

ITEM NO.3

COURT NO.10

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19031-19048/2010

(Arising out of impugned final judgment and order dated 09/11/2009 in WP No.5062/2006, WP No.5733/2006, WP No.6968/2006, WP No.5318/2006, WP No.18884/2006, WP No.18885/2006, WP No.17681/2007, WP No.5985/2007, WP No.1337/2006, WP No.7388/2006, WP No.6988/2006, WP No.13435/2006, WP No.15750/2006, WP No.17122/2006, WP No.1126/2006, in WP No.16283/2007, WP No.7438/2006, WP No.5072/2006, WP No.5062/2006, WP No.5733/2006, WP No.6968/2006, WP No.5318/2006, WP No.18884/2006, WP No.18885/2006, WP No.17681/2007, WP No.5985/2007, WP No.1337/2006, WP No.7388/2006, WP No.6988/2006, WP No.13435/2006, WP No.15750/2006, WP No.17122/2006, in WP No.1126/2006, WP No.16283/2007, WP No.7438/2006, WP No.5072/2006 passed by the High Court Of Karnataka at Bangalore)

RASHTREEYA SIKSHANA SAMITHI TRUST RV DEN

Petitioner(s)

VERSUS

COMMITTEE FOR FIXN.OF FEE OF P.P.COL& ORS.

Respondent(s)

(With office report)

[FOR FINAL DISPOSAL]

WITH

SLP(C) No. 3041-3048/2010

[M.R. MEDICAL COLLEGE ETC. ETC. V. MD MISBAUDDIN PATEL & ORS.]

(With prayer for interim relief and Office Report)

SLP(C) No. 3598/2010

[K.S. HEGDE MED. ACADEMY & ORS. V. FEE FIXATION COMMIT & ORS.]

(With appln.(s) for permission to file additional documents, interim relief and Office Report)

SLP(C) No. 3556/2010

[A/B. SHETTY MEM. INST. OF DENTAL SC & ORS. V. FEE FIXATION COMMITTEE & ORS.]

(With appln.(s) for permission to file additional documents, modification of court's order, interim relief and Office Report)

SLP(C) No. 24093-24100/2010

[B.L.D.E. ASSOCIATION ETC. ETC. V. ABID ALI MIRZA & ORS.]

(With Office Report)

SLP(C) No. 24101-24114/2010
[M.S. RAMAIAH MEDICAL COLLEGE V. COMMITTEE FOR FIXATION OF FEE
S.T.P.P. COLLEGE & ORS.]
(With Office Report)

SLP(C) No. 24115-24123/2010
[J.S.S. MEDICAL COLLEGE V. COMMITTEE FOR FIXATION OF FEE & ORS.]
(With appln.(s) for permission to file additional documents and
Office Report)

SLP(C) No. 24131-24137/2010
[BAPUJI EDUCATION ASSOCIATIONS V. COMMITTEE FOR FIXATION OF FEE
STR.PR.PF COL. & ORS.]
(With Office Report)

SLP(C) No. 24124-24130/2010
[VOKKALIGARA SANGHA'S VS DENTAL COLLEGE V. COMMITTEE FOR FIXATION
OF FEE ETC.]
(With Office Report)

SLP(C) No. 35023/2010
[HKES'S M.R. MEDICAL COLLEGE V. SHRUTI KATTISHETTAR & ORS.]
(With Office Report)

SLP(C) No. 35156-35157/2010
[M.R. MEDICAL COLLEGE V. NITIN ARYA & ORS.]
(With Office Report)

SLP(C) No. 7715-7732/2011
[BAPUJI EDUCATION ASSOCIATIONS ETC. V. COMMITTEE OF FIXATION OF
FEE OF P.V. PROF. COL.]
(With Office Report)

SLP(C) No. 4808-4939/2011
[STATE OF KARNATAKA V. A.B. SHETTY MEM. INST. OF DEN. SCIENCE &
ORS. ETC.]
(With applications for permission to file additional documents and
directions and Office Report)

Date : 06/08/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s)
In SLP 3598 & 3556

Mr. Gautam Narayan, Adv.
Ms. Asmita Singh, Adv.
Mr. Mubashir Mushtaq, Adv.

