



REPORTABLE/NON-REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ON THE 9th DAY OF NOVEMBER 2021

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE SATYEN VAIDYA

**EXECUTION PETITION NO. 147 OF 2016 A/W CONNECTED
MATTERS.**

1. EXECUTION PETITION NO. 147 OF 2016

Between:-

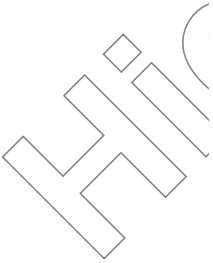
- 1. BHOJIA DENTAL COLLEGE,
CHANDIGARH-NAHAGARH ROAD,
BUDH, (BADDI), TEHSIL NALAGARH,
DISTRICT SOLAN, (H.P.),
THROUGH ITS SECRETARY.**
- 2. BHOJIA CHARITABLE TRUST,
FOR SCIENCE, RESEARCH &
SOCIAL WELFARE, SCO 855,
MANIMAJRA, CHANDIGARH (UT),
THROUGH ITS SECRETARY.**

....PETITIONERS

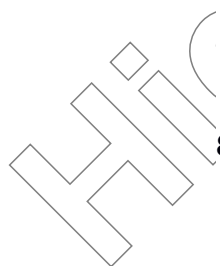
**(SH. RAJNISH MANIKTALA, SR. ADVOCATE WITH MR.
NARESH VERMA, ADVOCATE)**

AND

- 1. STATE OF HIMACHAL PRADESH,
THROUGH PRINCIPAL SECRETARY (HEALTH),
GOVERNMENT OF HIMACHAL PRADESH,
SHIMLA-171002 (H.P.).**
- 2. THE SECRETARY (LAW)
TO THE GOVERNMENT OF
HIMACHAL PRADESH,**

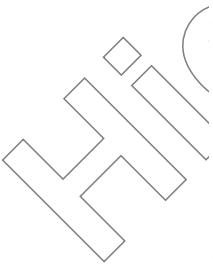


- SHIMLA-171002.**
- 3. SONIA ANAND,
DAUGHTER OF SHRI BALA NAND ANAND,
VILLAGE BAGAIN, POST OFFICE CHHAILA,
TEHSIL THEOG, DISTRICT SHIMLA,
171220, (H.P.).**
 - 4. RAJ KUMAR BANSAL,
SON OF LT. SH. MADAN LAL,
VILLAGE & POST OFFICE PANJEHRA,
TEHSIL NALAGARH, DISTRICT SOLAN,
(H.P.).**
 - 5. ARUNA KUMARI,
DAUGHTER OF SHRI GURMUKH SINGH,
VILLAGE ATHMAN, POST OFFICE KARLUHI,
TEHSIL AMB, DISTRICT UNA, (H.P.).**
 - 6. DINESH ANAND,
SON OF SHRI RAM LAL ANAND,
VILLAGE DURAHA, TEHSIL NIRMAND,
DISTRICT KULLU-172033.**
 - 7. RANJEET BODH,
SON OF SHRI DILE RAM,
VILLAGE HATHITHAN,
POST OFFICE ZIA,
DISTRICT KULLU-175125.**
 - 8. TANZIN GIAGO,
SON OF SHRI SONAM DARGE,
VILLAGE & POST OFFICE KOLANG,
DISTRICT LAHAUL-SPITI, (H.P.).**
 - 9. POOJA SHARMA,
DAUGHTER OF SHRI T.C. SHARMA,
C/O O.P. BHATT, NEAR SILVER OAK'S HOTEL,
BANDLA ROAD, PALAMPUR,
DISTRICT KANGRA-176061.**
 - 10. INDER SINGH SOHAL,**



**SON OF SHRI HARI SINGH,
VILLAGE KHAROLI,
POST OFFICE GANGATH,
TEHSIL NURPUR, DISTRICT KANGRA-176204.**

- 11. ANURADHA,
DAUGHTER OF SHRI JAGDISH CHAND,
VILLAGE & POST OFFICE NAROLA,
TEHSIL SARKAGHAT,
DISTRICT MANDI 175033, (H.P.).**
- 12. NAMISH SHARMA,
DAUGHTER OF SHRI B.D. SHARMA,
VILLAGE & POST OFFICE KHARUL,
VIA DAROH, TEHSIL PALAMPUR,
DISTRICT KANGRA (H.P.).**
- 13. MANJIT RANA,
SON OF SHRI R.P. RANA,
C/O GOVERNOR'S SECRETARIAT,
RAJBHAWAN, SHIMLA-171002.**
- 14. PARUL KAPIL,
DAUGHTER OF SHRI HANS RAJ KAPIL,
NEAR P.G. COLLEGE,
DISTRICT BILASPUR-174001, (H.P.).**
- 15. SARITA KUMARI,
DAUGHTER OF SHRI HIMMAT SINGH THAKUR,
VILLAGE & POST OFFICE-TISSA,
TEHSIL CHURAH, DISTRICT CHAMBA,
176316, (H.P.).**
- 16. VIKRAM GUPTA,
SON OF SHRI YOGESH GUPTA,
HOUSE NO. 2717/10,
NEAR RANITAL, NAHAN,
DISTRICT SIRMOUR-173001, (H.P.).**
- 17. SUNNY BANGA,
SON SHRI TILAK RAJ,
BINDRA COTTAGE, DINGU MANDIR ROAD,**



SANJAULI, SHIMLA-171006.

- 18. VIVEK MALHAN,
SON OF SHRI VARINDER KUMAR,
S-3/45, BBMB COLONY,
SUNDERNAGAR, DISTRICT MANDI (H.P.).**
- 19. RAJAT CHAUHAN,
SON OF SHRI INDERJIT CHAUHAN,
DHANLAIK NIWAS, NEAR FROOD KAMLA NAGAR,
SANJAULI, SHIMLA-171006, (H.P.).**
- 20. ADITYA BHRDWAJ,
SON OF SHRI RATTAN LAL BHARDWAJ,
VILLAGE DHOG, POST OFFICE JAJWIN,
TEHSIL JHANDUTTA,
DISTRICT BILASPUR (H.P.).**
- 21. SHRUTI VAID,
DAUGHTER OF SHRI KAMLESH CHAND VAID,
KUTHIALA MOHALLA,
VILLAGE & POST OFFICE PARAGPUR,
TEHSIL DEHRA, DISTRICT KANGRA,
177107, (H.P.).**
- 22. SAMEER SHARMA,
SON OF SHRI AJEET KUMAR SHARMA,
VILLAGE & POST OFFICE CHMNED,
TEHSIL & DISTRICT HAMIRPUR,
177029, (H.P.).**
- 23. KUNAL RAWAT,
SON OF SHRI BAL KRISHAN RAWAT,
THROCHHOUSE, SANJAULI,
SHIMLA-171006, (H.P.).**
- 24. ISHA AUMTA,
DAUGHTER OF ER. K.L. AUMTA,
AUMTA COTTAGE, NEARBALI COTTAGE,
SANJAULI, SHIMLA-171006, (H.P.).**



25. **NEHA SHARMA,**
DAUGHTER OF SHRI T.D. SHARMA,
C/O T.D. SHARMA, DIRECTOR IGCP,
PALAMPUR, DISTRICT KANGRA (H.P.)
AT PRESENT C/O PROJECT DIRECTOR,
SWAN PROJECT, UNA-174303, HP.
26. **MOHIT PRASHAR,**
SON OF SHRI PRITAM CHAND PRASHAR,
VILLAGE & POST OFFICE SERAVIA NADUAN,
DISTRICT HAMIRPUR (H.P.).

