

***IN THE HIGH COURT OF ANDHRA PRADESH**

**+WRIT PETITION (PIL) No.131 & 132 of 2017, W.P.Nos.16990,
17102 & 17104 of 2017, W.P.Nos.19755, 19764 & 19802 of 2019,
W.P.Nos.1323, 1324, 1327 & 6893 of 2020**

+W.P.(PIL).No.131/2017

Between:

#Smt. Govind Kumuda Sushma, W/o. Govind Suresh Kumar,
R/o. D.No.11-3-21, Old Bridge Pet, Church Road,
Kovvur, West Godavari District, A.P.

... Petitioner

AND

- \$ 1. State of Andhra Pradesh, rep. By its Secretary, Health, Medical and Family Welfare Department, Secretariat Buildings, Velagapurdi, Krishna District.
2. N.T.R. University of Health Sciences, Vijayawada, Krishna District, rep. By its Registrar.
3. A.P. Admission and Fee Regulatory Committee, 1st Floor, (South Wing), Gagan Vihar, M.J. Road, Hyderabad, rep. by its Member Secretary.
4. A.P. Private Medical and Dental Colleges Managements Association, No.60-1-2/2, Siddhartha Nagar, Vijayawada Urban, Vijayawada, Andhra Pradesh – 520010, rep. By its Secretary.

... RESPONDENTS

Date of Judgment pronounced on : 20.01.2021

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

1. Whether Reporters of Local newspapers may be allowed to see the judgments: : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy of the Judgment: : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH :: AT AMARAVATI**

*** HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
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... RESPONDENTS

! Counsel for petitioners : Sri D.S.N.V. Prasad Babu, Sri Sandeep Reddy
M/s. Nomos Vistas, Sri S. Ravinder,
Sri Srinivasa Rao Velivela

^Counsel for Respondents : Advocate General, Sri C. Dudesh Anand
Sri D. Prakash Reddy, Sri B. Adinarayana Rao,
Sri N. Subba Rao, Sri Challa Gunaranjan
Sri V.V. Anil Kumar

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>HEAD NOTE:

? Cases referred:

1. (2003) 6 SCC 697
2. (2002) 8 SCC 481
3. (2005) 6 SCC 537
4. AIR 1966 SC 1404
5. (1974) 4 SCC 98
6. (1998) 7 SCC 162,
7. (1990) Supp SCC 374
8. (2005) 2 SCC 334
9. AIR 1959 SC 781
10. 2013 (3) ALD 609 :: 2012 (3) ALT 686
11. (1993) 1 SCC 645

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
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WRIT PETITION (PIL) No.131 & 132 of 2017,
W.P.Nos.16990, 17102 & 17104 of 2017,
W.P.Nos.19755, 19764 & 19802 of 2019,
W.P.Nos.1323, 1324, 1327 & 6893 of 2020

COMMON ORDER: (per Hon'ble Sri Justice R.Raghunandan Rao)

Heard Sri D.S.N.V.Prasad Babu, M/s. Nomos Vistas, M/s. Sama Sandeep Reddy, Sri Srinivasa Rao Velivela, learned counsel for the petitioners, the learned Additional Advocate General for the State, Sri C. Sudesh Anand for A.F.R.C, Sri D. Prakash Reddy, Sri B.Adinarayana Rao, learned Senior Counsel for various Medical Colleges and the Association of Medical Colleges, Sri N. Subba Rao, Sri Challa Gunaranjan and Sri V.V. Anil Kumar for Respondent-Medical Colleges.

2. The present writ petitions are challenging the consensual agreement dated 02.05.2017, G.O.Ms.No.70 Health, Medical & Family Welfare (C1) Department, Dated 03.05.2017, G.O.Ms.No.72 Health, Medical & Family Welfare (C1) Department, Dated 03.05.2017 and G.O.Ms.No.77 Health, Medical & Family Welfare (C1) Department, Dated 06.05.2017, *inter alia*, making rules for admission and stipulating the annual fee payable, in private unaided medical and dental colleges for Post Graduate Medical Courses and Post Graduate Dental Courses payable from the academic year 2017-2018. There is a further prayer that the private institutions be permitted to collect only the fees prescribed, under G.O.Ms.No.116 Health, Medical and Family Welfare (E2) Department, dated 14.05.2010, for the period commencing from the year 2017-2018.

As the issues raised and the prayers are common, all these writ petitions are being disposed of by this common order.

The Developments prior to the issue of the Impugned G.O.s are as follows:

3. The Government of Andhra Pradesh in pursuance of the directions in **Islamic Academy of Education and another V. State of Karnataka¹**, constituted a Committee for overseeing fair and transparent conduct of Common Entrance Test by the Association of Colleges of Private Un-aided Professional Educational Institutions (Minority and Non-Minority) by way of G.O.Ms.No.91, Higher Education (EC) Department, dated 22.12.2003 and a committee to fix the fees by way of G.O.Ms.No.90, Higher Education (EC) Department, dated 22.12.2003. These Committees continued till G.O.Ms.No.6, Higher Education (EC.2) Department, dated 08.01.2007, was issued under the powers conferred by Section 15 read with Sections 3 and 7 of the Andhra Pradesh Educational Institutions (Regulation of Admission in Prohibition of Capitation Fee) Act, 1983 (hereinafter referred to as the 1983 Act). The Committee set up under this G.O., was called the Andhra Pradesh Admission and Fee Regulatory Committee (hereinafter referred to as AFRC). The said G.O., also brought in Regulations as to the Constitution of the AFRC, the process of fee fixation and other general issues.

4. The AFRC fixed the tuition fee for Post Graduate Courses in the Private Medical Un-Aided Non-Minority Professional Institutions for the Academic years 2007-2008 to 2009-2010 and the same were notified by the Government vide G.O.Ms.No.101, dated 02.04.2007. Similarly, fee was

¹ 2003 (6) SCC 697

fixed for Post Graduate Dental Course and notified for the period 2007-2008 to 2009-2010 by G.O.Ms.No.144, dated 02.05.2007. For the period 2010-2011 to 2012-2013 the fees fixed by the AFRC, for Medical and Dental courses was notified by the Government by way of G.O.Ms.No.116 Health, Medical and Family Welfare (E2) Department, dated 14.05.2010 for Medical Courses and by G.O.Ms.No.118, dated 14.05.2010 for Dental Courses.