In SLP 35023 &
35156-35157

Mr. Sharanagouda Patil, Adv.
Mr. Ashok Kumar Gupta-II, Adv.

In SLP 4808-4939

Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Lagnesh Mishra, Adv.
Mr. Parikshit Angadi, Adv.
Mr. Anirudh Sanganeria, Adv.
Mr. V.N. Raghupathy, Adv.

In rest of the matters

Mr. Krishnan Venugopal, Sr. Adv.
Ms. Bina Madhavan, Adv.
Ms. Praseena E. Joseph, Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Mr. Shivendra Singh, Adv.
Ms. Akanksha Mehra, Adv.
Mr. Javedur Rahman, Adv.
Ms. Vishakha Upadhyaya, Adv.
Ms. Farah Fatima, Adv.
For M/s. Lawyer's Knit & Co., Adv.

For Respondent(s)
For State of
Karnataka

Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Lagnesh Mishra, Adv.
Mr. Parikshit Angadi, Adv.
Mr. Anirudh Sanganeria, Adv.
Mr. V.N. Raghupathy, Adv.

In SLP 4808-4939

Mr. Krishnan Venugopal, Sr. Adv.
Ms. Bina Madhavan, Adv.
Ms. Praseena E. Joseph, Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Mr. Shivendra Singh, Adv.
Ms. Akanksha Mehra, Adv.
Mr. Javedur Rahman, Adv.
Ms. Vishakha Upadhyaya, Adv.
Ms. Farah Fatima, Adv.
For M/s. Lawyer's Knit & Co., Adv.

In SLP 19031-19048

Ms. Kiran Suri, Sr. Adv.
Mr. S.J. Amith, Adv.
Dr. (Ms.) Vipin Gupta, Adv.

For M/s. Mahalakshmi Balaji & Co., Adv.

Mr. Vipin Kumar Jai, Adv.

Mr. Vipul Jai, Adv.

Mr. Raghvesh Singh, Adv.

Mr. P.S. Sudheer, Adv.

Mr. Rishi Maheshwari, Adv.

Ms. Anne Mathew, Adv.

Mr. Raj Kumar Kaushik, Adv.

Mr. H.K. Naik, Adv.

Mr. Roshan Chapagain, Adv.

Mr. Sanjeev Kumar, Adv.

Mr. Basavaraj, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. P.N. Puri, Adv.

Mr. Rajesh Kumar, Adv.

In SLP 3041-3048

Mr. Raghavendra S. Srivatsa, Adv.

Mr. Ajay Singh, Adv.

Mr. Senthil Jagadeesan, Adv.

For M/s. Mahalakshmi Balaji & Co., Adv.

Mr. Raghvesh Singh, Adv.

Mr. P.S. Sudheer, Adv.

Mr. Rishi Maheshwari, Adv.

Ms. Anne Mathew, Adv.

Mr. Raj Kumar Kaushik, Adv.

In SLP 3556

Mr. Ejaz Maqbool, Adv.

Mr. A.S. Bhasme, Adv.

In SLP 24093-100

Mr. G. Umapathy, Adv.

Mr. Rakesh K. Sharma, Adv.

Mr. M.A. Venkatasubramanian, Adv.

Ms. R. Mekhala, Adv.

Mr. Senthil Jagadeesan, Adv.

Mr. Raghavendra S. Srivatsa, Adv.

Mr. Ajay Singh, Adv.

In SLP 24101-114

Mr. Raghavendra S. Srivatsa, Adv.

Mr. Ajay Singh, Adv.

Mr. Raghvesh Singh, Adv.
Mr. P.S. Sudheer, Adv.
Mr. Rishi Maheshwari, Adv.
Ms. Anne Mathew, Adv.
Mr. Raj Kumar Kaushik, Adv.

Mr. Senthil Jagadeesan, Adv.

In SLP 24115-123

Mr. Raghvesh Singh, Adv.
Mr. P.S. Sudheer, Adv.
Mr. Rishi Maheshwari, Adv.
Ms. Anne Mathew, Adv.
Mr. Raj Kumar Kaushik, Adv.

In SLP 24131-137

Mr. G. Umapathy, Adv.
Mr. Rakesh K. Sharma, Adv.
Mr. M.A. Venkatasubramanian, Adv.
Ms. R. Mekhala, Adv.