....RESPONDENTS

(SH. AJAY VAIDYA, SR. ADDL. A.G. FOR R-1 AND 2).

(SH. SANJEEV BHUSHAN, SR. ADVOCATE WITH SH.
RAJESH KUMAR, ADVOCATE, FOR R-3, 5, 14 AND 15)

(SH. RAVINDER SINGH JASWAL, ADVOCATE, FOR R-4, 8,
10,11, 21 AND 22)

(SH. C.N. SINGH, ADVOCATE, FOR R-6, 7, 13, 18 AND 20.)

2. **CIVIL WRIT PETITION NO. 879 OF 2016**

Beteen:-

CAPT. JAGDISH CHAND VERMA,
S/OLATE SH. LASHKARI RAM,
R/O VPO NAROLA, DISTT. MANDI,
HIMACHAL PRADESH.

.....PETITIONER

(BY SH. RAVINDER SINGH JASWAL, ADVOCATE)

AND

1. **STATE OF HIMACHAL PRADESH,**
THROUGH PRINCIPAL SECRETARY TO
GOVERNMENT OF HIMACHAL PRADESH,

SHIMLA-02, HIMACHAL PRADESH.

2. **THE SECRETARY (LAW),
TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA-02,
HIMACHAL PRADESH.**
3. **THE SECRETARY (HEALTH)
TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA-02
HIMACHAL PRADESH.**
4. **THE DIRECTORATE,
MEDICAL EDUCATION AND RESEARCH,
HIMACHAL PRADESH, SHIMLA-09
HIMACHAL PRADESH.**
5. **HIMACHAL PRADESH UNIVERSITY
THROUGH ITS REGISTRAR,
SUMMER HILL, SHIMLA-05,
HIMACHAL PRADESH.**
6. **BHOJIA DENTAL COLLEGE & HOSPITAL,
CHANDIGARH-NALAGARH ROAD,
BUDH (BADDI), TEHSIL NALAGARH,
DISTT. SOLAN, HIMACHAL PRADESH,
THROUGH ITS SECRETARY.**
7. **BHOJIA CHARITABLE TRUST FOR SCIENCE,
RESEARCH & SOCIAL WELFARE,
SCO 855, MANIMAJRA, CHANDIGARH (UT)
THROUGH ITS SECRETARY.**

.....RESPONDENTS

(SH. AJAY VAIDYA, SR. ADDL. A.G., FOR R-1 TO 4)

**(SH. RAJNISH MANIKTALA, SR. ADVOCATE WITH SH.
NARESH VERMA, ADVOCATE, FOR R-6 AND 7).**

3. **CIVIL WRIT PETITION NO. 3145 OF 2016**

1. **DINESH ANAND,
S/O SHRI RAM LAL ANAND,
VILLAGE DURAHA, TEHSIL NIRMAND,
DISTRICT KULLU-172033.**
2. **ADITYA BHARDWAJ,
S/O SHRI RATTAN LAL BHARDWAJ,
VILLAGE DHOG, P.O. JAJWIN,
TEHSIL JHANDUTTA,
DISTRICT BILASPUR, H.P.**
3. **RANJIT BODH,
S/O SHRI DILE RAM,
VILLAGE HATHITHA, P.O. ZIA,
DISTRICT KULLU-175125.**
4. **MANJIT RANA,
S/O SHRI R.P. RANA,
C/O SH. P.S. RANA, GOVERNOR'S
SECRETARIAT, RAJBHAWAN,
SHIMLA-171002.**
5. **VIVEK MALHAN,
S/O SH. VARINDER KUMAR,
S-4/42, BBMB COLONY,
SUNDERNAGAR, DISTRICT MANDI, H.P.**

....PETITIONERS

(BY SH. C.N. SINGH, ADVOCATE)

AND

1. **STATE OF H.P.
THROUGH ADDITIONAL CHIEF SECRETARY (HEALTH)
TO THE GOVT. OF HIMACHAL PRADESH,
SHIMLA-2, H.P.**
2. **FEE COMMITTEE,
THROUGH ITS CHAIRMAN**

**(ADDITIONAL CHIEF SECRETARY (HEALTH)
TO THE GOVERNMENT OF
HIMACHAL PRADESH, SHIMLA-2, H.P.**

- 3. DIRECTOR,
MEDICAL EDUCATION AND RESEARCH,
GOVERNMENT OF HIMACHAL PRADESH,
SHIMLA-9, H.P.**
- 4. BHOJIA DENTAL COLLEGE,
CHANDIGARH-NALAGARH ROAD,
BUDH (BADDI), TEHSIL NALAGARH,
DISTRICT SOLAN, H.P., THROUGH
ITS SECRETARH.**
- 5. BHOJIA CHARITABLE TRUST FOR SCIENCE,
RESEARCH & SOCIAL WELFARE,
SCO 855 MANIMAJRA, CHANDIGARH (UT)
THROUGH ITS SECRETARY.**

...RESPONDENTS

(SH. AJAY VAIDYA, SR. ADDL. A.G. FOR 1 TO 3)

**(SH. RAJNISH MANIKTALA, SR. ADVOCATE WITH SH.
NARESH VERMA, ADVOCATE, FOR R-4 AND 5).**

- 4. EXECUTION PETITION 157 OF 2016.**

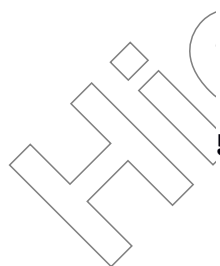
Between:-

- 1. BHOJIA CHARITABLE TRUST FOR
SCIENCE, RESEARCH & SOCIAL WELFARE,
SCO 855, MANIMAJRA, CHANDIGARH (UT),
THROUGH ITS SECRETARY.**
- 2. BHOJIA DENTAL COLLEGE,
CHANDIGARH-NALAGARH ROAD,
BUDH, (BADDI), TEHSIL NALAGARH,
DISTRICT SOLAN, (H.P.),
THROUGH ITS SECRETARY.**

(BY SH. RAJNISH MANIKTALA SR. ADVOCATE WITH SH. NARESH VERMA, ADVOCATE).

AND

- 1. STATE OF HIMACHAL PRADESH
THROUGH PRINCIPAL SECRETARY (HEALTH),
GOVERNMENT OF HIMACHAL PRADESH,
SHIMLA-171002 (H.P.).**
- 2. DIRECTOR,
MEDICAL EDUCATION & RESEARCH,
HIMACHAL PRADESH,
BLOCK NO.-18B, SDA COMPLEX,
KASUMPTI, SHIMLA-171009, (H.P.).**
- 3. ASHISH KUMAR,
SON OF SHRI PIRTHI CHAND,
VILLAGE KALRUHI, POST OFFICE AMB,
TEHSIL AMB, DISTRICT UNA (H.P.)
PIN 177203.**
- 4. MANISHA KAPILA,
DAUGHTER OF DR. RATTAN CHAND,
SET NO. 6, WILLY'S PARK,
NEAR CHAURA MAIDAN,
SHIMLA-171004, (H.P.).**
- 5. NARENDER KUMAR,
SON OF SHRISIDHU RAM,
VILLAGE CHACHOGA, POST OFFICE MANALI,
DISTRICT KULLU (H.P.) PIN 175131.**
- 6. RAJAT SAHOTRA,
SON OF SHRI P.C. SAHOTRA,
C/O KAPOOR CHAND,
VILLAGE KUTHIANA, POST OFFICE DANGRI,
TEHSIL & DISTRICT HAMIRPUR (H.P.)
PIN -171042.**



7. **SANCHETNA JARIYAL,
DAUGHTER OF SHRI RAM ALAL,
VILLAGE CHADIYARA, POST OFFICE GUTKAR,
TEHSIL SADAR, DISTRICT MANDI (H.P.),
PIN-175021.**
8. **NIVEDITA GAZTA,
DAUGHTER OF LATE COL. L.R. GAZTA,
C/O MS. KANTA GAZTA, 6401-B,
RAJEEV VIHAR BY AWHO,
MANIMAJRA, CHANDIGARH PIN 160101.**
9. **VIKAS SHARMA,
SON OF SHRI SUKHDEV SHARMA,
VILLAGE KWANGALTA, P.O. SALOUNI,
TEHSIL BARSAR, DISTRICT HAMIRPUR (H.P.).**
10. **VIJAYENDRA SINGH CHANDEL,
SON OF SUBEDAR CHARAN SINGH CHANDEL,
VILLAGE & POST OFFICE NANGAL,
TEHSIL NALAGARH, DISTRICT SOLAN (H.P.).**
11. **SHIKHA BAKSHI,
DAUGHTER OF LT. COL. S.R. BAKSHI,
HOUSE NO. 2628/1,
SECTOR 47-c, CHANDIGARH.**
12. **BHAWNA SINGAL,
DAUGHTER OF SHRI AMIN CHAND SANGAL,
HOUSE NO. 204 SECTOR 46A,
CHANDIGARH. PIN 160047.**
13. **SAMITA DEVI,
DAUGHTER OF SHRI SURINDER KUMAR,
WARD NO.4, NEAR PROF. COLONY,
MALAHAT NAGAR, UNA (H.P.).**
14. **DIMPAL DEHAL,
DAUGHTER OF SHRI BALDEV DAHAL,
VILLAGE & POST OFFICE CHAKMOH,
TEHSIL BARSAR, DISTRICT HAMIRPUR**



(H.P.) PIN-174312.

15. **BHABHISHAN KUMAR,
SON OF SHRI SUSHIL KUMAR,
VILLAGE SUNEHRA, P.O. UNA,
TEHSIL & DISTRICT UNA
(H.P.) PIN 174303.**
16. **JATINDER KUMAR,
SON OF SHRI MAST RAM,
VILLAGE AND POST OFFICE JEJWIN
TEHSIL JHANDUTTA, DISTRICT
BILASPUR (H.P.) PIN 174031.**
17. **ASHIMA BANSAL,
DAUGHTER OF SHRI SUNIL BANSAL,
HOUSE NO. 1455, KAMLA NAGAR,
KALKA DISTT. PANCHKULA
(HARYANA) PIN 133302.**
18. **SONAL CHOPRA,
DAUGHTER OF SHRI VIJAY KUMAR CHOPRA,
JAGDAMBA BHAWAN, WARD NO.7,
HOUSE NO. 108, HAMIRPUR (H.P.)
PIN 177001.**
19. **ASHISH SHARMA,
SON OF SHRI TILAK RAJ SHARMA,
KANOL BHAWAN, VIKAS NAGAR,
P.O. KASUMPTI SHIMLA-9 (H.P.)
PIN 171009.**
20. **SHWETA JAGOTA,
DAUGHTER OF SHRI AMAR NATH JAGOTA,
VILLAGE HARKURKAR P.O. &
TEHSIL GHUMRWAN, DISTT. BILASPUR
PIN 174021.**
21. **PRASHANT GUPTA,
SON OF SHRI RAVI CHAND GUPTA,
VILLAGE & POST OFFICE GURKURI,**



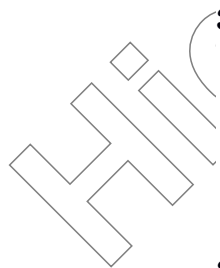
**TEHSIL & DISTRICT KANGRA (H.P.)
PIN 176001.**

- 22. POOJA SHARMA,
DAUGHTER OF SHRI SURENDER SHARMA
C/O SAROCH PRINTING PRESS,
KACHEHRI ADDA, DHARMSHALA,
DISTRICT KANGRA (H.P.).**
- 23. PRIYANKA,
DAUGHTER OF SHRI HARMESH RAJPOOT,
15, HILL VIEW HOUSING SOCIETY
JHALERA, UNA (H.P.) PIN 174303.**
- 24. VIJAY KUMAR THAKUR,
S/O SH. K.C. THAKUR,
1-415, SAROJININ NAGAR,
NEW DELHI-110023 AT PRESENT
VILLAGE KARKUHI, POST OFFICE TULLAH,
TEH. JOGINDAR NAGAR, DISTT MANDI,
(H.P.) PIN-175015.**
- 25. MAYANK SHARMA,
S/O SHRI RAJESH SHARMA,
HOUSE NO. 3759, SECTOR 22 D,
CHANDIGARH. PIN-160022.**
- 26. RENU KAUSHAL,
DAUGHTER OF SHRI S.P. KAUSHAL,
SHASTRI COLONY, GHUMARWIN,
DISTRICT BILASPUR (H.P.) PIN 174021.**
- 27. NEHA RANA,
DAUGHTER OF SHRI JAGMOHAN KUMAR RANA,
VILLAGE & POST OFFICE DAULATPUR CHOWK,
TEHSIL AMB, DISTRICT UNA,
(H.P.) PIN 177204.**
- 28. RISHAB GUPTA,
SON OF LT. SHRI BALRAJ GUPTA,
HOUSE NO. 2752/10, BARA CHOWK,**



