendation of the Review Committee and the consequent order passed by the State has been challenged by way of amendment. More or less, the factual position referred to in the first petition has been reiterated even in the second petition. In this petition, additionally, reference has been made to notification dated 8.12.2006, which reads thus:

"No.HFW-B(A)3-3/2006.
Government of Himachal Pradesh
Department of Medical Education &Research

From

The Principal Secretary (Health) to the
Govt. of Himachal Pradesh.

To

1. The Principal, MN DAV Dental College,
   Tatul, Solan, HP.
2. The Principal, Bhojia Dental College, Budh Nalagarh, Distt. Solan, HP
3. The Principal, Himachal Institute of Dental Science, Paonta Sahib, Distt.Sirmour, HP
4. The Principal, Himachal Dental College, Sundernagar, Distt.Mandi, HP.

Dated Shimla-171002, the 8th December, 2006.

Subject:- Review of fee structure fixed earlier for the academic year 2004-05 and 2005-06 in respect of Private Unaided Dental Colleges in HP.

Sir,

In continuation to this department notification of even number dated 24-11-2006, I am directed say that the matter regarding review of fee structure fixed earlier for the academic year 2004-05 and 2005-06 is active consideration of the Government and the meeting of the Review Committee so constituted, scheduled to be very held shortly. Therefore, it has been decided that the fee from the State Quota students admitted in the academic year 2004-05 and 2005-06 be charged Rs.50,000/- till the final outcome of recommendation of the Review Committee.

You are, therefore, requested to take necessary action in the matter accordingly, under intimation to this department.

Yours faithfully,

Sd/-
Additional Secretary (Health)
to the Govt. of Himachal
Pradesh."

13. This notification has been impugned in the second petition. According to the petitioners, this notification was illegal and contrary to the exposition of the Apex Court regarding determination of fees. This notification, however, specifies provisional fees to be paid by the students admitted during the academic years 2004-05 and 2005-06 as Rs.50,000/- till the final outcome of the recommendation of the Review Committee. This could not have been done because the amount specified therein was much less than the amount actually spent by the College for imparting education and, in particular, determined by the Fee Structure Committee. If the petitioners were forced to accept fees as specified in the notification, dated

8.12.2006, it would result in deficit recovery at least of Rs.34,000/- per student per year. That would inevitably make the institution unviable and forced to be closed down. According to the petitioners, no material has been adverted to by the Review Committee as to why the amount should be reduced from Rs.84,000/- to Rs.50,000/-. Thus, the impugned decision was the outcome of whims and fancies of the Authorities. In other words, it was colourable exercise of power. Moreover, the decision has been taken by the Review Committee without convening any formal meeting and giving opportunity to the petitioners. Further, there was no guarantee that the Review Committee would finalize the fee structure at an early date. In the meantime, the students may pass out the degree course and it may become impossible for the petitioners to recover the deficit amount.

14. As aforesaid, during the pendency of the second writ petition, as final decision was taken by the Review Committee, the petitioners have challenged that decision, dated 2nd June, 2008, (Annexure P-11), by amending the petition. Annexure P-11 reads thus:

> "Proceeding of the meeting of the Review Committee constituted to review Fee fixed earlier in respect of Private Unaided Dental Colleges in HP for the academic session 2004-05 and academic sessions 2005-06 held on 13.05.2008 under the Chairmanship of Dr.J.R. Thakur, Director Medical Education & Research, H.P. Shimla.
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>
> 1. Meeting of the Review Committee constitution by the Government vide Notification No.HFW-B(A)3-3/2006, dated 24-11-2006, to review the fee structure fixed in respect of Private Un-aided Dental Colleges for the academic sessions of 2004-05 and 2005-06, was held under the Chairmanship of Dr.J.R. Thakur, Director Medical Education & Research, HP. The following attended the meeting:
>
> i. Sh.Rakesh Kanwar, Additional Secretary (Health) to the Govt. of HP, Shimla_____Member
>
> ii. Dr.(Mrs.) Ashu Bhardwaj, Principal, HP Govt. Dental College, Shimla_____Member
>
> Apart from the above committee members, following officers were also present with the approval of the Chair:
>
> i. Dr.Surender Kashyap, Principal, IGMC, Shimla
>
> ii. Sh.D.C. Negi, Additional Director (Admn) IGMC, Shimla.
>
> iii. Sh.Narender Thakur, Assistant Accounts Officer (F&A), IGMC, Shimla.
>
> 2. The Member Secretary apprised the members of the Committee that

a. Prior to commencement of Act namely The Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, there was a Fee Structure Committee constituted under the Chairmanship of Mr.Justice V.P. Bhatnagar. This Committee fixed uniform fee for both category of students in the private unaided medical colleges of the state (i.e. for State Quota Seats and Management Quota Seats) for the academic session 2003-04, 2004-05 and 2005-06.

b. During the year 2006 State Government enacted two legislations to regulate admission and fixation of fee in respect of private un-aided medical education institutions. As per the provisions contained in one of the Acts the State Government fixed a fee of Rs.20,000/- per student/per annum in case of State Quota Students admitted during the academic session 2003-04.

c. Further, the State Government acting under clause 4 of Section 7 of The Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, constituted this Review Committee vide notification dated 24.11.2006. Also, the State Government issued directions to charge Rs.50,000/- per annum from the State Quota students admitted in the academic years 2004-05 and 2005-06 till the final outcome of recommendation of the Review Committee.

d. However the Review Committee could not meet and recommend the fee structure earlier. Therefore, the meeting has now been convened to review the fee fixed for the academic sessions of 2004-05 and 2005-06.

e. The position regarding the fixed by the Justice Bhatnagar Committee in respect of Private Unaided Dental Colleges in the State for the academic year 2003-04, 2004-05 and 2005-06 (College-wise) for both State Quota and Management Quota Students and the fee that was ordered to be charged from the State Quota Students by the government is as follows:

Name of College and number of seats	**Final fee fixed by Justice Bhatnagar Committee (in Rs.)**	**Fee fixed by the Government (in Rs.)**
M.N.D.A.V. Dental College Solan (60 seats)	84000/-	50,000/-
Bhojia Dental College & Hospital Budh Nalagarh (60 seats)	84000/-	50,000/-
Himachal Dental College, Sundernagar (60 seats)	63000/-	50,000/-
Himachal Institute of Dental Sciences, Paonta Sahib (100 seats)	65000/-	50,000/-

3. The Committee discussed the matter and it was decided unanimously that it will not be proper to recommend any change in the fee fixed for state quota students by the government (@ Rupees 50,000/- per student per annum) at this stage as the students who were admitted in the academic years of 2004-05 and 2005-06 are paying the fee of rupees 50,000/- per student per annum since their admission which his 2.5 times more than the fee of rupees 20,000 per

> student per annum fixed by the government for the year 2003-04. In view of this all members of the Committee unanimously decided to recommend that no change in the fee Rs.50,000/- per student per annum in case of students admitted against State Quota Seats during the academic year 2004-05 and 2005-06 was required.
> 4. The meeting ended with a vote of thanks to the Chair.
>
> Sd/-
> Additional Secretary (Health)
> -Cum-Member Secretary,
> Review Committee."

15. According to the petitioners, this decision taken by the Review Committee was illegal and contrary to the exposition of the Apex Court in TMA Pai and Islamic Academy cases (supra).

16. We have heard counsel for the parties.

17. Before we deal with the grievance of the petitioners about the validity of the First Act of 2006 and also about the modality followed by the Authorities in determining the fee structure contrary to the aspirations of the petitioners, we deem it apposite to advert to the legal exposition expounded by the Constitution Bench of the Apex Court. In the case of TMA Pai (supra), the Court considered the efficacy of the scheme, in particular regarding fee structure enunciated in Unni Krishnan's case, which was followed by the Governments, and found that the same was not reasonable restriction under Article 19(6) of the Constitution. The Apex Court went on to observe as follows:

> "35.....Normally, the reason for establishing an educational institution is to impart education. The institution thus needs qualified and experienced teachers and proper facilities and equipment, all of which require capital investment. The teachers are required to be paid properly. As pointed out above, the restrictions imposed by the scheme, in Unni Krishnan's case, made it difficult, if not impossible, for the educational institutions to run efficiently. Thus, such restrictions cannot be said to be reasonable restrictions.
> 36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, inter alia, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this

completely destroys the institutional autonomy and the very objective of establishment of the institution.

37. The Unni Krishnan judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

38. The scheme in Unni Krishnan's case has the effect of nationalizing education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable. …… .

…….. ……. ……..

45. In view of the discussion hereinabove, we hold that the decision in Unni Krishnan's case, insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, Medical Council of India, Central and State governments, etc., are overruled.

…….. ……. ……..

56. ……It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government.

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required

> for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.
>
> ....
>
> 69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers."
>
> (emphasis supplied)

18. In the subsequent decision in Islamic Academy of Education (supra), the Apex Court once again examined the issue as to whether the educational institutions are entitled to determine their own fee structure and answered the same in favour of the educational institutions. In paragraph 7, while considering that question, the Apex Court observed thus:

> "7.....The Committee will 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 which period the institute would be a 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. 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."
>
> (emphasis supplied)

19. It will be useful to refer to paragraph 155 of the same decision, to which our attention was invited by the petitioners. The same read thus:

> "155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the

statement of law laid down in para 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee."

(emphasis supplied)

20. The other authority of the Constitution Bench of the Apex Court on the question of fee structure, is, the case of **P.A. Inamdar and others** vs. **State of Maharashtra and others**[3]. The Apex Court restated the principle expounded by it in the earlier decisions. While dealing with question Nos.3 and 4 posed in paragraph 27 of the judgment, the Apex Court in paragraphs 139 to 151 observed thus:

"Q.3. Fee; regulation of

139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in Pai Foundation. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (Paras 56 to 58 and 161 [Answer to Q.5(c)] of Pai Foundation are relevant in this regard).

Capitation Fees

140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. 'Profession' has to be distinguished from 'business' or a mere 'occupation'. While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to the society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not

[3] (2005) 6 SCC 537

permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

141. Our answer to Question-3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.

Q.4. Committees formed pursuant to Islamic Academy

142. Most vehement attack was laid by all the learned counsel appearing for the petitioner-applicants on that part of Islamic Academy which has directed the constitution of two committees dealing with admissions and fee structure. Attention of the Court was invited to paras 35,37, 38, 45 and 161 (answer to question 9) of Pai Foundation wherein similar scheme framed in Unni Krishnan was specifically struck down. Vide para 45, Chief Justice Kirpal has clearly ruled that the decision in Unni Krishnan insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent the said decision and the consequent directions given to UGC, AICTE, MCI, the Central and the State Governments etc. are overruled. Vide para 161, Pai Foundation upheld Unni Krishnan to the extent to which it holds the right to primary education as a fundamental right, but the scheme was overruled. However, the principle that there should not be capitation fee or profiteering was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. It was submitted that Islamic Academy has once again restored such Committees which were done away with by Pai Foundation.

143. The learned senior counsel appearing for different private professional institutions, who have questioned the scheme of permanent Committees set up in the judgment of Islamic Academy, very fairly do not dispute that even unaided minority institutions can be subjected to regulatory measures with a view to curb commercialization of education, profiteering in it and exploitation of students. Policing is permissible but not nationalization or total take over, submitted Shri Harish Salve, the learned senior counsel. Regulatory measures to ensure fairness and transparency in admission procedures to be based on merit have not been opposed as objectionable though a mechanism other than formation of Committees in terms of Islamic Academy was insisted on and pressed for. Similarly, it was urged that regulatory measures, to the extent permissible, may form part of conditions of recognition and affiliation by the university concerned and/or MCI and AICTE for maintaining standards of excellence in professional education. Such measures

have also not been questioned as violative of the educational rights of either minorities or non- minorities.

144. The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

145. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on an 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 on a reasonable fee-structure.

147. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy 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 adhoc 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 Committees which were supposed to be permanent in nature.

> 149. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their job and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.
>
> 150. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.
>
> 151. On Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails. However, the observation by way clarification, contained in the later part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by 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 No.1."
>
> (emphasis supplied)

21. From the extracted portion of the aforesaid decisions, there is no manner of doubt that it is the prerogative muchless right of the educational institution to decide its own fee structure. The Review Committee has to evaluate as to whether that fee structure does or does not result in profiteering, commercialization or demanding capitation fee. The Review Committee is expected

to examine the justification given by the educational institution and record its satisfaction, one way or the other, by a speaking order and reasons to be recorded therefor. That Committee has to bear in mind the broad contours delineated by the Apex Court in paragraph 155 of the Islamic Academy and paragraph 149 of P.A. Inamdar (supra).

22. Reverting to the challenge in the first petition, it is in relation to the fees pertaining to the academic session 2003-04. The same were governed by notification, dated 15th September, 2003. That, however, underwent change qua the merit seats by virtue of the First Act of 2006. The petitioners have, therefore, challenged the validity of the First Act of 2006. What has been argued by the petitioners is that although the said Act is a validating Act, the effect thereof is to disregard and overturn the decisions of the Court. That is plainly impermissible. For, the Legislature has power to legislate only to remove the deficiencies pointed out by the Court; whereas, the First Act of 2006 effaces the substratum of the conclusion and the legal opinion on the basis of which the judgments are founded. By virtue of the notification, which has been validated by the First Act of 2006, the right of the educational institution to determine and charge rational fees from its students has been clearly impinged upon, as has been expounded by the Apex Court in the aforesaid decisions. The respondents, on the other hand, have relied on the statement of objects and reasons for enacting the said Act of 2006. The same reads thus:

> "STATEMENT OF OBJECTS AND REASONS
>
> The Supreme Court orders in Islamic Academic Education Vs. State of Karnataka was pronounced on 14.08.2003 yet the Fee Structure Committee could not be constituted till September, 2003, therefore, as per directions of the Supreme Court of India the fees for private Unaided Dental Colleges in Himachal Pradesh was to be fixed by the Fee Structure Committee after 14.08.2003, therefore, the fee structure for the year 2003-04 was fixed by the State Government vide Notification No. HFW-B(F)-5-10/94-loose dated 15.09.2003 i.e. Rs.20,000/- for 50% State Quota (merit seats) and Rs.2,50,000/- for 50% Management Seats (Payments seats) per student/per annum. However, the fees fixed by the State Government was challenged in

the Hon'ble High Court of Himachal Pradesh vide CWP No.763/03 titled as Trisha Sharma V/S State of HP and thereafter CWP No.22/04, 824/04 and 990/04, the Hon'ble High Court has directed that the fees fixed by the State Government for the year 2003-04 will be provisional and Fee Structure Committee will consider as to accept the same or again fix the fees for the year 2003-04.

As per direction of the Hon'ble High Court of Himachal Pradesh, the issue was considered by the Fee Structure Committee and has fixed the final fee structure in respect of Private Unaided Dental Colleges in Himachal Pradesh for the year 2003-04, i.e. Rs.84,000/- each for Mathuram Nirmala Devi College, Solan and Bhojia Dental College & Hospital, Budh Nalagarh, Rs.65,000/- for Himachal Institute of Dental Science, Paonta Sahib and Rs.63,000/- for Himachal Dental College, Sundernagar, per student/per annum.

Keeping in view of the judgment of Supreme Court in case titled TMA Pai Vs. State of Karnataka (2002) 8 SCC 481, the Fee Structure Committee has done away with the practice of charging less fee from merit seats (State Quota candidates) and has brought at par with categories of students of management seats by framing same/uniform rate fees, which is much higher side for the students admitted against State Quota (merit seats). Due to this reason the purpose of Government to keep 50% seats as free merit seats (State Quota) and charge subsidized fees from them got defeated and the private colleges may get undue benefit.

The fee structure for 50% Government seats (merit seats) in Private Unaided Dental Colleges for the year 2003-04 was fixed @ Rs.20,000/- per student/per annum by the Government after due consideration of all aspects, whereas the Fee Structure Committee so constituted later on fixed the fee ranging from Rs.63,000/- to Rs.84,000/- per student/per annum with retrospective effect on uniform pattern to all categories of students i.e. Merit/payment seats.

Since the students already admitted against merit seats opted for admission in the above Private Unaided Dental Colleges keeping in view of the fee amount of Rs.20,000/- per annum and if they were aware of the fact that the fee against these seats will be fixed ranging from 63,000/- to Rs.84,000/- per student/per annum, they would not have opted for admission in these colleges. Therefore, the enhancement of fee for the academic year 2003-04 retrospectively, has adversely affected the students and there is widespread resentment amongst the parents and students already admitted against merit seats in Private Unaided Dental Colleges during the academic sessions 2003-04. Thus, in order to protect the interest of the students admitted against merit seats, during academic year 2003-04 in various private Unaided Dental Colleges and to save their future, it has been decided to bring legislation which seeks to provide for regularization and fixation of fee in respect of students admitted against State Quota (merit seats) for academic year 2003-04 in the private Unaided Dental Colleges in the State.