5. For the block period commencing from 2013-2014, the AFRC had, considering the request of the Andhra Pradesh Private Medical and Dental Colleges Managements Association, resolved to postpone the fixation of tuition fee till the next Academic Year 2014-2015 and that the existing tuition fee structure could be retained in the Academic Year 2013-2014. In accordance with this resolution, the Government issued G.O.Ms.No.92 Health, Medical and Family Welfare (E1) Department, dated 01.07.2013, notifying the existing tuition fee structure being applicable to the Academic Year 2013-2014. The Government by letter No.1331/C1/2015, dated 08.05.2015 retained the existing fee with 5% increment for the Academic Year 2015-2016. For the Academic Year 2016-2017, the fee fixed for the Academic Year 2015-2016 was retained by Letter No. 177935/C1/2016, dated 03.05.2016 issued by the Principal Secretary to the Government.

6. The AFRC commenced the process of fee fixation for the block period commencing from 2017-2018 by issuing a notification dated 08.12.2016, published in the newspapers calling upon the managements of all concerned Private Un-Aided Professional Institutions in the State of Andhra Pradesh to submit relevant data by 20.01.2017 for the committee to review and determine fee structure for under graduate, post graduate and super speciality courses in Medical courses, under graduate and post

graduate courses in Dental and Ayush Courses for the block period 2017-2018 to 2019-2020. At that stage, the Andhra Pradesh Private Medical & Dental Colleges Management's Association (hereinafter referred to as the Management Association) by Letter dated 05.01.2017 sought time till 20.02.2017 to submit fresh data. The AFRC extended time till 10.02.2017. There was again a request made by the Management Association for further time which was extended up to 18.02.2017. It appears that, by this time, the Managements of the Private Institutions had submitted their accounts and proposals before AFRC. At that stage, the Management Association addressed a letter dated 15.03.2017 to the Vice Chancellor Dr. N.T.R. University of Health Sciences as well as the Government of Andhra Pradesh, seeking revision of fee structure for seats under convenor quota and management quota as the AFRC has not yet finalised the fee structure. The University, by notification dated 05.04.2017, invited applications for admissions into Post Graduate Medical Degree/Diploma and MDS Courses on the basis of the marks obtained in NEET PG-2017 and NEET MTS-2017. The Management Association again addressed a letter dated 17.04.2014 to the Vice Chancellor of the University of Health Sciences requesting the Vice Chancellor not to initiate admission processes into the Post Graduate Medical and Dental seats for Private Medical and Dental Colleges for the year 2017-2018 as the Government had not issued any orders with regard to seat matrix and fees for admission to the post graduate course.

7. After receipt of the said letter, it appears that there were some negotiations/discussions between the Government and the Management Association, which resulted in a Consensual Agreement dated 02.05.2017 wherein seat sharing and fees structure were agreed upon.

Subsequently, G.O.Ms.No.70 Health, Medical & Family Welfare (C1) Department, dated 03.05.2017 was issued under Section 3 and 15 of "the 1983 Act" enacting the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate, Medical and Dental Professional Courses) Rules, 2017, which came into force from the Academic Year 2017-2018. This G.O., stipulated the seat matrix in the admission process. G.O.Ms.No.72 Health, Medical & Family Welfare (C1) Department, dated 03.05.2017 was issued notifying the fee agreed between the Government and the Private Managements Association in the Consensual Agreement, dated 02.05.2017. Thereafter, G.O.Ms.No.77, dated 06.05.2017 was issued, increasing certain fees on the request made by the management association. These G.Os., are now challenged before this Court.

8. Initially W.P.(PIL).Nos.131 of 2017 and 132 of 2017 were filed as public interest litigations. Thereafter, students, who were pursuing their post graduate medical and dental education, approached this Court by way of other Writ Petitions which are being disposed by this common order.

9. The tuition fees fixed by G.O.Ms.No.72, dated 03.05.2017 is as follows:

Particulars of the Tuition Fee structure per annum in respect of Post Graduate Medical / Dental courses in Private Un - Aided Non - Minority Colleges from the Academic year 2017-18 and certain directions thereto.

MD/MS/Diploma (Medical courses)

A) Tuition fee of Convener Quota seats (50% of total intake capacity): All Broad specialties:

a. Pre-clinical Degree /Diploma Courses- Rs.3,60,000/

b. Para-clinical Degree /Diploma Courses- Rs.6,60,000/

c. Clinical Degree/Diploma Courses: Rs.6,90,000/

B) Tuition Fee for management quota seats (Sub-Category 1):All Broad specialties:

a. Pre-clinical Degree /Diploma Courses- Rs.3,60,000/

b. Para-clinical Degree /Diploma Courses- Rs.6,90,000/

c. Clinical Degree/ Diploma Courses – Rs.24,20,000/

C) Tuition Fee for management quota seats (Sub-Category 2& 3):All Broad specialties: Degree Courses / Diploma Courses: not exceeding 3 times of b) c above

MDS (Dental courses)

D) Tuition fee of Convener Quota seats (50% of total intake capacity):All Broad specialties:

a. Non-Clinical Degree Courses:-- Rs.5,50,000/

b.Clinical Degree Courses:-- Rs.7,50,000/

E) Tuition Fee for management quota seats (Sub-Category 1): All Broad specialties:

a.Non-Clinical Degree Courses- Rs.7,00,000/

b.Clinical Degree Courses – Rs.13,00,000

F) Tuition Fee for management quota seats (Sub-Category 2& 3):All Broad specialties:

a. Non-Clinical Degree Courses:-- Rs.8,00,000/

b. Clinical Degree Courses: -- Rs.15,00,000/

*Non clinical degrees include Oral Pathology and Oral Medicine.

10. The above tuition fees was modified by G.O.Ms.No.77, dated 03.05.2017, as follows:

1. For item (d) of Annexure to G.O. 1st read above, the following shall be substituted. Tuition fee for Convenor Quota seats (50% of total intake capacity: All Broad specialties:

a. Para-Clinical Degree Courses :- Rs.5,25,000/-

b. Clinical Degree Courses:- Rs.5,50,000/-

2. For category (b) under item (e) of MDS (Dental Courses), the following shall be substituted. Clinical Degree courses - Rs.10,00,000/-

3. Under item "d, e and f" of Annexure to G.O. 1st read above, the expression 'non-clinical' shall be read as 'para-clinical'.

4. For asterisk (*) under item "f" of Annexure to G.O.1st read above, the word 'Oral medicine' shall be substituted with 'Oral medicine and Radiology.

11. The case of the petitioners essentially is that the directions of the Hon'ble Supreme Court in **T.M.A. Pai Foundation and Ors., v. State of Karnataka & Ors.**,² (hereinafter referred to as TMA PAI), in **Islamic Academy of Education and another V. State of Karnataka** (hereinafter referred to as Islamic Academy), and **P.A. Inamdar and others V. State of Maharashtra**³ (hereinafter referred to as P.A. Inamdar), require the AFRC to go through the individual cases of the private un-aided institutions and to fix and recommend the fee for each of the post graduate medical courses being conducted by these private institutions. Upon such recommendations being made, the Government is required to notify the same. The petitioners contend that the entire process was delayed by the private institutions and thereafter these private institutions have threatened to withdraw from the counselling process, which forced the Government to arrive at a consensual agreement with the private institutions, resulting in a huge increase in the fees being charged by these institutions. The petitioners contend that the directions of the Hon'ble Supreme Court in **Islamic Academy**) and **P.A. Inamdar** that AFRC would be the body which would fix the fee to be notified by the Government has been given a go bye and as such, G.O.Ms.No.72, dated 03.05.2017, which is said to be based on a consensual agreement, requires to be set aside. G.O.Ms.No.77, which

² (2002) 8 SCC 481

³ 2005 6 SCC 537

made some changes in the fee fixed by G.O.Ms.No.72, is also challenged on the same grounds. An additional ground raised is that the Consensual agreements of this nature are opposed to public policy and are hit by section 23 of the Contract Act. The petitioners also rely upon the judgement of the Hon'ble High Court for the State of Telangana dated 23.04.2019 in W.P.No.29938 of 2018 and the judgement of this Court dated 24.09.2019 in W.P.No.33656 of 2018 where similar G.Os., fixing fees for super speciality medical courses were struck down on the grounds raised here.

12. A separate challenge is made to G.O.Ms.No.70 on the ground that the said G.O. permits convenor quota seats to be shifted to management quota, when such seats are vacated by students who get better seats in further counselling. This sliding of seats is challenged on the ground that it would give additional seats to the private institutions. Except this ground, no other ground is urged in relation to G.O.Ms. No. 70. No grounds of law demonstrating any violation of the directions of the Hon'ble Supreme Court or the 1983 Act or the regulations made under the said Act have been pointed out to us. The sliding of seats would occur when the convenor seats are left unoccupied after the final counselling. At that stage it would be difficult to get the seats filled up and the Government has left it to the managements to fill up the seats. We do not find sufficient merit in this ground to strike down G.O.Ms.No.70.

13. The learned Additional Advocate General appearing on behalf of the State submits that the State was faced with a *fait accompli* due to the paucity of time and had entered into an agreement on account of the failure of AFRC in fixing the fee payable by the students. He submits that the Government had already taken a stand in the counter

affidavit that it was willing to undertake a fresh exercise of fixing the fees for the block period 2017-2018 to 2019-2020 following the guidelines in the Rules and the Judgments of the Hon'ble Supreme Court.

14. Sri C. Sudesh Anand, learned Standing Counsel for AFRC and the Andhra Pradesh Higher Education Regulatory and Monitoring Commission (hereinafter referred to as the Commission) created under the Andhra Pradesh Higher Education Regulatory and Monitoring Commission Act, 2019, submits that the fee agreement between the private institutions and the Government is exorbitant and in fact the new body had already fixed the fees for the block period 2020-2021 to 2022-2023 which has been notified by the Government by way of G.O.Ms.No.56, dated 29.05.2020. The fee fixed under this G.O. would clearly show that the fee sought to be collected for the earlier period is highly excessive. At this stage, it may be noted that the fee fixed under G.O.Ms.No.56 is under challenge before this Court.

15. Sri D. Prakash Reddy, Learned Senior Counsel appearing for some of the private institutions and Sri B. Adinarayana Rao, learned senior Counsel appearing for the Management Association had raised various submissions, which are summarised below:

I) The pleadings in all the writ petitions only state that the directions of the Hon'ble Supreme Court have not been complied with. There is no pleading that the impugned G.Os., have resulted in profiteering or commercialisation of education by the private institutions. In the absence of such pleadings, the present writ petitions would not be maintainable.

II) The last time fee was fixed by AFRC was in the year 2010 and since there was no increase in fees till 2017 with the sole exception of a solitary increase of 5%. In between, the 6th Pay Commission recommendations increased the salary bill of the institutions enormously and the fees were fixed under G.O.Ms.No.72, dated 03.05.2017 after taking these facts into account. G.O.Ms.No.75, dated 06.05.2017 amended the rules, requiring Medical Colleges to pay Rs.30,000/- per month to post graduate students of Medical and Dental Sciences. This was the reason why G.O.Ms.No.77 dated 06.05.2017 was issued for ensuring that the private institutions were insulated against the increased expenditure of Rs.30,000/- per month.

III) The directions of the Hon'ble Supreme Court in **Islamic Academy** and **P.A. Inamdar** are to the effect that the committees like the AFRC are stop gap arrangements till regulations are put in place by the Government. The Government had put in place appropriate regulations by issue of G.O.Ms.No.6, dated 08.01.2007. This G.O. was issued under the provisions of the 1983 Act and cannot be treated as a continuation of the *ad hoc* arrangement made under the directions of the Hon'ble Supreme Court. As such the observations and directions of the Hon'ble Supreme Court would not be applicable to matters regulated under G.O.Ms.No.6, dated 08.01.2007.

IV) The judgment of the Hon'ble High Court of Telangana, dated 23.4.2019 in W.P.No.29938 of 2018 and the judgement of this Court dated 24.9.2019 in W.P.No.33656 of 2018 relied upon by the petitioners do not lay down the correct Law as these judgements ignored the fact that the AFRC was established under the 1983 Act and as such, the directions of the Hon'ble Supreme Court would not apply. S.L.P. (Diary)

No.39681 of 2019 filed against the Judgment of this Court in W.P.No.33656 of 2018 is pending before the Hon'ble Supreme Court.

V) Section 3 of the Andhra Pradesh Educational Institutions (Regulation of Admission in Prohibition of Capitation Fee) Act, 1983 stipulates that, subject to the rules that may be made admission into educational institutions shall be made on the basis of performance in the qualifying exam or the entrance test. Section 7 grants power to the Government to fix the fees that may be levied and collected by educational institutions. It can be noticed that under section 3, the regulation of admissions would require rules to be made. However, the fixation of fees under section 7 is directly vested in the Government. The Government, which could have exercised the power of regulation of fee, directly under Section 7 of the 1983 Act, chose to issue G.O.Ms.No.6, dated 08.01.2007, putting in place an AFRC, under Rule 3, and delegating, under Rule 4, the task of scrutinising the fee details and fixing fees to the AFRC. Under the new system in place, it is the State which will regulate the fees and the AFRC is only its delegate. The principal can always exercise the power delegated to the agent. Since the AFRC was unable to fix the fees in time, the State stepped in and notified the fees and the same cannot be challenged on the ground that the State did not have such a power. Reliance is placed on **Godavari S. Parulekar & Ors., v. State of Maharashtra**⁴; **Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., v. Assistant Commissioner of Sales Tax & Ors.**⁵ (para 37 & 38); and **State of Orissa v. Commissioner of Land Records and Settlement,**

⁴ AIR 1966 SC 1404

⁵ (1974) 4 SCC 98

Cuttack & Ors.,⁶ Scientific Advisor to the Ministry of Defence & Ors., v. S. Denial & Ors.,⁷ (para 14); **Ishwar Singh v. State of Rajasthan & Ors.,⁸** (para 8).

VI) Contention of the Petitioners that any consensual arrangement between the State and private institutions is violative of the directions of the Hon'ble Supreme Court and section 23 of the Contract Act is incorrect. The Judgment of the Hon'ble Supreme Court in **Gherulal Prakash v. Mahadeodas Maiya & Ors.,⁹** (para 23) is a complete answer to the challenge to the consensual agreement under section 23 of the Contract Act. The Hon'ble Supreme Court in **P.A. Inamdar**, in Paras 126 to 129, provided for consensual arrangements between managements of private unaided institutions and the State.

16. Division Bench of the erstwhile High court for the State of Telangana and the State of Andhra Pradesh had considered the validity of fixation of fee by way of a consensual arrangement and had upheld the same by its judgement dated 25.1.2016 in W.P.No.16651 of 2015 and batch.

17. Sri Challa Gunaranjan, learned counsel appearing for some of the Medical Colleges submits that the private institutions had pointed out by their letter dated 15.03.2017 itself that the last date of admission was 31.05.2017. He submits that the Management Association had expressed its apprehension, as early as 15.03.2017 that any delay in fixing the fee could result in all the seats lapsing. It is on account of the said

⁶ 1998 (7) SCC 162,

⁷ 1990 Supp SCC 374

⁸ 2005 (2) SCC 334

⁹ AIR 1959 SC 781

apprehension that the Management Association was forced to issue the second letter dated 17.04.2017 stating that the private institution would prefer to withdraw from the counselling itself. It is in those circumstances and with a view to save the seats that the private institutions and Government entered into a consensual agreement, which is also permissible in view of the observations by the Hon'ble Supreme Court in para Nos.128, 131 and 132 of **P.A. Inamdar**.

18. Sri Srinivasa Rao Velivela, M/s Nomos Vistas and Sri Sandeep Reddy Sama, the learned Counsel for the Petitioners replied to the contentions raised by the learned senior counsel. Sri Sandeep Reddy forwarded the following table to show the increase in the fees by virtue of the impugned G.Os.

TUTION FEE OF CONVENER QUOTA FOR MD/MS/DIPLOMA (MEDICAL COURSES)			
Course	G.O.Ms.No.116 & G.O.Ms.No.92	G.O.Ms.No.72 03.05.2017	G.O.Ms.No.56 29.05.2020
Clinical degree/ Clinical diploma	2,90,000	6,90,000	4,32,000
Para-Clinical Degree/Para Clinical Diploma	80,000	6,60,000	1,35,000
Non-Clinical Degree/Non-Clinical Diploma	30,000	3,60,000	61,200

TUTION FEE OF MANAGEMENT QUOTA FOR MD/MS/DIPLOMA (MEDICAL COURSES)			
Course	G.O.Ms.No.116 & G.O.Ms.No.92	G.O.Ms.No.72 03.05.2017	G.O.Ms.No.56 29.05.2020
Clinical degree/ Clinical diploma	5,25,000	24,20,000	8,64,000
Para-Clinical Degree/Para Clinical	1,70,000	6,60,000	2,70,000

Diploma			
Non-Clinical Degree/Non-Clinical Diploma	60,000	3,60,000	1,22,400

19. Sri Sandeep Reddy relied upon the judgement of a Division bench of the erstwhile High Court of Andhra Pradesh reported as **Consortium of Engineering Colleges Managements Association (CECMA) and Ors. v. Government of Andhra Pradesh**¹⁰, to contend that the directions of the Hon'ble Supreme Court are applicable even after the issue of G.O.Ms.No.6, dated 8.01.2007. He also disputed the contention of the Learned Senior Counsel that the judgement of this Court dated 24.9.2019 in W.P.No.33656 of 2018 does not lay down the correct Law as it ignored the fact that the AFRC was established under the 1983 Act and as such, the directions of the Hon'ble Supreme Court would not apply. He contended that the said judgement had specifically considered regulation 4 in G.O.Ms.No.6.

20. M/s Nomos Vistas had contended that once G.O.Ms.No.72 and 77 are set aside, the earlier fees would be applicable as there would be no existing notification for the relevant period.

Consideration of the Court:

21. The undisputed fact is that the Government, by issue of G.O.Ms.No.72 dated 03.05.2017 and G.O.Ms.No.77, dated 06.05.2017, has fixed the fee payable for post graduate course in Medical and Dental Sciences, for the period 2017-2018 to 2019-2020, without an underlying recommendation of the AFRC and without going through the process mandated by the directions of the Hon'ble Supreme Court. This fixation of fee violates the directions given by the Hon'ble Supreme Court in **Islamic**

¹⁰ 2013 (3) ALD 609 :: 2012 (3) ALT 686

Academy and P.A.Inamdar. On this basis, fee fixed by the Government of Telangana for super speciality courses was struck down by the Judgment of the Hon'ble High Court of Telangana, dated 23.4.2019 in W.P.No.29938 of 2018 Similarly, the fee fixed by super speciality courses in medicine by the Government of Andhra Pradesh was also struck down by this Court by order dated 24.9.2019 in W.P.No.33656 of 2018. In the usual course, these writ petitions also would have to be allowed on that short ground.

22. However, the learned Senior Counsel appearing for the private institutions have raised grounds, set out above, to differentiate the present situation, from the earlier cases. The said Grounds are now considered.

Ground No.I

23. The contention raised was that there were no pleadings on the question of profiteering and commercialisation. Though the said issue was not dealt with fully in the pleadings in the writ petitions, it cannot be said that this issue was not raised at all. Some of the pleadings such as the following pleadings would show that the issue of profiteering and commercialisation were raised. Paragraphs 10, 12 in W.P. No.17102 of 2017 speak of "the unjustified greed and demand of the Private Medical and Dental Colleges". Paragraph 15 in the same Writ Petition speaks of "further enhancing the annual tuition fee exorbitantly will result in gross commercialisation of medical/dental education and causes injustice to the petitioners". Paragraph 24 of the affidavit in W.P.No.16990 of 2017 speaks of "preventing the students' higher education right illegally to promote the private colleges' interest". Paragraph No.6 of the affidavit in

W.P.No.10254 of 2019, speaks of "as the aforementioned government orders were exorbitant and unreasonable and were in the nature of capitation and profiteering and were passed without any recommendation of the Andhra Pradesh Admission and Fee Regulatory Committee". In view of the said pleadings, the contention that there are no pleadings on this issue would have to fail.

Ground No.II

24. Ground No.II is on the justification of the quantum of increase of fees. There have been arguments on this issue from both sides. The Courts have always been reluctant to go into such issues as it is best left to an expert body to undertake that enquiry. In view of the directions issued in this order it would not be appropriate for this Court to go into that issue.

25. The issues raised In Grounds III to VI relate to the directions issued by the Hon'ble Supreme Court in **T.M.A. Pai, Islamic Academy** and **P.A. Inamdar**.

26. The Hon'ble Supreme Court in the case of **Unni Krishnan, J.P & Ors Vs. State of Andhra Pradesh**¹¹, while considering various legislations including the Andhra Pradesh Educational Institutions (Regulation of Admission in Prohibition of Capitation Fee) Act, 1983 (herein after referred "the 1983 Act") had given certain directions in the form of a scheme to regulate the activities of private institutes imparting education. The scheme formulated in **Unni Krishnan's case** was held to have the effect of nationalising education and was set aside by an eleven

¹¹ (1993) 1 SCC 645

Judge Bench of the Hon'ble Supreme Court in **T.M.A. Pai** ,. The majority opinion (for himself, Sri G.B. Patnaik, Sri S. Rajendra Babu, Sri K.G. Balakrishnan, Sri P. Venkatarama Reddi and Arijit Pasayat, JJ,) was delivered by the Hon'ble Chief Justice of India.

27. The majority opinion framed eleven questions to be answered by the Court. The majority opinion also discussed the issues arising in the case under five heads. The discussion under head No.3 was **"in case of private institutions, can there be Government regulations, and if so, to what extent"**.

28. The observations of the Hon'ble Supreme Court, at paras 54 to 57 and 69 which relate to private unaided professional colleges are relevant:-

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in *Unni Krishnan case* [(1993) 1 SCC 645] the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the

requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. 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.

29. However, Legislations and Government orders issued in pursuance of the Judgment in **T.M.A. Pai** were challenged before various High Courts where conflicting views were expressed. In order to ensure uniformity, a Constitution Bench of the Hon'ble Supreme Court in

Islamic Academy, had taken up the task of interpreting the Judgment of the Hon'ble Supreme Court in **T.M.A. Pai**. The Majority opinion for four learned judges was delivered by the Hon'ble Chief Justice. A separate opinion was delivered by S. B. Sinha J. The Majority Judgement formulated the following four questions for its consideration:

- (1) Whether the educational institutions are entitled to fix their own fee structure;
- (2) Whether minority and non-minority educational institutions stand on the same footing and have the same rights;
- (3) Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and
- (4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admission.

30. Answering the first question, the Hon'ble Supreme Court, at Para 7 of the majority Judgement, observed thus:

"So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the

surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and as this Court had, not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed five. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. 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 at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. 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, where under 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.

31. The directions in para 20 would also be relevant:

20. Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament. The expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.”

32. Thereafter, the clarification/directions given by the Constitution Bench in **Islamic Academy** were challenged on the ground that they run counter to the Judgment of the Hon’ble Supreme Court in **T.M.A. Pai**. A Seven Judge Bench in **P.A. Inamdar** considered the question whether the Constitution of the two committees dealing with admissions and fee structure was correct and had held, at paras 145 to 148 as follows:

145. “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.

146. 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.

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 ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.”

33. The backdrop of the above observations of the Hon’ble Supreme Court we may now take up consideration of the grounds raised by the learned Senior Counsel.

Ground No.VI.

34. It is true that the Hon’ble High Court for the states of Telangana and Andhra Pradesh, in its judgement dated 25.01.2016 in W.P.No. 16651 of 2015 and batch had refused to interfere in a case where the fees had been fixed by way of a consensual agreement. However, it

should be noticed that the reason given, by the Hon'ble High court, for refusing to interfere with the fee structure was the fact that only one petitioner had been admitted to the course and that the course had commenced 4 months prior to the judgement. The Learned Senior Counsel has not pointed out any ratio, which needs to be followed by us. As such the said judgement may not be relevant for this case.

35. A perusal of paragraphs 126 to 129 in **P.A. Inamdar**, extracted below would show that the consensual agreements, which were considered by the Hon'ble Supreme Court, are consensual agreements in relation to the admission process and the seat matrix only. A reading of the judgments of the Hon'ble Supreme Court does not indicate that these consensual agreements extend to fixation of fee.

36. Very nature of the Regulatory process for fixation of fees would negate the concept of a consensual agreement. The private institution proposes the fees and this proposal is regulated by the State in the form of the AFRC. For this purpose, the AFRC determines whether the proposed fee contains any element of profiteering or commercialisation. If the AFRC comes to the conclusion that there is no profiteering in the proposed fee, it would have to give its approval for the said fee. The approval or further regulation of the fees can be based on this consideration alone. In such a situation, the question of stipulating a fee on the basis of a consensual agreement would not arise.

37. Judgement of the Hon'ble Supreme Court in *Modern Dental College & Research Centre v. State of Madhya Pradesh*¹², which was relied

¹² (2016) 7 SCC 353

upon by Sri B. Adinarayana Rao, does not set out any other principle. The observations at para 75 that the fee can be fixed by the educational institution itself is modified by the observations in para 81 and 92 that the fee proposed by the institution is subject to regulation by the State.

Ground Nos.III and IV

38. The State, framed regulations by way of G.O.Ms.No.6 dated 08.01.2007. It may be noted that there is a specific mention of the directions of the Hon'ble Supreme Court in G.O.Ms.No.6. The relevant regulation being regulation 4 reads as follows:

4. Fee Fixation

- (i) The AFRC shall call for, from each Institution, its proposed fee structure well in advance before the date of issue of notification for admission for the academic year along with all the relevant documents and books for accounts for scrutiny.
- (ii) The AFRC shall decide whether the fees proposed by the Institution is justified and does not amount to profiteering or charging of capitation fee.
- (iii) The AFRC shall be at liberty to approve or alter the proposed fee for each course to be charged by the Institution.
Provided that it shall give the institution an opportunity of being heard before fixing any fee or fees.
- (iv) The AFRC shall take into consideration the following factor while prescribing the fee:
 - (a) The location of the professional institution,
 - (b) The nature of the professional course,
 - (c) The cost of available infrastructure,
 - (d) The expenditure on administration and maintenance,
 - (e) A reasonable surplus required for growth and development of the professional institution

(f) The revenue foregone on account of waiver of fee, if any, in respect of students belonging to Schedule caste, Schedule tribes and wherever applicable to Socially and Educationally Backward Classes and other Economically weaker sections of the society, to some extent as shall be notified by the Government from time to time. (This sub clause has been struck down by the erstwhile High Court of Andhra Pradesh in the judgement in Consortium of Engineering Colleges Managements Association (CECMA) and Ors. v. Government of Andhra Pradesh 2013 (3) ALD 609 :: 2012 (3) ALT 686.)

(g) Any other relevant factor

(v) The AFRC shall communicate the fee structure as determined by it, to the Government, for notification.

(vi) The fee or scale of fee determined by the AFRC shall be valid for a period of three years.

(vii) The fee so determined shall be applicable to a candidate who is admitted to an institution in that academic and shall not be altered till the completion of his course in the institution in which he was originally admitted. No professional Educational Institution shall collect at a time a fee which is more than one year's fee from a candidate.

Regulation No.4 set up under this G.O. essentially reiterates the procedures and guidelines given by the Hon'ble Supreme Court.

39. The erstwhile High Court of Andhra Pradesh had considered the validity of section 7 of the 1983 Act and the provisions of G.O.Ms.No.6, dated 8.01.2007 in the case of Consortium of Engineering Colleges Managements Association (CECMA) and Ors. v. Government of Andhra Pradesh (supra). After a comprehensive review of the Law, the division bench had held that, in view of the judgement in **T.M.A. Pai** and **P.A. Inamdar**, the power of the State to fix fees under section 7 of the

1983 Act, would have to be read in the context of the above judgements.

Paras 143 to 147 are apposite:

Validity of Section 7 of the Capitation Fee Act and Rule 4 of the AFRC Rules:

143. The Capitation Fee Act is a State legislation that precedes the *Unnikrishnan's case*(supra), judgment by a decade and fell for consideration therein. The "free seats" and "payment seats" matrix propounded in *Unnikrishnan's case* (supra), with a cross-subsidization formula thrown in was however not the product of the textual authority of any provision of the Capitation Fee Act the classification of seats and the cross-subsidization methodology was a curial evolved formula integrated in the scheme evolved in *Unnikrishnan's case* (supra).

144. Section 7 enables the Government by notification to regulate the tuition fee or any other fee that may be levied and collected by an educational institution in respect of each class of students; and enjoins that no educational institution shall collect a fee in excess of the fee notified under sub-section (1) thereof. As the *Unni Krishnan's case* (supra), scheme was invalidated in *TMA Pai Foundation's case* (supra), which also declared the contours of operational administrative autonomy of private unaided educational institutions but preserved authority of the State or its instrument, the AFRC to regulate a fee structure proposed by a private unaided educational institution only to ensure exclusion of profiteering and capitation, the powers consecrated to the State under Section 7 must be interpreted consistent with the redefined architecture of the State's regulatory power, post *Unnikrishnan 's case* (supra) and in the legal environment consequent on *TMA Pai Foundation's case* (supra). *Islamic Academy of Education's case* (supra), and *PA Inamdar's case* (supra).