Mr. Senthil Jagadeesan, Adv.

In SLP 24124-130

Mr. S.N. Bhat, Adv.

In SLP 35023

Mr. Guntur Pramod Kumar, Adv.
Ms. Prerna Singh, Adv.
Mr. Prashant Mathur, Adv.
Mr. Guntur Prabhakar, Adv.

In SLP 35156-57

Ms. N. Annapoorani, Adv.

In SLP 7715-7732

Mr. Senthil Jagadeesan, Adv.

In SLP 4808-4939

Mr. A.S. Bhasme, Adv.

Mr. Rana Mukherjee, Adv.
Ms. Kasturika Kaumudi, Adv.
Mr. Shekhar Kumar, Adv.

Mr. Gautam Narayan, Adv.
Ms. Asmita Singh, Adv.
Mr. Mubashri Mushtaq, Adv.

Mr. G. Umapathy, Adv.
Mr. Rakesh K. Sharma, Adv.
Mr. M.A. Venkatasubramanian, Adv.
Ms. R. Mekhala, Adv.

Mr. Senthil Jagadeesan, Adv.

Mr. Raghavendra Srivatsa, Adv.

Mr. Ajay Singh, Adv.

For M/s Mahalakshmi Balaji & Co., Advs.

UPON hearing counsel the Court made the following
O R D E R

1. These batch of cases arise out of an order passed by the High Court of Karnataka which pertains to fixation of fee for admission of students to the Dental and Medical Colleges. The issue as to the fixation of fee is already covered by the decision of Eleven Judges Bench of this Court in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (2002) 8 SCC 481 followed by the subsequent decisions in Islamic Academy of Education and Anr. v. State of Karnataka and Ors. (2003) 6 SCC 697 and P.A. Inamdar & Ors. v. State of Maharashtra & Ors. (2005) 6 SCC 537. In fact, consistently in all the above decisions, there were specific observations/directions that charging of capitation fee cannot be permitted even by private unaided institutions imparting education in medical, as well as engineering courses.

2. For easy reference we wish to extract the relevant paragraphs in the above referred to decisions. In T.M.A. Pai (supra) for question No.5(c), it was stated as under:

"Fees to be charged by unaided

institutions cannot be regulated but no institution should charge capitation fee."

Again for question No.9, it was stated as under:

"The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

(Underlining is ours)

3. In paragraph 261, the concept of capitation fee has been explained. It was also highlighted how the charging of capitation fee would even amount to a crime. The relevant part of the said paragraph reads as under:

"261.....The most damaging allegation against non-government educational institutions is charging of capitation fee which has become the talk of the town throughout the length and breadth of the country. So much so that the term "capitation fee" has become synonymous with crime. The concept of capitation has its origin in taxation; earlier there used to be capitation tax per person. Educational institutions, it is stated, oblige guardians/students to pay, in addition to the notified fees, varying amounts depending upon the courses in which admission is sought; such amounts are nothing but per capita collection for admission to a given course in an educational institution and can properly be termed as capitation fee. This is reprehensible and cannot be tolerated. Now, in view of the majority judgment different institutions may notify different fees for the same course and

the same institution may notify different fee structure for different courses. If the evil of collection of capitation fee is done away with by the private educational institutions (both non-minority and minority), much of the controversy about intervention by the State and complaints by citizens could be avoided. Collection of capitation fee being the worst part of maladministration can properly be the subject-matter of regulatory control of a State. Receiving donations by an educational institution, unconnected with admission of students, could not obviously be treated as an equivalent of collection of capitation fee.

(Underlining is ours)

- 4. Again in Islamic Academy of Education case (supra) the relevance relating to capitation fee can be found in paragraphs 7, 84, 149 and 150, which are as under:**

"7.Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation."

84. The States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh enacted statutes prohibiting collection of capitation fee and regulating admission in professional colleges. In terms of the provisions of the said Acts, the management of the professional colleges is prohibited from charging any fee other than fee determined under the said Acts.

149. The expression "capitation fee" does not have any fixed meaning. The legislatures of some of the States, however, have defined capitation fee. We may notice that in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, capitation fee has been defined as:

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

150. Section 4 of the said Act states that any amount collected in excess of the fee so prescribed is prohibited in the following terms:

"Regulation of fee etc.—(1) Notwithstanding anything contained in any other law for the time being in force, the Government, may by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students:

Provided that before issuing a notification under this sub-section, the draft of which shall be published, in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it."