The Bill seeks to achieve the aforesaid objectives.

Shimla (VIRBHADRA SINGH)
The-------2006. CHIEF MINISTER."

(emphasis supplied)

23. According to the respondents, the First Act of 2006 has been enacted in public interest because of the wide spread resentment amongst the parents and students already admitted against merit seats in Private Unaided Dental Colleges during the academic year 2003-04. The said Act purports to regularize and fix the fees in respect of students admitted against the State quota (merit seats) for the said academic year (2003-04) and it does not result in overturning the legal position expounded by the Apex Court as such. Further, it was open to the State to treat the students admitted to the course in the academic sessions 2003-04 as a separate class of persons and legislate on the subject of fees to be paid by them to the Unaided Private Educational Institutions. By enacting a statute, the Legislature was free to give retrospective effect to such dispensation.

24. In support of these submissions, learned Advocate General relied on the decision of the Apex Court in the case of **State of H.P. and others** vs. **Yash Pal Garg (dead) by LRs. and others**[4]. The Apex Court, in paragraphs 24 and 25 of this decision, has observed thus:

> "24. The High Court also held that 1991 Act was ultra vires the power of the legislature as it has over-ruled the decision rendered in earlier writ petition in case of M/s Yash Pal Garg. This reason also cannot be sustained as it is settled law that the Legislature can change the basis on which a decision is rendered invalidating the Act and there by validating the legislation which has been declared to be null and void. The cause for invalidating the Act can be removed and if such cause is removed, it cannot be said that the Legislature had acted beyond its competence.
>
> 25. The Legislature under the Constitution has within the prescribed limits powers to make laws prospectively as well as retrospectively. By exercise of its powers, the Legislature can remove the basis of a decision rendered by a competent Court there by rendering that decision ineffective. {Re. The Municipal Corporation of the City of Ahmedabad and Another etc. etc. v. The New Shrock Spg. And Wvg. Co. Ltd. etc. etc. *[(1970) 2 SCC 280].* In Cauvery Water Disputes Tribunal *[(1993) Supp 1 SCC 96 (II)]*, same view is taken."
>
> (emphasis supplied)

[4] (2003) 9 SCC 92

25. Reliance has also been placed on the decision in the case of **Tamil Nadu Electricity Board and another** Vs. **Status Spinning Mills Limited and another**[5]. In paragraphs 42, 49, 51 and 52 of the said decision, the Court observed thus:

> "42. A statute, even a subordinate legislation, may have to be construed reasonably. A subordinate legislation ordinarily would not be given a retrospective effect. Retrospective effect can be granted only if there exists any power in that behalf. There is nothing to show that such a power has been conferred upon the State in terms of the Act. While saying so, we are not oblivious of the situation that the State has a statutory power to fix the tariff. It may also be true that when a statutory power is conferred, the State would have power to amend, alter, modify or rescind the same. The Court must also bear in mind that it may not cause undue hardship. What we mean to say that if construction of a statute is possible as a result of hardship is avoided, vis-a-vis, an undue hardship would be created, the court will prefer the former interpretation.
> ……. ……. …….
>
> 49. It is not a case where decisions were altered pursuant to any representation made by the State. Concessions in tariff had been granted by reason of a statutory provision. Such concessions could also be withdrawn. If the appellants have not altered their position pursuant to any promise, the doctrine of promissory estoppel would not apply. If that be so, the question of any right being vested in the appellants would also not apply. In any event, the reasonableness of the statute was not the subject matter of the writ petition. The provisions have not been sought to be declared ultra vires. Even otherwise, the State while amending statute stated about the public interest necessitated the same. When a statute is amended keeping in view the public interest even the concession can be withdrawn with retrospective effect.
>
> ……. ……. …….
>
> 51. A distinction must be made between a policy decision and a statute. Whereas prima facie a policy decision may not have any retroactive operation, a statute may have. Only because it affects a past transaction the same, by itself, would not come in the way of the legislature in enacting an enactment or the executive government to exercise its power of subordinate legislation.
>
> 52. We have noticed hereinbefore that some of the industries had even installed generators. They had to do it. They inevitably had to do it because the Board would not supply power. Would it not be too much to contend that even those industries have not been set up as they have not become consumers? We think that for the said purpose, the proviso has to be read down. It must be made applicable

[5] (2008) 7 SCC 353

to them who not only had started commercial production before the said date, namely, 14.02.1997 but also had applied and were otherwise ready to take electrical connections having deposited the amount asked for. Those hard cases, even according to Mr. Ganguli, should be brought within the purview of the proviso. We, therefore, hold:

> 1. As the concession had been granted by the State, it had the power to withdraw the same.
> 2. It is not a case where in view of the doctrine of promissory estoppel, the State could not have in law amended the Schedule.
> 3. In view of existence of public interest the doctrine of promissory estoppel would have no application.
> 4. Even otherwise the appellants having not preferred appeals against the judgment of the Division bench of the High Court, the said questions cannot be permitted to be raised before us.
> 5. Proviso appended to-the main provision should be read down as stated in paragraphs 44 and 45 supra.
> 6. In view of our findings aforementioned, we have not gone into the merit of the matter involved in each case separately."