**JAIN GALI NAHAN, DISTRICT SIRMOUR
(H.P.) PIN 173001.**

- 29. PUJA CHAUHAN,
DAUGHTER OF SHRI SHAYAM SUNDER,
MALONWALA BHOOD, TEHSIL NAHAN
DISTRICT SIRMOUR (H.P.) PIN- 173001.**
- 30. ABHINAV KONDAL,
SON OF SHRI R.C. KINDAL,
VILLAGE & POST OFFICE PAPROLA,
TEHSIL BAIJNATH, DISTRICT KANGRA,
(H.P.) PIN 176115.**
- 31. RUPINDER,
SON OF LATE SHRI DHANI RAM,
VILLAGE JAIGARH, POST OFFICE CHOWAI,
TEHSIL ANI, DISTRICT KULLU,
(H.P.) PIN 172032.**
- 32. BINDU BALA,
DAUGHTER OF SHRI KISHNU RAM,
VILLAGE & POST OFFICE GANDHIR,
TEHSIL JHANDUTTA, DISTRICT BILASPUR,
(H.P.) PIN-174029.**
- 33. ANKUR DHIMAN,
SON OF SHRI ANIL KUMAR DHIMAN,
VILLAGE DIALRI, POST OFFICE BHORANJ,
TEHSIL BHORANJ, DISTRICT HAMIRPUR,
(H.P.) PIN-176045.**
- 34. ROHIT,
SON OF SHRI MANGAL CHAND,
VILLAGE THORANG, POST OFFICE GONDHLA,
DISTRICT LAHAUL-SPITI, (H.P.)
PIN-175140.**
- 35. RUCHI CHOUDHARY,
DAUGHTER OF SHRI SHANTI SAWROOP CHAUDHARY
V.P.O BHARMAR, TEHSIL JAWALI,**



**DISTRICT KANGRA (H.P.)
PIN- 176021.**

- 36. SHRADHA SHANDIL,
DAUGHTER OF SHRI SURESH SHANDIL,
RAMA NEWS AGENCY, THE MALL SHIMLA,
(H.P.) PIN- 171001.**
- 37. KARAN KANWAR,
SON OF COL. N.S. KANWAR,
C/O DIRECTOR RVS HEADQUARTERS,
WESTERN COMMAND, CHANDIMANDIR
(HARYANA) PIN-134107.**
- 38. SAMRIDHI SHARMA,
DAUGHTER OF SHRI SHAM LAL SHARMA,
VILLAGE & POST OFFICE AMB,
DISTRICT UNA (H.P.) PIN-177203.**
- 39. GEETIKA KAUSHAL,
DAUGHTER OF SHRI PAWAN KUMAR KAUSHAL,
HOUSE NO. 44, WARDNO.-2, KAUSHAL NIWAS,
NEAR PNB, VILLAGE & POST OFFICE
SANTOKHGARH, TEHSIL & DISTRICT
UNA (H.P.).**
- 40. AASTHA MAHAJAN,
DAUGHTER OF SHRI PRAVEEN KUMAR,
H. NO. 1767/1, SECTOR 39-B,
CHANDIGARH. PIN-160036.**
- 41. AVNIMAHAJAN,
DAUGHTER OF DR. ANIL MAHAJAN,
SUB DIVISIONAL HOSPITAL DEHRA GOPIPUR,
DISTRICT KANGRA (H.P.) PIN-177101.**
- 42. SANGEETA RANI,
DAUGHTER OF SHRI OMKAR SINGH,
VILLAGE & POST OFFICE BHATOLI,
DISTRICT UNA (H.P.) PIN 174315.**



43. **GARIMA MAJAHAN,
DAUGHTER OF BRGD. ARVIND GUPTA,
VILLAGE & POST OFFICE SAMLOTI,
TEHSIL & DISTRICT KANGRA,
(H.P.) PIN- 176001.**
44. **VISHAL SHARMA,
SON OF SHRI PARDEEP KUMAR,
VILLAGE & POST OFFICE CHALET,
TEHSIL AMB, DISTRICT UNA,
(H.P.) PIN-177204.**
45. **RHYTHM BHARDWAJ,
SON OF SHRI BISHAN DASS BHARDWAJ,
HOUSE NO. 89, LAKHANPUR,
TEHSIL SADAR, DISTT. BILASPUR,
(H.P.) PIN-174001.**
46. **RAMANPREET KAUR,
D/O SH. SANTOKH SINGH
VILLAGE & POST OFFICE
DEHLAN (UPPER), TEHSIL AND DISTT UNA
(H.P.) PIN-174306.**
47. **AMIT SHARMA,
SON OF SHRI ASHOK KUMAR,
VILLAGE TUKARI, POST OFFICE
DARKATI, TEHSIL JAWALI,
DISTRICT KANGRA, (H.P. PIN-176023.**
48. **PALVI MAJAHAN,
DAUGHTER OF SHRI RISHI MAHAJAN,
FANCY CLOTH HOUSE, HOSPITAL GALI,
KANGRA (H.P.) PIN-176001.**
49. **SHILPA MANKOTIA,
DAUGHTER OF SHRI SURESH SINGH MANKOTIA,
VILLAGE & POST OFFICE PANJAWAR,
DISTRICT UNA (H.P.) PIN-177208.**
50. **NATASHA,**



**DAUGHTER OF SHRI HEM RAJ,
WARD NO.4, VIKASNAGAR KHAD PAAR,
NEAR FISHERY DEPARTMENT
UNA, (H.P.).**

- 51. MANIK MAJAHAN,
SON OF SHRIAJAY KUMAR,
MOHALLA SAPRI, NEAR BUS STAND,
CHAMBA (H.P.) PIN-176310.**
- 52. PREETI SAGAR,
DAUGHTER OF SHRI PREM SAGAR SHARMA
VILLAGE & POST OFFICE DHARAMSAL
MAHATAN, TEHSIL AMB,
DISTRICT UNA (H.P.) PIN-177203.**
- 53. PALLAVI SHARMA,
DAUGHTER OF SHRI S.K. SHARMA,
HOUSE NO. 415/1, WARD NO.3,
NEAR CHIEF ENGINEER RESIDENCE (C.Z.)
M.G. ROAD, MANDI (H.P.) PIN-175001.**
- 54. JYOTI SHARMA,
SON OF SHRI RAJENDER KUMAR SHARMA,
VILLAGE LADHYANI, POST OFFICE LEHRI SARAIL
TEHSIL GHUMARWIN, DISTRICT BILASPUR,
(H.P.) PIN-174027.**
- 55. ABHAY KATOCH,
SON OF SHRI VINOD KATOCH,
VILLAGE PATHIAR, TEHSIL &
DISTRICT KANGRA, (H.P.) PIN-176047.
(BY SH. AJAY VAIDYA, SR. ADDL. A.G. FOR R-1 & 2.)**

**(SH. SANJEEV BHUSHAN, SR. ADVOCATE WITH SH.
RAJESH KUMAR, ADVOCATE, FOR R-3, 5, 7, 8, 12, 14, 15,
16, 20, 22, 23, 25 TO 28, 30 TO 34, 38 TO 42, 44, 46, 47,
49, 51 TO 55).**

Reserved on: 4.10.2021

Decided on: __11.2021

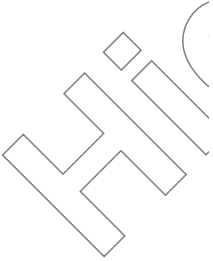
These petitions coming on for orders this day, **Hon'ble Mr. Justice Satyen Vaidya**, passed the following:

ORDER

CWP No. 879 of 2016 and CWP No.3145 of 2016 along with Execution Petition 147 of 2016 in CWP No. 1235 of 2007 and Execution Petition No. 157 of 2016 in CWP No. 384 of 2008 have been heard together and are being decided by a common judgment on account of involvement of common questions of facts and law.

2. By way of instant petitions, petitioners have prayed for following substantive reliefs respectively:

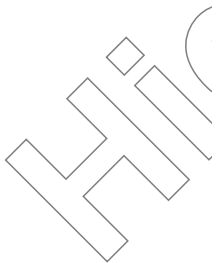
CWP No. 879 of 2016

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- (i) That the tuition fee for free/merit seats as notified by the respondent state in notification dated 15.9.2003 for the session 2003-04 for free/merit seats (i.e Rs. 20,000/- per seat per annum) may kindly be held applicable.
 - (ii) That the notification No. HFW-B(E)3-8/2014 dated 7.11.2015 i.e. Annexure P-2 which has been issued in violation of Apex Courts judgment and the direction of this Court may be kindly be quashed and set aside and declared null and void.

- (iii) That notice reference No. BDC/BHUD/CWP-1235FR/SF-167-16089 dated 23.11.2015 i.e Annexure P-1 issued in violation the Apex Court, Judgment and the directions of this Court may also be quashed and set aside in view of the above submissions.

CWP No.3145 of 2016

- a. Issue a writ of certiorari, mandamus or appropriate writ order or direction as this Hon'ble Court deems fit quashing notification dated 17.11.2015 (Annexure P-6) passed by respondent No.1.
- b. Issue a writ of certiorari, mandamus or appropriate writ order or direction as this Hon'ble Court deems fit quashing the decision dated 17.7.2015 (Annexure P-5) passed by respondent No.4/ fee committee held on 17.7.2015 for all intents and purposes.
- c. Issue a writ of certiorari, mandamus as this Hon'ble Court deems fit quashing he very constitution of respondent No.2 "Fee Committee" by respondents being in defiance, non-compliance to the judgment dated 17.9.2013 passed by the Hon'ble Court in CWP No. 1235 of 2007 (Bhojia Dental College Vs State of H.P. and others) and CWP No. 384 of 2008) Bhojia Charitable Trust and another Vs State of H.P. and others) for all intents and purposes.



- d. Issue a writ of certiorari, mandamus as this Hon'ble Court deems fit upholding the tuition fee as prescribed vide notification No. HFW-B(F)5-10/94, loose dated 15.9.2003, for the academic session of 2003-04 in respect of BDS course of Private Dental Colleges of Himachal Pradesh, may be upheld.

Execution Petition No. 147 of 2016 in CWP No. 1235 of 2007

- (A) That the respondents 3 to 26 may be directed to pay the amount of balance fee as per details given in the body of petition.
- (B) That the necessary certificate for the amount to be recovered from each respondent student as per details given in the body of the petition may be ordered to be given in favour of the petitioner.

Execution Petition No. 157 of 2016 in CWP No. 384 of 2008

- (A) That the respondents 3 to 55 may be directed to pay the amount of balance fee as per details given in the body of petition.
- (B) That the necessary certificate for the amount to be recovered from each respondent student as per details given in the body of the petition may be ordered to be given in favour of the petitioner.

3. Petitioner in CWP 879 of 2016 is father of Ms. Anuradha, who along with petitioners in CWP No. 3145 of 2016



were students of BDS course, commencing from 2003-04, in Bhojia Dental College and Hospital, Bhud, Nalagarh, Distt. Solan (HP) (for short, "Bhojia Dental College").

4. Government of Himachal Pradesh, after decision of Supreme Court in **Islamic Academy of Education versus State of Karnataka**, issued notification dated 15.9.2003, whereby the fee structure of Private Dental Colleges for academic session 2003-04 was determined. A sum of Rs. 20,000/- per student per annum was determined for 50% seats of Govt. sponsored students and Rs. 2.5 Lakhs per student per annum was fixed for 50% seats of management quota. These amounts, however, were inclusive of all charges except refundable security.

5. Vide notification dated 13.2.2004 Government of Himachal Pradesh constituted Fee Structure Committee for academic session 2004-05. The committee submitted provisional fee structure at Rs. 85,000/- for academic session 2004-05 for Bhojia Dental College in respect of both State as well as Management quotas. This provisional fee structure was subject matter of CWP No. 22 of 2004 and connected matters. The Division Bench of this Court vide decision dated

22.12.2004 disposed of the matters on the basis of consensus arrived at between the parties to the effect 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 uninfluenced by the provisional fee structure already adopted/assessed by it. Accordingly, directions were issued. It was also noted by the court that the committee while determining the final fee structure would also consider the cases of students who were admitted prior to academic session 2004-05.

6. Consequent upon the directions issued by High Court, the Fee Structure Committee submitted its recommendations to the State Government, who in turn, issued communication dated 28.7.2005 prescribing the fee for academic sessions 2003-04, 2004-04 and 2005-06. As regards Bhojia Dental College, final fee was fixed at Rs. 84,000/- per annum per student for both the categories i.e. free seats and management seats. This fee structure was challenged by students admitted in 2003-04 before this Court in CWP No.856 of 2005. The challenge was rejected by the court holding that

judicial review of the decision of the Committee was not possible.

7. The State Legislature enacted The Himachal Pradesh Unaided Dental Colleges (Regulation of Admission and Fixation of Fee for Academic Year 2003-04) Act, 2006 (for short, "First Act of 2006"). Section 4 of the Act read as under:

4. Fixation and Regulation of Fee:

Notwithstanding anything contained in any order or judgment passed by any competent Court or any order, notification or instruction issued, the students admitted against Government quota (merit seats) during 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 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."

8. The State Legislature enacted another Act titled as Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (for short, "Second Act of 2006"). Section 3 of this Act provides for Regulation of Admission, fixation of fee and making of reservation for different categories in admissions to Private

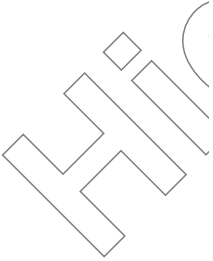


Medical Educational Institutions. Sub section (3) of Section 3 of said Act reads as under:

“3(3) The State Government may constitute an Admission and Fee committee (hereinafter referred to as the ‘Committee’) consisting of such members as may be specified by the State Government, by notification, to recommend the mode of admission, making of reservation, allocation of seats and fixation of fees etc. to the State Government.”

Section 7 of the Act read as under:

“7. Fixation of Fees: (1) The State government while determining, or the Committee constituted under sub section (3) of section 3 while recommending to the State Government, the fee to be charged by a Private Medical Education Institution, shall consider the following factors:

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- (a) The location of the institution;
 - (b) The nature of the medical course;
 - (c) The cost of land and building;
 - (d) The available infrastructure and equipment;
 - (e) The expenditure incurred or being incurred on faculty, administration and maintenance;
 - (f) The reasonable profit required for the growth and development of the institution;
 - (g) Any other relevant factor, which the State Government deems just and appropriate for the determination of fee.

(2) Before determining fee under sub section (1), the State Government or the said Committee, as the case may be, shall give the concerned Private, Medical Educational Institutions and the representatives of the students already studying in such institutions and the representatives of the students who intend to seek admission in these institutions, a reasonable opportunity to express their view point in writing in respect to the fee determination.

(3) Notwithstanding anything contained in sub sections (1) and (2), the State Government may, in public interest, determine a provisional fee structure.

Provided that the fee shall be fixed in accordance with the provisions of sub section (1) and sub section (2) within a period of ninety days from the fixation of such provisional fee.

(4) Notwithstanding anything contained in sub sections (1) and (2), the State Government shall have power to review the fee structure fixed by the Committee, prior to commencement of this Act.

9. The Government of Himachal Pradesh vide notification dated 8.12.2006 fixed the provisional fee for the state quota students admitted in the academic years 2004-05 and 2005-06 at Rs. 50,000/- till the final outcome of the

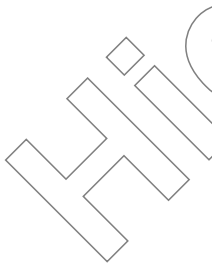


recommendation of the Review Committee. The Review Committee took final decision on 2.6.2008 and recommended the fee of Rs. 50,000/- per student per annum for students admitted against state quota seats during the academic years 2004-05 and 2005-06.

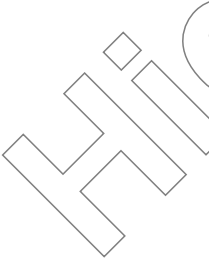
10. Whereas Section 4 of the First Act of 2006 was challenged in CWP No. 1235 of 2007 before this Court, notification dated 8.12.2006 issued by the State Government and recommendation dated 2.6.2008 made by Review Committee was challenged in CWP No. 384 of 2008. Both the writ petitions were filed by Bhojia Dental College. Division Bench of High Court vide common judgment dated 17.9.2013 passed in CWP. Nos 1235 of 2007 and 384 of 2008 held section 4 of the First Act of 2006 invalid and null and void and as concomitant entire Act was rendered unenforceable and redundant. The decision of Review Committee dated 2.6.2008 was also quashed and set aside. The Division Bench of this Court in paras 40 to 43 of the said judgment held as under:

“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 2.8.2008. 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 for Private Unaided Dental Colleges in the context of final fee 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 on the fee 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.

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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 above, we dispose of both the petitions on the following basis:

i) Section 4 of the Himachal Pradesh Private Unaided Dental Colleges (Regulation of Admissions and Fixation of Fee for Academic year 2003-04) Act, 2006 is declared illegal 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 reconsideration 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 fee already collected. However, in the event of 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.

11. The Review Committee vide proceedings dated 17.7.2015 decided that Bhojia Dental College will charge Rs. 84,000/- per student per annum from the batches of students of BDS course of the academic years 2003-04, 2004-05 and 2005-06. Government of Himachal Pradesh notified the said decision of Review Committee vide Notification dated 17.11.2015.

12. Petitioners in the instant petitions have assailed the above-mentioned notification dated 17.11.2015 issued by the State Government and also the decision dated 17.7.2015 of the Review Committee.

13. Petitioners have alleged that the constitution of the Committee was bad in law as the State Government had not

taken any steps to nominate retired High Court Judge, Chartered Accountant, representative of MCI and AICTE etc to the committee in accordance with the mandate of Apex Court. The constitution of Review Committee has also been challenged on the ground that it was not the same which had taken decision dated 13.5.2008. Petitioners were not afforded opportunity of being heard. Fixation of fee at Rs. 84,000/- per annum was in violation of judgment dated 17.9.2013 of this court in CWP No. 1235 of 2007, whereby the decision of Fee Structure Committee dated 17.7.2005 fixing the fee at Rs. 84,000/- per annum had been set aside. It has also been contended that Review Committee had not applied its mind in as much as the fee fixed for 2015-16 session was Rs. 73,000/- per annum for free/ merit seats. Further the challenge has been made on the ground that the impugned notification and decision of Review Committee was in violation of Directions of Apex Court judgment in Islamic Academy of Education Vs State of Karnataka as the Review Committee had blatantly neglected the fixed criteria of 6% to 15% as surplus for expansion of the system and development of education. As per petitioners the State Government had issued impugned notification only to

further the business interest of Bhojia Dental College, which was not running educational institution for charitable purposes. The decision of the State Government has also been assailed on the ground of financial constraints of the petitioners. It has been alleged, had they known before getting admitted to BDS course that they would be charged such huge fee, they would have not got themselves admitted.

14. The official respondents have supported and justified their action being in accordance with the mandate of Apex Court as well as this Court. It has been stated that the fee for academic sessions 2003-04 to 2005-06 was fixed strictly in accordance with the established guidelines and criteria.

15. Bhojia Dental College has also contested the claim of petitioners. After narrating the entire sequence of events on factual side has controverted the allegations of the petitioners. It has been asserted that the fixation of fee by the Review Committee vide proceedings dated 17.7.2015 and notified by the State Government vide notification dated 17.11.2015 was strictly in compliance to law laid down by Constitution Bench of Apex Court in TMA Pai and Islamic Academy of Education and also to the directions issued by this Court in CWP No. 1235 of

2007. In CWP 879 of 2016, the petition is stated to be not maintainable on behalf of the father of the student, who herself was major on the date of filing of petition.

16. We have heard the parties and have also gone through the records.

17. The Division Bench of this Court while rendering judgment dated 17.9.2013 in CWP Nos. 1235 of 2007 and 384 of 2008 had taken note of exposition made by Constitution Benches of Apex Court in TMA Pai, Islamic Academy of Education and P.A. Inamdar and had observed in para 21 as under:

“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. The Committee has to bear in mind broad contours delineated by the Apex Court



in paragraph 155 of the Islamic Academy and paragraph 149 of P.A. Inamdar(supra).

18. Indisputably, the judgment passed by the Division Bench of this Court in CWP Nos 1235 of 2007 and 384 of 2008 has attained finality. Petitioners in CWP No. 879 of 2016 and daughter of petitioner in CWP 3145 of 2016 were parties to the above noted lis in CWP No. 1235 of 2007. Resultantly, the legality and validity of the impugned notification dated 17.11.2015 of the State Government and decision dated 17.7.2015 of Review Committee can be tested only to the limited extent, whether the same are in conformity with the directions issued by this court?

19. Judged on the touchstone of above noticed observations/directions, the decision of Review Committee dated 17.7.2015 cannot be faulted. Perusal of minutes of meeting of Review Committee reveal that after taking into consideration the past instances of fee fixation having taken place from time to time it was noted in paragraphs 4 and 6 as under:

“4. The committee reviewed the income-expenditure statement submitted by the applicant i.e. Shri Vikram Bhojia, Secretary, Bhojia Dental

College, Bhud, Nalagarh, District Solan. The committee also reviewed the three options of fee structure of BDS course submitted by the applicant, for the academic years under reference. The applicant submitted that (a) if the fees is fixed @ Rs. 20,000/- for state quota and @ Rs. 2.50 Lakh for management quota seats, the net receipt would be Rs. 2,73,20,100/- and (b) if the fees is fixed @ Rs. 84,000/- for all seats, then total receipt will be Rs. 1,81,44,000/- and (c) further if the fees is fixed @ Rs. 20,000/- for state quota seats and Rs. 84,0000/- for management quota seats, the receipt would be Rs. 86,32,000/-. The applicant further submitted that if the committee re-fixes the fees as per option (a), the institute will be in profit, if the fees is fixed as per option (b), there will be no profit or no loss and if the option (c) is chosen then the institute will be in loss.

6.The committee noted that as per law laid down by the Apex Court, the committee was required to review and moderate the fee structure to be proposed by the college. In the instant case, the fee was to be reviewed for three years commencing 2003 onwards. Students admitted to these sessions had already passed out and the college would have to resort to innovative mechanism to recover the amount due or refund the excess fees received. The committee further observed that expenditure figures



in respect of 2003-04, 2004-05 and 2005-06 had already achieved finality as audited balance sheets and statements of accounts were available. The only variable was the tuition fee. In view of the three options given by the applicant college, option No. II was the only permissible option that could be considered.”

20. At this stage we find it appropriate to quote paragraph 155 of Islamic Academy of Education and Paragraph 149 of P.A. Inamdar:

“155. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purposes 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 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 faculty and other staff, the investments made by them, the infrastructure provided and the plans for the 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



expansive device (for medical colleges) or a powerful computer (for technical college). Those factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the committee.”

“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 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 regards for realities. They should refrain from generalising fee structure 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.”

21. Thus, what was required from Review Committee was to ensure that the fixation of fee was recommended in the manner which on one hand would not unduly enrich the educational institution so as to make it profitable institution and on the other hand would not render it financially unviable. In the instant case the audited balance sheets for the relevant years as also account statements of the institution were before the Review Committee. On the basis of such accounts three different options were proposed. The Review Committee recommended the option which in its opinion was best suited in the facts of the case. There was nothing before the Review Committee suggesting that there was some component of capitation fee in the proposed options. In fact, options mooted by the institutions were nothing but permutations and combinations of different fee structures proposed or employed in the past. It can also not be said that the recommended fee



structure would in any manner have taken out the institution from category of charitable institution or had made it a commercial organisation. In either of the petitions before us the petitioners have not placed on record any material to doubt the bonafide of the Review Committee in decision making. It is equally noteworthy that the findings recorded by the Review Committee on the basis of accounts before it has not been proved to be incorrect. We cannot lose sight of another fact that vide judgment dated 6.12.2005 in CWP No. 856 of 2005 Division Bench of this Court had upheld the fee structure for academic year 2003-04 for Bhojia dental College at Rs. 84,000/- per annum for all category of seats after holding that the committee, which was constituted for the purpose had taken into consideration all the matters, which ought to have been taken into consideration. Accordingly, the court had refused to go into merits of the case by judicial review. This judgment had also attained finality. That being so, the specific findings recorded in the above noted judgment is a definite indicator that the fee fixed by Review Committee vide impugned decision is not exorbitant.

22. As regards, objection as to constitution of Review Committee, it has been stated that the Review Committee was not constituted in accordance with the direction passed by Apex Court and also that the committee that took the impugned decision was not the same that had taken decision dated 13.5.2008. The objection deserves to be rejected for the reason that after coming into force of Second Act of 2006, the statutory committees envisaged therein had substituted the committee suggested by Apex Court in TMA Pai. The said Act provided for constitution of committee by the State Government by notification. Thus, the statutory committee under the Act has to be viewed as an institution in perpetuity notwithstanding its membership being changed from time to time.

23. Another objection raised by the petitioners is that they were not afforded any opportunity of being heard by the committee before taking the decision which ultimately affected them. The matter was referred to the Review Committee under the directions of Division Bench of this Court in CWP NO. 1235 of 2007 whereby the said committee was under no mandate to afford opportunity of being heard to the petitioners herein. In another view of the matter the power to review the fee structure

fixed by any committee before commencement of Second Act of 2006 is vested with State Government under Section 7(4) of said Act, which does not envisage any such opportunity. Even otherwise Section 7(2) provides for opportunity to express view point in writing, before committee determining fee structure under section 7(1), to the representatives of the students who either were already studying in the educational institution concerned or were seeking admission. In none of the cases the petitioners herein were entitled to be heard by the Review Committee as they had passed out from the institutions long back and also that the fee structure was not being determined under sub section (1) of Section 7 of Second Act of 2006. It is not the case that the petitioners herein were not aware about the decision rendered by Division Bench of this Court in CWP No. 1235 of 2007 and CWP No. 384 of 2008 as they were parties to said litigation. Had they been serious in their endeavour, they could have easily approached the Review Committee with the material, if any, to dislodge the claim of Bhojia Dental College. The petitioners have also not been able to produce before us any material which may cast some doubt on the proceedings of the Review Committee or its ultimate

analysis. The petitioners have been afforded sufficient opportunity of hearing in the present petitions and their inability to show any serious prejudice to their rights on account of their non-participation in the proceedings of Review Committee otherwise pales into insignificance. It is significant to notice that students of Bhojia Dental College had represented to the committee against imposition of Rs 84,000/- fee for all categories of students for academic years 2003-04 to 2005-06. The committee had considered and rejected their objections in its meeting dated 8.12.2015 and there is no challenge to such findings of the committee in the instant petitions.

24. Petitioners have contended that for 2015-16 session the same committee has fixed the fee for state quota seats @ Rs. 73,000/- per annum, thus it was absurd that the fee for academic sessions 2003-04 to 2005-06 was fixed at Rs.84,000/- per annum. Perusal of minutes of meeting dated 8.12.2015 reveal firstly that the constitution of committee was substantially not the same and secondly the recommendation made by said committee was in the context of notification dated 27.5.2014 whereby three tier fee structure for state quota

students of BDS course in Private Dental Colleges in the State was prescribed. In any case the proceedings dated 28.12.2015 of the committee is not in challenge before us nor are we seized of material to adjudicate upon its legality or otherwise. It is also not clear whether the recommendation of said committee has been accepted by the State Government or not.

25. The petitioners have also raised the plea of estoppel on the ground that the fee structure changed after their joining the course was not binding on them and had they known the change in fees beforehand, they would not have got themselves admitted. It is not in dispute that the change in fee structure was necessitated with the purpose to comply with mandate of Apex Court in TMA Pai which had overruled Unnikrishnan on relevant aspect to limited extent. That being so, the plea of estoppel is not available to the petitioners. Moreover, petitioners never assailed the changes in fee structure proposed by different committees from time to time, therefore, they cannot be allowed to raise this issue in present proceedings, where the scope of challenge has its own restrictions as noticed above.

26. In view of above discussion, we do not find it necessary to rule on the objection of Bhojia Dental College with

respect to maintainability of writ petition No. 879 of 2016 on behalf of father of one of the students.

27. Bhojia Dental College has preferred Execution Petition No.147 of 2016 in CWP 1235 of 2007 and Execution Petition No. 157 of 2016 in CWP 384 of 2008. The fact remains that both the Writ Petitions i.e. 1235 of 2007 and 384 of 2008 were decided by a common judgment dated 17.9.2013 by Division Bench of this Court with directions as noticed above in paragraph 10 of this judgment.

28. In Execution Petition No. 147 of 2016 private respondents Nos. 6,7,13,18 and 20 have submitted their reply and respondent No.11 has submitted objection petition separately. Respondents 6,7,13,18 and 20 in Execution Petition No. 147 of 2016 are the petitioners in CWP No.3145 of 2016 and respondent No. 11 in the said execution petition is daughter of petitioner in CWP No. 879 of 2016. The reply and objection petition submitted by above referred private respondents respectively contain the grounds which are *Pari Materia* the same on which they have preferred CWP Nos 3145 of 2016 and 879 of 2016 respectively. Since we have already considered the grounds raised in CWP Nos 3145 of 2016 and

879 of 2016 in paras *supra* and have recorded specific findings, the same shall apply *mutatis mutandis* to the objections raised in Execution Petition No. 147 of 2016. No other private respondent has raised any objection in said execution petition.

29. In Execution Petition No. 157 of 2016 an objection petition is purportedly filed by respondents 3, 5 to 9, 12, 14 to 16, 19 to 23, 25 to 28, 30 to 34, 36, 38 to 42, 44, 46, 47, 49 and 51 to 55 but the same has been signed only by Shri Bhabhishan Kumar (Respondent-15) and nothing on record suggests that said respondent No.15 had authority from other above noted respondents to file the objection petition on their behalf also. Respondent No. 45 has separately filed his objections.

30. Noticeably, none of above referred objectors in Execution Petition No. 157 of 2016 had assailed judgment dated 17.9.2013 passed by the Division Bench of this Court. They had also accepted the decision dated 17.7.2015 of the Review Committee and notification dated 17.11.2015 issued by the State Government.

31. The objection of objectors in Execution Petition No. 157 of 2016 primarily is that judgment dated 17.9.2013 did not

carry any mandatory direction and the tool of execution cannot be used by the execution petitioner to recover the due amount, if any, from the objectors.

32. The right of execution petitioner to receive fees from students including objectors is not in question. The bone of contention has been the rate at which the fee is to be paid. Admittedly, on account of various interdicts imposed by statute and judicial pronouncements, the regulatory procedure to fix the fee was taken out of hands of execution petitioner and other similarly situated educational institutions and was instead vested in independent authorities. Decisions taken by authorities, from time to time, to fix fee payable to execution petitioner could not attain finality as is evident from details of facts narrated in earlier part of this judgment. Judgment dated 17.9.2013 passed by Division Bench of this Court, in execution in instant proceedings has attained finality. The direction No. iii) of said judgment was preceded by specific mandate of the Court as contained in para 41 of the judgment as under:

“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 the deficit amount from its students admitted in the college for the concerned academic years 2003-04 to 2005-06.**

Thus, the Writ Court has pronounced a positive mandate in favour of execution petitioner and the same cannot remain a mere paper decree. All the objectors were parties to the judgment in execution and the above said mandate is binding on them without any shadow of doubt, judgment having attained finality and Review Committee having upheld the claim of execution petitioners. To direct execution petitioners at this stage to institute independent claims against individual private respondents in execution petitions will be nothing but travesty of justice.

33. Objectors in Execution Petition No. 147 of 2016 have also raised an objection that the execution petition is not maintainable in view of Notification No. HHC/Rules/Vol. V/97-1-26000-26019 dated 23/24.09.2013 whereby Rule 16, under Part C, "Civil Writ" of the Rules known as "High Court of

Himachal Pradesh (Original Side) Rules 1997 has been deleted. The objection is wholly misconceived and untenable in view of The High Court of Himachal Pradesh (Original Side) (9th Amendment), Rules notified vide notification No. HHC/Rules/Vol. V/97-I dated 9.4.2014.

34. In view of above, we do not find any merit in the writ petitions and also the objections raised in execution petitions Nos. 147 and 157 of 2016 and the same are dismissed with no orders as to costs. Private respondents in both the execution petitions are directed to pay due and admissible amount of arrears of fee to the execution petitioners within a period of three months from today, failing which the execution petitioners shall be at liberty to take steps to execute the order in accordance with law especially Part-C, Rule 16, Writ Jurisdiction (High Court of Himachal Pradesh) Rules, 1997. All miscellaneous pending applications, if any, are accordingly disposed of.

(Tarlok Singh Chauhan)
Judge

November 9th, 2021
(kck)

(Satyen Vaidya)
Judge