5. In P.A. Inamdar's case (supra) the relevant part on the issue of capitation fee is found in paragraphs 56, 58, 89, 140 and 141, which are as under:

"56. To justify fixation of quota for seat-sharing between the State and the private management and fixing a reasonable fee structure to avoid profiteering and capitation, the learned counsel highlighted certain illicit practices, which are being resorted to, by the private institutions to exploit the student community. It is submitted that in both the judgments, Pai Foundation and Islamic Academy, profiteering, commercialisation of education and the collection of capitation fee have been condemned. This Court had expressly held that it would be open to the Government to make regulations for the purpose of preventing commercialisation of professional education. It is on the line suggested by this Court that the Government of Kerala had made regulations both for the purpose of admissions as well as for fixing reasonable fee which will cover not only the expenditure incurred by the institution but also give them a reasonable revenue surplus for further growth and betterment of the institution.

58. It is submitted that if the scheme as evolved in Islamic Academy of setting up of permanent Committees is not allowed, education which is already commercialised to some extent would be wholly inaccessible to students coming from middle classes, lower-middle classes and poor sections of the society.....

89. Education, accepted as a useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to society. And even though an occupation, it cannot be equated to a trade or a business.

140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. "Profession" has to be distinguished from "business" or a mere "occupation". While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A

student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

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

(Underlining is ours)

6. We have made specific reference to the above quoted passages in order to highlight how consistently this Court has condemned the charging of capitation fee and issued a word of caution that such illegal practice should be restrained at its inception and how every State should take appropriate measures to curb the menace. In fact, it has also been noted in Islamic Academy of Education case (supra) that in the States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh,

Legislations have been brought out to control the menace of changing of capitation fee.

7. In this context, it will be worthwhile to note an admission system directed to be followed by this Court in one of the recent decisions of this Court in Modern Dental College & Research Centre vs. State Of M.P. reported in (2009) 7 SCC 751. Paragraphs 16, 17 and 18 can be referred to which are extracted below:

"16. We, therefore, direct that the admissions in the private unaided medical/dental colleges in the State of Madhya Pradesh will be done by first excluding 15% NRI seats (which can be filled up by the private institutions as per para 131 of Inamdar case), and allotting half of the 85% seats for admission to the undergraduate and post-graduate courses to be filled in by an open competitive examination by the State Government, and the remaining half by the Association of the Private Medical and Dental Colleges. Both the State Government as well as the Association of Private Medical and Dental Colleges will hold their own separate entrance examination for this purpose. As regards "the NRI seats", they will be filled as provided under the Act and the Rules, in the manner they were done earlier.

17. We make it clear that the aforesaid directions will for the time being only be applicable for this Academic Year i.e. 2009-2010. We also make it clear that if there are an odd number of seats then it will be rounded off in favour of the private institutions. For example, if there are 25 seats, 12 will be filled up by the State Government and 13 will be filled up by the Association of Private Medical/Dental Colleges. In specialties in PG courses also half the seats will be filled in by the State Government and half by the Association of Private

Medical/Dental Colleges and any fraction will be rounded off in favour of the Association. In other words if in any discipline there are, say, 9 seats, then 5 will be filled in by the Association and the remaining 4 will be by the State Government. Capitation fee is prohibited, both to the State Government as well as the private institutions, vide para 140 of Inamdar case. Both the State Government and the Association of Private Medical/Dental Colleges will separately hold single window examinations for the whole State (vide para 136 of Inamdar case).

18. We make it clear that the solution we have arrived at may not be perfect, but we have tried to do our best to find out the best via media. Although this order is only for Academic Year 2009-2010, we recommend that it may also be considered for future sessions."

**(Underlining is
ours)**

8. However, we take judicial notice of the hard reality that charging of exorbitant capitation fee is very much prevalent in spite of the said specific observations/directions issued by this Court. Shri Basava Prabhu S. Patil, learned Senior Counsel appearing for the State of Karnataka submitted that a legislation has been brought out in the State of Karnataka to curb this practice of charging of capitation fee. But yet, we are not sure whether in spite of the said legislation, the said practice could be effectively curbed.