145. On a grammatical construction of Rule 4(of the AFRC Rules) particularly, sub-rules (iii), (iv)(g) and (v), it is possible to infer that under the provisions of Section 7 of the Capitation Fee Act read with provisions of this Rule, the AFRC is empowered to fix or determine the fee itself. On a true and fair construction of the plurisignative phraseology of Rule 4 and interpreted to confirm to the law declared in *TMA Pai Foundation's case* (supra), *Islamic Academy of Education's case* (supra) and *PA Inamdar's case* (supra), however, the provisions of Section 7 and the prescriptions of Rule 4 must be read down. *PA Inamdar's case* (supra), *inter alia* set out to clarify whether regulation of fee

structure could be taken over by the Committees ordered to be constituted by the judgment in *Islamic Academy of Education's case* (supra) and held:

... every institution is free to devise its own fee structure which may however be regulated to prevent profiteering, no capitation fee may be charged; a committee for determining fee structure qua the judgment in *Islamic Academy of Education* is permissible as a regulatory measure aimed at protecting the interests of the students community as a whole and in maintaining the required standards of professional education on non-exploitative *terms* in the institution.

146. This judgment also dealt with the criticism as to the ham-handed, insensitive and stereo-typed approach by Committees while dealing with oversight of fee regulation. The observations on this aspect are found in Paras 49 and 150 of *PA Inamdar's case* (supra), (extracted herein above).

147. In the light of the principles evolving from *TMA Pai Foundation's case* (supra), to *PA Inamdar's case* (supra) and to sustain the provisions of Section 7 and Rule 4, we consider it appropriate to read down these provisions; (i) as enabling the AFRC to consider institution-specific fee proposals, course-wise on the bases of the parameters indicated in clauses (a) to (e) and (g) of sub-rule (iv) of Rule 4; (ii) to analyze fee proposals to verify whether they incorporate or camouflage any profiteering or capitation fee; and (iii) to approve, modify or alter the fee structure proposed by each institution, only for the purpose of excising *pro tanto* any element of profiteering/capitation fee. If fee proposals of an institution, duly substantiated by relevant data, audited accounts and balance-sheets, do not incorporate elements of profiteering or capitation fee (on analyses of the proposals within the contours of the guidelines in Rule 4), the AFRC must accept the same. The AFRC cannot transgress the law declared in *TMA Pai Foundation's case* (supra), *Islamic Academy of Education's case* (supra) and *PA Inamdar's case* (supra), (that every institution enjoys the operational autonomy to devise its own fee structure) by resorting to a misconceived mission, of formulating a common fee structure for private unaided educational institutions.

40. This Judgement clearly lays down the principle that the regulations made under the 1983 Act would have to be in consonance

with the judgements of the Hon'ble Supreme Court and any deviation from those principles would render the said regulations invalid. We are in respectful agreement with the said judgement. In view of the same, the contention that the observations and directions of the Hon'ble Supreme Court would not be applicable to matters regulated under G.O.Ms.No.6, dated 08.01.2007 has to be rejected.

41. The facts as set out in the pleadings show that, the AFRC was handling the issue of fee fixation till 17.4.2017, when the Management Association wrote to inform that it's members would not be participating in the counselling. The Consensual agreement is said to have been signed on 02.05.2017 that is within 14 days. It is obvious that this consensual agreement is on the basis of negotiation between the Government and the management Association and not by applying the process and guidelines set out in Regulation No.4.

42. The consensual agreement provided for a uniform fee to all private institutions irrespective of their actual expenditure. The logical corollary of a uniform fee would mean that some of the private institutions would definitely be receiving fee, which is way above their actual expenses and reasonable surpluses that they are entitled to collect. Effectively the consensual agreement would mean that some of the colleges are indulging in profiteering, which is prohibited. Accordingly the consensual agreement, to the extent of fixation of fees would have to be set aside.

43. Viewed from any angle, the fixation of fees was not in accordance with the mandatory requirements of the directions of the Hon'ble Supreme Court or Regulation-4 of G.O.Ms.No.6 dated 8.01.2007.

Ground No.V

44. The principle that the functions of a delegate can be discharged by the principal is not in dispute. The contention raised is that, the AFRC set up under G.O.Ms.No.6 is a delegate of the State and the State can discharge the functions of AFRC. This issue would arise if the decision of the state was valid in all other respects and the challenge is only on the ground that the AFRC alone could regulate and fix fees. In the present case, the decision taken by the State either on its own accord or as the principal of AFRC is not in compliance with the directions mentioned above and has to be set aside on that short ground. In such circumstances, this issue is only academic and does not require further consideration.

45. Similarly, the issue whether the consensual agreement of 2.5.2017 was opposed to public policy and cannot be the basis for fixation or regulation of fees, does not survive in view of the finding of this Court that consensual agreements are not permissible, to the extent of fixation of fees.

46. For all the above reasons, G.O.Ms. No.72 dated 03.05.2007 and G.O.Ms.No.77 dated 6.05.2007 cannot be sustained as they fall foul of the directions of the Hon'ble Supreme Court in Islamic Academy and **P.A. Inamdar** and are also not in accordance with the regulations in G.O.Ms.No.6, dated 08.01.2007.

47. The next question that arises is whether the prayer of the petitioners to allow the students to pay the fees fixed under G.O. Ms. No. 116, dated 14.05.2010 as enhanced by letter No.1331/C1/2015, dated 08.05.2015 should also be allowed or whether the fees payable by the

students should be fixed in accordance with the guidelines set out in G.O.Ms.No.6, dated 08.01.2007.

48. In our view, the direction to permit students to pay fees according to G.O.Ms.No.116 cannot be granted. The directions of the Hon'ble Supreme Court and the provisions of G.O.Ms.No.6, dated 08.01.2007 stipulate that any fee fixed would be valid for 3 years and thereafter the AFRC has to call for fresh proposals from the private institutions. The petitioners having relied on the directions of the Hon'ble Supreme Court and G.O.Ms.No.6 dated 08.01.2007 for challenging the fees fixed under G.O.Ms.No.72 dated 3.5.2017 and G.O.Ms.No.77 dated 6.5.2017 cannot contend that the fees fixed under G.O.Ms.No.116 would still be applicable. The fee provided in G.O.Ms.No.116 was fixed in the year 2010. There is a gap of 7 years between 2010 and 2017. For this reason, the fees payable for the block period 2017-2018 to 2019-2020 would need to be fixed as per the guidelines set out in G.O.Ms.No.6 dated 08.01.2007.

49. Replying to a query from the bench whether the exercise of fixing the fee could be taken up by AFRC at this stage. The following submissions were made by Sri B. Adinarayana Rao the learned senior Counsel appearing for the management Association:

(i) The AFRC has been abolished under Section 12 of the Andhra Pradesh Higher Education Regulatory and Monitoring Commission Act, 2019.

(ii) The Andhra Pradesh Higher Education Regulatory and Monitoring Commission (hereinafter referred to as the Commission) set up

under the above Act cannot take up the exercise as the Commission cannot undertake the exercise under the earlier Act/Rules.

(iii) The Commission cannot undertake the exercise as Section 12 of the Andhra Pradesh Higher Education Regulatory and Monitoring Commission Act, 2019, itself provides that the Commission does not step into the shoes of the AFRC and it is only permitted to complete the unfinished work of AFRC in the future.

(iv) Para No.146 of **P.A. Inamdar** clearly rejects any post Audit fixation of fees. As such, neither AFRC nor the Commission can undertake any exercise of fixing of fee for the period, which has already passed.

50. In **P.A. Inamdar**, as part of the challenge to the two committees instituted under Islamic Academy, it was contended that, the fees fixed by the institutions should not require any prior approval and the fees fixed by the institutions can always be regulated if it is subsequently found to be either a case of profiteering or capitation. Rejecting this contention, the Hon'ble Supreme court had held that fixation of fees has to be regulated and controlled at the initial stage, to ensure that deserving students are not deprived admission on account of exorbitant fees. The present case is a situation where the fees fixed for that period has been set aside. The Court cannot leave the issue there. Some fee would have to be fixed. Therefore fees would have to be fixed for that period in accordance with the procedure laid down in G.O.Ms.No.6, after taking into account the actual expenditure incurred by the private institutions for the year 2017-2018.

51. It is true that AFRC has been abolished and a new body has taken over the task of regulating fees which can be collected by private unaided medical and dental colleges. Even assuming that the Commission

cannot step into the shoes of the erstwhile AFRC, it must be noted that we are in uncharted territory as there is no AFRC existing today and the exercise of verifying the correctness of the fees payable to the private institutions has to be carried out by some state body. In the circumstances, it would be the Commission which would be best suited to carry out the task.

52. In the result, the Writ Petitions are allowed with the following declarations/directions:

1. The discretion to fix the fees payable to private institutions is, subject to regulation by the State, with the private institutions.
2. The State cannot regulate the fees, in any manner it deems fit. The regulation by the State or any instrumentality of the State is restricted to ensuring that the proposed fee does not involve profiteering or collection of capitation fee.
3. The fee proposed by each private institution needs to be verified and regulated on an individual basis and a common uniform fees cannot be fixed as a general fee payable to every institution.
4. The observations and directions of the Hon'ble Supreme Court in **T.M.A. Pai, Islamic Academy** and **P.A. Inamdar**, would be applicable to matters regulated under G.O.Ms.No.6, dated 08.01.2007. The guidelines in G.O.Ms.No.6, dated 08.01.2007, are to be interpreted and controlled by the directions issued by the Hon'ble Supreme Court.
5. The challenge to G.O.Ms.No.70 Health, Medical & Family Welfare (C1) Department, dated 03.05.2017, is rejected.

6. The consensual agreement dated 02.05.2017 to the extent of fixation of fees and consequently G.O.Ms.No.72 Health, Medical & Family Welfare (C1) Department, Dated 03.05.2017 and G.O.Ms.No.77 Health, Medical & Family Welfare (C1) Department, Dated 06.05.2017, are set aside on the ground that they fall foul of the directions of the Hon'ble Supreme Court in **Islamic Academy** and **P.A. Inamdar** and are also not in accordance with G.O.Ms.No.6, dated 08.01.2007.
7. The private institutions shall submit their statements of expenditure incurred, in relation to the courses covered under G.O.Ms.No.72 and G.O.Ms.No.77, for the year 2017-2018, along with all supporting documents to the Commission within two weeks of this Judgement.
8. The Commission shall scrutinise all the documents to arrive at the expenditures incurred by the private institutions for the year 2017-2018. For this purpose the Commission can call for all such information and documents it deems fit from the private institutions for the purposes of arriving at the actual expenditures of the private institutions. This exercise shall be completed within a period of three weeks from the date of receipt of the expenditure details from the private institutions.
9. The private institutions shall co operate with the Commission and produce all documents required by the Commission.
10. The Commission shall inform the private institutions of the expenditure being accepted by the Commission, and propose the fees, in accordance with the directions of the Hon'ble Supreme

Court and the guidelines in G.O.Ms.No.6, dated 08.01.2007, for the block period 2017-2018 to 2019-2020 and give an opportunity to the private institutions to file such objections as they may have within two weeks thereafter.

11. The Commission, after considering the objections of the private institutions, if any, shall, by way of a speaking order, arrive at the acceptable expenditure for the year 2017-2018 and the fees payable to each private institution, in accordance with the directions of the Hon'ble Supreme Court and the guidelines in G.O.Ms.No.6, dated 08.01.2007, for the block period 2017-2018 to 2019-2020 within two weeks of receipt of the objections and forward the same to the Government for notification. The Fees shall be recommended for each individual institution on the basis of their individual expenditure.
12. The Commission, to obviate any challenge of bias on account of the fixation of fees for the period 2020-2021 to 2022-2023, shall carry out the entire exercise without reference to the fees recommended by it or fixed by the Government for the period 2020-2021 to 2022-2023.
13. The Government of Andhra Pradesh shall notify the Fees recommended by the Commission within one week of receiving the recommendations.
14. Upon such notification, the private institutions shall be entitled to collect or refund the difference between the fees already collected and the notified fees from the students.

15. All the parties shall scrupulously adhere to the time lines prescribed here.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

R. RAGHUNANDAN RAO, J

20th January, 2021

Rjs/Sdp/Js

L.R. Copy to be marked.

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION (PIL) No.131 & 132 of 2017,
W.P.Nos.16990, 17102 & 17104 of 2017,
W.P.Nos.19755, 19764 & 19802 of 2019,
W.P.Nos.1323, 1324, 1327 & 6893 of 2020

20th January, 2021

Rjs/Sdp/Js