26. The question is: whether the First Act of 2006 tantamounts to changing the basis of the decision of the Court? Indeed, in the present case, the decisions of the Apex Court are not in relation to any legislation or invalidating an Act made by the Legislature as such. No legislation with regard to the subject of fee structure was in force. It is also true that the intent behind the Act of 2006 is to secure the interests of the students already admitted to the course for academic session 2003-04 on the basis of representation made to them that the fees in respect of admissions to merit seats in private unaided Colleges would be only Rs.20,000/-. However, the decision of the Apex Court, being law declared under Article 141 of the Constitution, the Authorities as well as the Private Unaided Colleges were under obligation to charge uniform fees from both categories of students – whether admitted against merit seats or paid seats, and the fee structure does not result in profiteering, commercialization or collection of capitation fees. The fact that there was wide spread resentment amongst the parents and the students, by itself, could be no justification to enact a law which, on the face of it, is against the spirit of the decisions of the Apex Court. As

aforesaid, the Apex Court has explicitly held that it is the right of the educational institution to determine the fee structure. The only limitation which can be said to be reasonable restriction, is that, the fee structure should not result in profiteering, commercialization or collection of capitation fee. That is the sole matter for regulation. In other words, the State Authorities cannot determine the fee structure of Private Un-aided Institutions. The Apex Court, therefore, directed constitution of Review Committee to examine this limited aspect. That exercise is to be done on case to case basis and not by a general fiat, as is the effect of enacting the first Act of 2006. Further, the notification, dated 15th September, 2003 prescribes uniform fee of Rs.20,000/- per student per annum in respect of free seats in all the private Colleges in the State, whereas the fee structure approved by the Fee Structure Committee in respect of academic year 2003-04 qua the petitioner-College is Rs.84,000/- per seat per annum, irrespective of the category of seat – be it free seat or paid seat – vide notification dated 28th July, 2005. As a matter of fact, that notification was subject matter of challenge in Writ Petition No. 856 of 2005 at the instance of students admitted to the course for academic session 2003-04, which came to be rejected. In other words, the right of the petitioner-College to charge uniform fees at Rs.84,000/- per seat per annum was not only affirmed by the Committee but also upheld by this Court. The First Act of 2006, therefore, in effect, attempts to overturn the decisions of the Court. The statement of objects and reasons provide no indication that the said Act was necessitated to remove the basis which led to the Court's decision. It merely mentions that enhancement of fees for the academic year 2003-04 retrospectively, has adversely affected the students and there was wide spread resentment amongst the parents and the students already admitted against merit seats in Private Unaided Dental Colleges during the academic session 2003-04 and that seeks to provide for regularization and fixation of fees in respect of those students. The decision of the Apex Court, in

no uncertain terms, expound that determination of fees is the right of the Private Unaided Educational Institutions. The State can only regulate the same and the only restriction is that the fees should not result in profiteering, commercialization or collection of capitation fee.

27. The Apex Court in **Virender Singh Hooda and others vs. State of Haryana and another**[6], has restated the legal position that though the Legislature has no power to sit over Court's judgment or usurp judicial power, but, it has, subject to the competence to make law, power to remove the basis which led to the Court's decision. The Legislature, however, has no power to change a judgment of Court of law either retrospectively or prospectively. In paragraphs 33 to 35, the Court observed thus:

> "33. The legislative power to make law with retrospective effect is well recognised. It is also well settled that though the Legislature has no power to sit over Court's judgment or usurp judicial power, but, it has, subject to the competence to make law, power to remove the basis which led to the Court's decision. The Legislature has power to enact laws with retrospective effect but has no power to change a judgment of Court of law either retrospectively or prospectively. The Constitution clearly defines the limits of legislative power and judicial power. None can encroach upon the field covered by the other. The laws made by the Legislature have to conform to the constitutional provisions.....
>
> 34. Every sovereign Legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at page 387 defines retrospective statutes in the following words.
>
> > "A statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to trans-actions or considerations already past".
>
> Judicial Dictionary ; [13th Edition) K.J. Aiyar, Butterworth, pg. 857, states that the word 'retrospective' when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) re-opening up of past, closed and completed transaction; or (ill) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases; Permanent Edition; Vol. 37A pages 224/225, defines a 'retrospective' or 'retroactive law' as one which takes away or Impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws,

[6] (2004) 12 SCC 588

or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

35. In Harvard Law Review, Vol.73, p. 692 it was observed that

> "it is necessary that the Legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the Legislature's of administrators action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in administration of Government outweighs the individual's interest in benefiting from the defect."

The above passage was quoted with approval by the Constitution Bench of this Court m the case of The Assistant Commissioner of Urban Land Tax and others v. The Buckingham and Carnatic Co. Ltd. etc. (1969) 2 SCC 55). In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors have to be considered. It was observed in the case of Stott v. Stott Realty Co., 284 NW 635, 640, 288 Mich 35, (as noted in Words and Phrases, Permanent Edition, Volume 37A, page 225) that:

> "The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizen's the enjoyment of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right".

Craies on Statue Law (7th Edn.) at p. 396 observes that:

> "if a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."

Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation."

28. It will be useful to refer to paragraphs 47 and 67 of the same decision, to which our attention was invited. The same read thus:

> "47. <u>There is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits</u> (M/s. Tirath Ram Rajindra Nath, Lucknow v. State sc 405) of U.P.& Anr [(1973) 3 SCC 585]). <u>The reason for this lies in the concept of separation of powers adopted by our constitutional scheme</u>. The adjudication of the rights of the parties according to law is a judicial function. The

Legislature has to lay down the law prescribing norms of conduct which will govern parties and transactions and to require the Court to give effect, to that law [I.N. Saksena's case].

67. The result of the aforesaid discussions is that retrospectivity in the Act cannot be held to be ultra vires except to a limited extent which we will presently indicate. It Is not a case of usurpation of judicial power by the Legislature, The Legislature has removed the basis of the decision in Hooda and Sandeep Singh's cases by repealing the circulars. The Act is also not violative of Articles 14 and 16 of the Constitution of India the candidates have right to posts that are advertised and not the one which arise later for which a separate advertisement is issued. A valid law, retrospective or prospective, enacted by Legislature cannot be declared ultra vires on the ground that it would nullify the benefit which otherwise would have been available as a result of applicability and interpretation placed by a superior Court, A mandamus issued can be nullified by the Legislature so long as the law enacted by it does not contravene constitutional provisions and usurp the judicial power and only removes the basis of the issue of the mandamus."

(emphasis supplied)

29. Counsel for the petitioners have relied on the decision in the case of ***Satchidananda Misra versus State of Orissa and others, (2004) 8 SCC 599.*** The Apex Court considered the question about the validity of the Validating Act. In paragraph 13, the Court observed thus:

"13. The question here is about the validity of the validating statute seeking to regularise illegal appointments without either repealing the 1979 Rules or changing the definition of the Selection Board. Learned counsel for the appellant has also placed reliance on the decision in the case of Vijay Mills Co. Ltd. v. State of Gujarat. The Court referred to various decisions which considered the law of validation generally including the decision in the case of Prithvi Cotton Mills. The conclusions have been set out in para 18 that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the legislature in that behalf. Where the legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the legislature makes the said intention clear by the specific language of the Validating Act. <u>It is open for the legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis</u>. In the said case, it was held that the legislature had changed the very basis of the provisions retrospectively as was apparent from the provisions of the amending Act. In the present case as already noticed, the validating statute has done nothing of the kind and only sought to regularise illegal appointments without repealing the Rules that were applicable at the relevant time or

amending the definition of the Selection Board with retrospective effect." (emphasis supplied)

30. Counsel for the petitioners have also relied on the decision in the case of ***Indra Sawhney versus Union of India and others, (2000) 1 SCC 168.*** In paragraph 28 and 29, the Court observed thus:

"28. The question of validation arises in the context of S. 6 of the Act. It is true that whenever legislative or executive action is declared as being violative of the provisions of Part III of the Constitution, it will be permissible for the Executive or Legislature to remove the defect which is the cause for discrimination prospectively and which defect has been pointed out by the Court. The defect can be removed retrospectively too by legislative action and the previous actions can also be validated. But where there is a mere validation with retrospective effect, without the defect being legislatively removed with retrospective effect, the legislative action will amount to overruling the judgment of the Courts by way of legislative fiat and will be invalid as being contrary to the doctrine of separation of powers.

29. In the context of the law laid down in Indra Sawhney (1992 AIR SCW 3682 : AIR 1993 SC 477 : 1993 Lab IC 129) and in Ashok Kumar Thakur (1995 AIR SCW 3731 : AIR 1996 SC 75 : 1995 Lab IC 2475) if the legislature of any State does not take steps to remove the defect or to effectively and realistically remove the defect to exclude the 'creamy layer' from the Backward Classes then the benefits of reservations which are invalidly continued in favour of the 'creamy layer' cannot be declared retrospectively valid merely by a legislative declaration that such creamy layer is absent as done by S. 3 of the Kerala Act. Nor can it be done by means of the validating provision contained in S. 6 of that Act. The creamy layer principle laid down in Indra Sawhney, cannot be ignored as done by S. 6 of the said Act. We shall elaborate these aspects later. If under the guise of elimination of the 'creamy layer,' the legislature makes a law which is not indeed a true elimination but is seen by the Court to be a mere cloak, then the Court will necessarily strike down such a law as violative of principle of separation of powers and of Arts. 14, 16(1) and Art. 16(4)."

(emphasis supplied)

31. It will be useful also to advert to the exposition in paragraph 59 to 61 of the same decision, which reads thus:

59. The non obstante clause in S. 4 too cannot come to the rescue of the State. As already stated, the said clause cannot override the judgments of this Court based on Arts. 14, 16(1) and 16(4) if the defect is not removed by the legislation. Neither Parliament nor the State Legislature can make any law to continue reservation to the creamy layer inasmuch as the above judgments of this Court are

> based on Arts. 14 and 16(1) of the Constitution of India, and no law can obviously be made to override the provisions of Arts. 14 and 16(1).
>
> 60. Thus, for the aforesaid reasons, S. 4 of the Act along with the non obstante clause is declared unconstitutional and violative of the judgments of this Court and also violative of Arts. 14, 16(1) and 16(4) of the Constitution of India.
>
> (xi) Section 6 :
> 61. We then come to S. 6 of the Act which deals with retrospective validation. This section again starts with a non obstante clause. Obviously, the Kerala Legislature is having Indra Sawhney (1992 AIR SCW 3682 : AIR 1993 SC 477 : 1993 Lab IC 129) and Ashok Kumar Thakur (1995 AIR SCW 3731 : AIR 1996 SC 75 : 1995 Lab IC 2475) in its mind, when it inserted, the non obstante clause. Once S. 3 of the Act is held unconstitutional, the position is that the legislative declaration as to non-existence of creamy layer goes and the existence of creamy layer becomes a starting reality. That will mean that under the Act of 1995, the Legislature has not eliminated the defect. Nor can S. 4 in this connection be of any help because that provision has also been declared as unconstitutional. Section 6 cannot stand alone once Ss. 3 and 4 are declared unconstitutional. As long as the creamy layer is not excluded and the defect continues, any validation - without elimination of the defect which is the basic cause of unconstitutionality - is, as already stated, ineffective and will be invalid. Thus, S. 6 is also unconstitutional."
>
> (emphasis supplied)

32. Counsel for the petitioners have relied on the decision in the case of ***Delhi Cloth & General Mills Co. Ltd. & another versus State of Rajasthan and others, (1996) 2 SCC 449.*** The Apex Court after analysing the gamut of case law opined that the relevant sections remained on the statute book un-amended when the validating Act was passed. Their provisions were mandatory. They had admittedly not been followed. The defect of not following these mandatory provisions in the case was not cured by the validating Act. The curing of the defect was an essential requirement for the passing of a valid validating statute, as held by the Constitution Bench in the case of *Prithvi Cotton Mills Ltd.* On that basis the validating Act was struck down.

33. Counsel for the petitioners have further relied on yet another decision of the Apex Court in the case of ***D. Cawasji and Co., Mysore versus State of Mysore and another, 1984(supp.) SCC 490.*** The Apex Court opined that if a

particular provision of the statute is for some lacunae or defect in the statute declared un-constitutional or invalid, it is open to the legislature to pass a Validating Act with retrospective effect so that State may not be saddled with liability of refund or other consequences which may arise, as a result of the particular provision being declared invalid. In paragraph 17, the Court noted that the object of enacting the amended provision which it was considering was to nullify the effect of the judgment which became conclusive and binding on the parties to enable the State Government to retain the amount wrongfully and illegally collected as sales tax. That was impermissible and for which reason, the Validating Act was declared invalid and unconstitutional.

34. As noted earlier, it is well established position that the State cannot determine fees of Private Unaided Educational Institutions. It can only regulate the fees fixed by the Private Unaided Educational Institutions to ensure that it does not result in profiteering and commercialization or collection of capitation. Further, the fee structure of both categories of students – admitted against merit seats or paid seats – must be uniform. The First Act of 2006, therefore, purports to do what is not within the domain of the Legislation. In our opinion, while enacting Section 4 of the Act of 2006, attempt was not to remove the basis of the decisions of the Apex Court or for that matter of this Court, referred to earlier. But, it was singularly intended to nullify the effect of judicial decisions, which in a way were inter parte by making the law retrospectively. Thus understood, Section 4 of the Act of 2006 is invalid and null and void. This provision being the core of the enactment, as a concomitant, the entire Act is rendered unenforceable and hence redundant.

35. That takes us to the argument of the respondents that the students admitted in the academic session 2003-04 are separate category of students, which form one category. Further, the legislation is intended to secure the interests of

those students, was a reasonable classification and, therefore, permissible. In support of this contention, reliance was placed on the decision in the case of **Andhra Pradesh Dairy Development Corporation Federation** vs. **B.Narasimha Reddy and others**[7]. In paragraph 18 of this decision, the Court observed thus:

> "18. It is well settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable in as much as there must be nexus to the object sought to be achieved by it. (Vide: Budhan Choudhry & Ors. v. State of Bihar, AIR 1955 SC 191 ; and Ram Krishna Dalmia v. Justice S.R. Tendolkar & Ors., AIR 1958 SC 538)".

However, in view of the opinion recorded that the First Act of 2006 is invalid as it purports to overturn the judicial decisions and not to remove the basis of those decisions as such, it is unnecessary to dilate on the argument regarding reasonable classification.

36. Having said this, it must necessarily follow that the fee structure for academic session 2003-04, as determined by the Fee Structure Committee in its meeting held on 25th July, 2005 and notified on 28th July, 2005, (Annexure P-5),

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[7] (2011) 9 SCC 286

ought to prevail. We would deal with this question a little later. For, the same reasons and logic will apply while considering the relief in respect of fees for academic session 2004-05 and 2005-06.

37. Reverting to the second petition, the petitioners had initially challenged the decision dated 8.12.2006 (Annexure P-9) determining the provisional fees in respect of merit seats for the academic year 2004-05 and 2005-06 at Rs. 50,000/- till the final outcome of recommendation of the Review Committee. As regards this decision, the same was only a provisional decision until the final determination of fee structure by the Review Committee. Thus, the students as also the College management were put to notice that the amount specified by the Review Committee was only provisional. The admission process was taken forward on that understanding. In the first place, if the Review Committee had power to determine the fee structure of the petitioner-College, it had intrinsic power to prescribe provisional fees till the final determination was done. Thus, it is not a case of want of authority of the Review Committee to prescribe provisional fees. Further, in view of the final determination by the Review Committee, vide decision dated 2.6.2008 (Annexure P-11), the latter ought to operate and the challenge to the provisional fees prescribed by the Review Committee would recede in the background. Whether the final determination is legal, valid or otherwise, is a matter to be considered independently.

38. A priori, we may now examine the validity of the final decision of the Review Committee dated 2.6.2008. Although, the Review Committee constituted under Section 7 of the Second Act of 2006 took notice of the final fees fixed by the Fee Committee of Justice Bhatnagar and the claim of the petitioners to allow them to charge fees per student @ 84,000/- which claim was supported by documentary evidence, evincing that the petitioner-College was incurring expenditure in excess of the amount collected from the students by way of fees. However, the Review

Committee in the first place determined the provisional fees @ Rs. 50,000/- and by the impugned decision confirmed that amount merely because it may not be proper to recommend any change in the fees fixed for State-quota students by the Government at Rs. 50,000/- per student, per annum at such belated stage as the admission process was concluded in the years 2004-05 and 2005-06. The additional reason to be discerned from paragraph 3 of the impugned decision is that the said amount was 2.5 times more than the fees of Rs. 20,000/- per student, per annum fixed by the Government for the academic year 2003-04. Both these reasons, in our opinion, are untenable. The Review Committee is not supposed to act as a post office. It is its bounden duty to evaluate the factual basis about the actual expenditure incurred by the concerned College for imparting education to its students entitling it to charge commensurate fees and keeping in mind the dictum of the Apex court in paragraph 155 of Islamic Academy and paragraph 149 of P.A. Inamdar (supra). In other words, the Review Committee is expected to assess as to whether the fees to be charged by the College would result in profiteering, commercialization or collection of capitation fees. For arriving at that conclusion, the Review Committee is not only expected to analyze the documents and books of accounts; but is also obliged to give opportunity to the Management to explain its stand-point to justify the fee structure claimed by it. The Review Committee has to analyze that claim and juxtapose it with the documents and material produced by the Management. It is also expected to answer the matter in issue, one way or the other, by a speaking order, by recording reasons therefor.

39. In the present case, the Review Committee has completely failed to discharge its legal obligation. The Committee, however, was swayed by considerations, which, to say the least, were extraneous. The fact that the provisional fees was fixed at Rs. 50,000/- does not mean that the same was just and proper and commensurate with the claim of the Management. Notably, the

provisional fees was fixed without giving any opportunity to the petitioners. According to the petitioners, the said decision was taken without having a formal meeting. Moreover, the fact that the said fees was 2.5 times more than the fees specified for academic year 2003-04 for students admitted against merit seats, by itself, can be no basis to decide the matter. The duty of the Review Committee is to ascertain whether the fees fixed and claimed by the Management would result in profiteering, commercialization or collection of capitation fees. That satisfaction has to be recorded in writing by the Review Committee. No other reason is germane for exercising the power bestowed on the Review Committee. For, as expounded by the Apex Court, it is the right of the Private Unaided Educational Institutions guaranteed under Article 19(1)(g) to determine their own fees. The only restriction is that the fees so fixed should not result in profiteering, commercialization or collection of capitation fees. It is only this area which is open to inquiry by the Review Committee. As a result, we have no hesitation in taking the view that the basis on which the Review Committee has determined the final fee structure for academic sessions 2004-05 and 2005-06, in respect of the petitioner-College, is untenable and cannot be sustained in law. Accordingly, the decision of the Review Committee Annexure P-11, qua the petitioner-College deserves to be quashed and set aside.

40. Having said this, the next question is what must be the fee structure of the petitioner-College for the relevant academic sessions 2003-04, 2004-05 and 2005-06 - should it be on the basis of the notifications, dated 15.9.2003 and 28.7.2005, as claimed by the petitioners? Indisputably, after notification dated 28.7.2005, the issue was required to be examined by the Review Committee constituted under Section 7 of the Second Act of 2006. The Review Committee was constituted under Section 7(4) of the said Act vide notification dated 24.11.2006, to review the fee structure fixed earlier in respect of Private Unaided Dental Colleges

in Himachal Pradesh. Neither this notification nor Section 7 of the Second Act of 2006 has been challenged by the petitioners before us. Whereas, the petitioners participated in the proceedings before the Review Committee so constituted. This Committee has determined the "final fee structure" for the relevant academic sessions 2003-04, 2004-05 and 2005-06, vide decision dated 2.6.2008. It is a different matter that we have set aside that decision in terms of this judgment. That, however, does not follow that the communication dated 28.7.2005 prescribing the fee structure in respect of Private Unaided Dental Colleges in the context of final fees fixed by the Fee Structure Committee can be taken forward. Notably, the Review Committee was constituted in exercise of statutory powers under section 7(4) of the Second Act of 2006 to review the fee structure for the relevant academic sessions determined by the Fee Structure Committee. This being a Statutory Committee and the notification to constitute the said Committee having not been challenged, coupled with the fact that the petitioners participated in the proceedings before the Review Committee, the petitioners cannot be permitted to fall back upon the fees determined by the Fee Structure Committee for academic sessions 2003-04, 2004-05 and 2005-06, and notified in terms of communication dated 28.7.2005 or 15.9.2003. In other words, the Review Committee (Statutory Committee) must first examine the issue of fee structure keeping in mind the exposition of the Constitution Bench of the Apex Court in the afore-noted decisions.

41. Having set aside the decision of the Review Committee, the only logical direction that needs to be issued is to direct the Review Committee to re-examine the entire matter afresh and pass appropriate directions as may be advised, in accordance with law, expeditiously and preferably within 8 weeks from today. If the Review Committee upholds the claim of the petitioners, the

petitioners would become entitled to recover deficit amount from its students admitted in the College for the concerned academic years 2003-04 to 2005-06.

42. In view of the above, we dispose of both the petitions on the following basis:

i) Section 4 of the Himachal Pradesh Private Unaided Dental Colleges (Regulations of Admissions and Fixation of Fee for Academic Year 2003-04) Act, 2006 is declared illegal, invalid and null and void.

ii) The decision of the Review Committee in its meeting held on 13.5.2008 and notified vide notification dated 2.6.2008 (Annexure P-11 in CWP No. 384 of 2008) is quashed and set aside. Instead, the petitioners are relegated before the same Review Committee for re-consideration of the entire matter afresh in accordance with law, expeditiously and not later than 8 weeks from today after giving fair opportunity to the petitioners.

iii) Until the Review Committee finally determines the fee structure for the academic years 2003-04, 2004-05 and 2005-06, respectively, the petitioners shall not recover any further amount from the students admitted in the concerned academic years 2003-04, 2004-05 and 2005-06 save and except the fees already collected. However, in the event the Review Committee determines the final fee structure for the concerned academic years and if the same is in excess of the prescribed amount already collected by the petitioners, the petitioners would be free to recover such excess amount from its students, in accordance with law.

43. Both the petitions are disposed of with the above observations, with no orders as to costs.

(A.M. Khanwilkar)
Chief Justice

(Kuldip Singh)
Judge

September 17, 2013.
(tilak/karan)