9. We are, therefore, of the view that we should get appropriate support to find out whether this

practice can be put an end to by getting a detailed report based on an in-depth study. With that view, we requested Shri Salman Khurshid, learned Senior Counsel as to whether he could act as an Amicus Curiae and render his assistance by making a detailed analysis of this problem and suggest an appropriate mechanism by which the charging of capitation fee can be effectively stopped. The learned Senior Counsel graciously agreed to render his assistance to this Court. We, therefore, appoint Shri Salman Khurshid, learned senior counsel as an Amicus Curiae in these matters to examine this issue and come forward with his Report and suggestions and for that purpose, we direct all these matters to be listed after four weeks.

10. In the first instance, in order to enable the learned Amicus Curiae to work on these issues, we direct the States of Karnataka, Tamil Nadu, Andhra Pradesh and Maharashtra to furnish whatever information required by Shri Salman Khurshid, learned Senior Counsel such as any complaint received as regards the charging of capitation fee, action taken report, apart from any other data available on this aspect. It is also open to Shri Salman Khurshid to seek for any other data in connection with the said issue namely, demand of capitation fee. We direct the Chief Secretaries of

the respective States to give appropriate instructions to the concerned authorities to furnish whatever data is available on this aspect, as well as any other data called for directly to Shri Salman Khurshid, learned Senior Counsel. We also appoint Shri Mohit Kumar Shah, Advocate-on-Record to render assistance to the learned Senior Counsel/Amicus Curiae.

11. The amicus curiae can also refer the State Act, enacted by the State of Gujarat Professional Technical Educational Colleges or Institutions (Regulation of Admission Fixation of Fees) Act, 2007 (for short 'the Act'), which was brought into effect on 30.04.2008. The said Act was brought into force for the purpose of determining the fees for admission of students in the professional educational colleges or institutions and constitute a Fee Regulatory Committee with a retired Judge of the High Court nominated by the State Government. Reference has been made to the said Act in a recent decision of this Court in Fee Regulatory Committee vs. Kalol Institute of Management and others (2011) 10 SCC 592.

12. In order to gather the required information, we also authorize Shri Mohit Kumar Shah, Advocate-on-Record to create a website wherein email address and postal address can be furnished

exclusively to gather more information even from the public at large who were/are directly affected or who have the required information relating to the collection of capitation fee so that Shri Salman Khurshid, learned Senior Counsel/Amicus Curiae would be able to gather enough materials for the purpose of submitting his report before this Court. The Advocate-on-Record can seek for the assistance of the State Government Authorities for the creation of the website and email address and get them published in the local newspapers, both vernacular and English. In the event of any such request being made by the amicus curiae, the Chief Secretary of the above four States shall direct the concerned department to effectuate the publication as required by the amicus curiae in the vernacular as well as in popular English Daily in the respective States within the dates stipulated by the amicus curiae. While creating the website, the amicus curiae may indicate as to what sort of information is being called for and how the same can be communicated i.e. vide email address and postal address. After getting the required information the Amicus Curiae may verify the veracity of the information collected and gathered from the public and other sources and thereafter place the report before

us along with his suggestions.

13. The names of Shri Salman Khurshid, learned Senior Counsel/Amicus Curiae and Shri Mohit Kumar Shah, Advocate-on-Record may be reflected in the Cause List.

14. Copy of this order shall be sent to the Chief Secretaries of the respective States.

15. For this purpose, we implead the Medical Council of India and the Dental Council of India as parties suo motu, so that if need be appropriate directions can be issued. Cause title be amended accordingly.

16. Notice may be issued to the newly added respondents.

17. Ms. Kiran Suri, learned Senior Counsel referring to the order of this Court dated 16th August, 2010 submitted that in spite of specific direction, the said order for refund of the fee has not been effectuated so far. We direct the learned Senior Counsel to file an affidavit furnishing the details of the concerned students who have furnished the bank guarantee to the institutions concerned and for whom the refund has not been effectuated. Copy of the affidavit may be served on the concerned counsel for the institutions. The affidavit may be filed within

two weeks and the institutions may file their response
to these affidavits within two weeks thereafter.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER