

ITEM NO.101,101A,101B,101D COURT NO.3 SECTION X, IV, IVA

S U P R E M E C O U R T O F I N D I A  
 RECORD OF PROCEEDINGS  
 WRIT PETITION (CIVIL) NO(s). 358 OF 2004

MODERN DENTAL COLLEGE & RES. CENTRE & ORS. Petitioner(s)

VERSUS

STATE OF M.P. & ORS. Respondent(s)

WITH

W.P.(C) NO.359/2004;  
 W.P.(C) NO.360/2004;  
 W.P.(C) NO.361/2004;  
 W.P.(C) NO.362/2004;  
 W.P.(C) NO.363/2004;  
 W.P.(C) NO.380/2004 (With office report);  
 W.P.(C) NO.386/2004 (With appln. for stay);  
 W.P.(C) NO.397/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.416/2004 (With office report);  
 W.P.(C) NO.421/2004 (With office report);  
 W.P.(C) NO.422/2004 (With appln.(s) for ad-interim ex-parte stay and  
 with office report);  
 W.P.(C) NO.424/2004 (With appln.(s) for ex-parte stay and with  
 office report);  
 W.P.(C) NO.427/2004 (With appln.(s) for stay and with office  
 report);  
 W.P.(C) NO.428/2004 (With office report);  
 W.P.(C) NO.430/2004  
 (With appln.(s) for stay and with office report);  
 W.P.(C) NO.436/2004 (With appln.(s) for stay);  
 W.P.(C) NO.437/2004 (With appln. for exemption from filing c/c of  
 the impugned judgment);  
 W.P.(C) NO.438/2004 (With appln. for stay);  
 W.P.(C) NO.439/2004 (With appln. for stay);  
 W.P.(C) NO.440/2004 (With appln. for exemption from filing OT);  
 W.P.(C) NO.441/2004 (With appln. for exemption from filing OT);  
 W.P.(C) NO.442/2004 (With appln. for stay/direction and with office  
 report);  
 W.P.(C) NO.443/2004 (With appln. for stay/direction);  
 W.P.(C) NO.445/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.446/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.447/2004 (With appnl. For ex-parte stay);  
 W.P.(C) NO.448/2004 (With appln. for stay/direction);  
 W.P.(C) NO.449/2004 (With appln. for ex-parte stay);

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W.P.(C) NO.450/2004 (With appln. for accepting english translation);  
 W.P.(C) NO.451/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.452/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.453/2004 (With appln. for stay/direction);  
 W.P.(C) NO.454/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.455/2004 (With appln. ex-parte stay);  
 W.P.(C) NO.455/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.456/2004 (With appln. for permission to place addl.  
 documents on record);  
 W.P.(C) NO.457/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.458/2004 (With appln. for ex-parte stay);  
 W.P.(C) NO.459/2004 (With appln. for stay/direction);  
 W.P.(C) NO.462/2004 (With appln. for ex-parte stay and with office  
 report)

WITH

W.P(C)No.309/2005 (With Office Report)  
W.P(C)No.304/2005 (With Office Report)  
WITH  
W.P(C)No.261/2004 (With Office Report)  
W.P(C)No.265/2004 (With Office Report)  
WITH  
C.A.No.7969-7971/2004 (With Office Report)  
C.A.No.7972/2004 (With Office Report)  
C.A.No.7973/2004 (With Office Report)  
C.A.No.7974/2004 (With Office Report)  
C.A.No.7975/2004 (With Office Report)  
SLP(C)No.13448/2007 (With Prayer for Interim Relief and Office Report)

Date: 08/09/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Puneet Jain, Adv.  
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Mr. Devendra Singh, Adv.

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For Respondent(s) Ms. Vibha Datta Makhija, Adv.  
  
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Mr. U.A. Rana, Adv.  
Ms. Mrinal Majumdqr, Adv.  
for M/s. Gagrat & Co., Adv.  
  
Mr. Amit Kumar, Adv.  
  
Mr. S. Udaya Kumar Sagar, Adv.  
Ms. Bina Madhavan, Adv.  
for M/s. Lawyers Knit & Co., Adv.  
  
Mr. Gopal Singh, Adv.  
Mr. Amitesh Kumar, Adv.  
Mr. Ravi Kant, Adv.

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

Leave granted in SLP(C) No.13448/2007

All the writ petitions and civil appeals are  
disposed of in terms of the signed order.

( Ravi P. Verma ) ( M.S. Negi )  
Court Master Court Master  
[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION(C) NO. 358 OF 2004

MODERN DENTAL COLLEGE & RESEARCH . . . . .PETITIONERS  
CENTRE & ORS.

Versus

STATE OF MADHYA PRADESH & ORS. . . . .RESPONDENTS

WITH

W.P.(C) NO.261/2004	W.P.(C) NO.441/2004
W.P.(C) NO.265/2004	W.P.(C) NO.442/2004
W.P.(C) NO.359/2004	W.P.(C) NO.443/2004
W.P.(C) NO.360/2004	W.P.(C) NO.445/2004
W.P.(C) NO.361/2004	W.P.(C) NO.446/2004
W.P.(C) NO.362/2004	W.P.(C) NO.447/2004
W.P.(C) NO.363/2004	W.P.(C) NO.448/2004
W.P.(C) NO.380/2004	W.P.(C) NO.449/2004
W.P.(C) NO.386/2004	W.P.(C) NO.450/2004
W.P.(C) NO.397/2004	W.P.(C) NO.451/2004
W.P.(C) NO.416/2004	W.P.(C) NO.452/2004
W.P.(C) NO.421/2004	W.P.(C) NO.453/2004
W.P.(C) NO.422/2004	W.P.(C) NO.454/2004
W.P.(C) NO.424/2004	W.P.(C) NO.455/2004
W.P.(C) NO.427/2004	W.P.(C) NO.456/2004
W.P.(C) NO.428/2004	W.P.(C) NO.457/2004
W.P.(C) NO.430/2004	W.P.(C) NO.458/2004
W.P.(C) NO.436/2004	W.P.(C) NO.459/2004
W.P.(C) NO.437/2004	W.P.(C) NO.304/2005
W.P.(C) NO.438/2004	W.P.(C) NO.309/2005
W.P.(C) NO.439/2004	W.P.(C) NO.462/2004
W.P.(C) NO.440/2004	

AND

C.A.No.7969-7971/2004  
C.A.No.7972/2004  
C.A.No.7973/2004  
C.A.No.7974/2004

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C.A.No.7975/2004  
C.A.No.7995/2010 [Arising out of SLP(C)No.13448/2007]

O R D E R

Leave granted in SLP(C) No.13448/2007.

Issue involved in the writ petitions

2. The petitioners in these writ petitions are all private unaided professional colleges in Madhya Pradesh. Though various questions were raised in these writ petitions, during arguments, parties agreed that the only issue that now survives for consideration in these writ petitions is the question of fee structure in regard to medical, dental and other health related professional institutions in Madhya Pradesh for the years 2003-04 and 2004-05.

3. The other issues that were raised in the writ petitions related to (i) right of Association of private unaided colleges to have a separate common entrance test for admissions; (ii) validity of the order of the State Government fixing the management quota as 50%; (iii)

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validity of the order of the State Government directing the unaided colleges to admit students according to the merit on the common entrance test conducted by the State Government; (iv) validity of the Rules regarding the conduct of common entrance test and validity of the guidelines by the Admission Committee regarding admissions. Prayers relating to these issues have now become infructuous and redundant on account of either passage of time, or account of other laws being made replacing the rules/guidelines challenged or on account of the clarification of various issues of this Court in PA Inamdar vs. State of Maharashtra - 2005 (6) SCC 537.

Facts and issues in the Civil Appeals

4. One Nidhi Bhargava approached the Madhya Pradesh High Court inter alia contending that she had been allotted a merit seat by the State Government and the college to which she was allotted, namely RD Gardi Medical College, Ujjain was asking for a caution money in addition to the fee prescribed which was impermissible. In the said petition, the High Court made an order dated 15.9.2003, directing R D Gardi Medical College to give admission to the petitioner therein by applying the state fee structure. On an application for clarification of the order dated 15.9.2003 made in the said writ petition, the High Court issued an  
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interim order dated 26.9.2003 directing that no institution shall charge more fees than what was stipulated by the state government subject to revision by the state government for the academic year 2003-04 and that no institution shall charge any capitation fee. In the said proceedings, the High Court made a further interim order dated 29.9.2003, the operative portion of which is extracted below:

"6. After a long debate a broad consensus was arrived at before us, to pass directions as interim measures pending final disposal of the present applications. We proceed to enumerate them as under: This direction is applicable to the four private management institutions mentioned in the paragraph.

(a) 12 seats which are available in the R.D. Gardi Medical College, Ujjain shall be filled up from the Government quota on the basis of the fee structure prescribed by the State Government. The management would be at liberty to collect the caution money of Rs.60,000/- as 38 students have already paid the same. However, if the students do not come forward to take admission tomorrow, i.e. on 30.9.2003 the seats shall be filled up by the management quota only after obtaining the leave of the court.

(b) The students who have already taken the admission and who are going to take admission would give necessary undertaking in all cases that if eventually the fee structure is enhanced they would abide by the same and made good the same.

(c) As the State Government has fixed the fee at Rs.38,500/- the State shall issue letters to the institutions as the counter guarantee to make good the amount to the institutions in case the students who have taken the admission do not pay the enhanced fee.

(d) The management through its counsel undertaken that if after due inspection the fee structure is submit it shall return the amount to the students concerned in the management quota.

(e) The aforesaid directions would be without prejudice to the contentions raised in course of final

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hearing of the matters."

By a further interim order dated 7.10.2003, the High Court also issued certain direction regarding admission to students to state quota seats in medical and dental colleges.

5. The said orders dated 26.9.2003, 29.9.2003 and 7.10.2003 passed by the High Court are challenged by the several colleges in C.A. Nos.7969-7971/2004, 7972/2004, 7973/2004 and 7974/2004. Being aggrieved by that part of the order dated 29.9.2003, which directs the State Government to issue letters to the colleges by way of counter guarantee undertaking to make good the amount to the institution in case the students who take admission do not pay the enhanced fee that may be ultimately fixed (as the State had fixed the fee at Rs.38,500/-, the State Government has filed CA No. 7975/2004).

6. The last Civil Appeal (arising out of SLP(C) No.13448/2007) is filed by R.D. Gardi Medical College challenging the order dated 27.4.2007 in W.P. No.219/2005 challenging the fixation of fee at Rs.38,500/- for the year 2003-04 in regard to students directed to be admitted to free seats in MBBS and BDS course.

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Re: Fee Structure for 2003-04 and 2004-05

7. An eleven Judge Bench of this Court in T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors - (2002) 8

SCC 481 held that the Scheme framed by this Court in Unni Krishnan Vs. State of Andhra Pradesh & Ors - (1993) 1 SCC 645 in regard to admissions and fixation of fees was unreasonable, invalid and unconstitutional. This Court held that it would be unfair to apply the rules and regulations regulating admissions and fee structure in the case of aided professional institutions, to unaided professional institutions. This Court also held that the managements of unaided professional institutions were entitled to autonomy in administration but at the same time bound to follow the principle of merit; and that they should adopt a rational fee structure but will not be entitled to charge any capitation fee. In Unni Krishnan, this Court had evolved a Scheme of 50% free seats and 50% payment seats for admission to professional colleges. The State Governments and the colleges were following the Unni Krishnan scheme for about a decade. In view of the decision in TMA Pai Foundation, it became necessary to reconsider and re-adjudicate the question of admissions and fee structure as various state governments and educational institutions understood the decision in TMA Pai Foundation, in different perspectives. Consequently various issues arising therefrom were considered by a Constitution Bench of this Court in Islamic Academy of Education & Ors. Vs. State of Karnataka & Ors., (2003) 6 SCC 697 so as to clarify any doubts/anomalies arising from diverse interpretations. In regard to the question whether educational institutions are entitled to fix their own fee structure and what should be the factors to be taken note of for fixing the fee, this Court held as under:

"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 (in TMA Pai Foundation) 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, mere 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

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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, 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."

8. As the judgment was rendered on 14.8.2003, the principles laid down therein could be applied only for the academic year 2004-05 onwards. This is also evident from the fact that in paragraph 21 of the judgment, this Court observed that in so far as the academic year 2003-04 was

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concerned, time was running out as the outer time limit for admissions had elapsed and there should be an ad hoc arrangement for that year. It can, therefore, be inferred that whatever was stated with reference to academic year 2003-04 in Islamic Academy, was only intended to be an adhoc arrangement. Be that as it may.

9. The State Government, by circular memorandum dated 3.7.2003 fixed the tuition fees for Graduate and Post Graduate courses for academic session 2003-04 in private and Government Medical, Dental, Nursing, Ayurveda, Unani and Homeopathic Colleges as follows:

S. No.	Name of the Institution	Free Seats Rs.	Payment Seats Rs.	NRI Seats (In US Dollars)
1.	Autonomous Medical and Dental Colleges	35000	1,50,000	10000
2.	Medical and Dental College established in Private Sector	38500	1,65,000	12000
3.	Autonomous Nursing college (B.Sc.) course	10000	50000	-
4.	Nursing Colleges of private sector	11000	55000	-
5.	Govt. Autonomous Private/Ayurveda, Unani, Homeopathy College	11000	25300	3600
6.	Autonomous Medical/Dental College	Diploma - 40000		
		Post Graduate Degree - 45000		

By subsequent memorandum dated 8.9.2003, the State

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Government fixed the fee as Rs.38,500/- for free seats and Rs.1,65,000/- for payment seats (and US \$ 12000 for NRI

quota seats) in regard to three unaided private dental colleges in the State (that is School of Dental Science, Indore, Modern Dental College, Indore and RKDF Dental College, Bhopal) and one unaided private medical college (RD Gardi Medical College, Ujjain).

10. Some of the colleges gave representations to the State Government for increasing the fees. They contended that if the fee structure was calculated on the basis of principles laid down in Islamic Academy (extracted above), their fee structure should be much higher. They also requested that the matters be referred to a Fee Fixation Committee headed by a retired High Court Judge.

11. The State Government, by order dated 4.11.2003 appointed a Committee presided over by a retired High Court Judge for Fixation of Fees for Professional Institutions. The said Committee called upon the colleges to supply the information that is referred to in the judgment of this Court in Islamic Academy in regard to fixation of fees. Only the medical college and the dental colleges responded. Other colleges did not respond. In the circumstances, the Committee announced a public hearing with reference to  
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fixation of fee. It also gave detailed instructions as to how the data should be furnished for the purpose of determination of fees. It gave personal hearing to all those who were present.

12. Thereafter by order dated 31.5.2004, the Fee Fixation Committee fixed the fee for three academic sessions that is 2004-05 to 2006-07 with an observation that the fees fixed may also be applied to academic session 2003-04 in regard to the medical and dental colleges as per the directions of the High Court. It fixed the following fee structure:

Name of College	Tuition Fee	Educational Fees	Student Funds	Caution (one deposited) College	Money time Hostel	Hostel Fees
R D Gardi Medical, Ujjain	164000/-	-	1000/-	25000/-	1200/-	6000/-
College of Dental Science, Rau, Indore	146000/-	-	1000/-	10000/-	1200/-	6000/-
Other Dental Colleges	112000/-	-	1000/-	10000/-	1200/-	6000/-
Nursing Colleges	48000/-	-	1000/-	5000/-	1200/-	6000/-
Ayurvedic Colleges	52000/-	2000/-	1000/-	5000/-	1200/-	6000/-
Homeopathic Colleges	22000/-	2000/-	1000/-	5000/-	1200/-	6000/-
Unani Colleges.	42000/-	2000/-	1000/-	1000/-	1200/-	6000/-

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The Fee Fixation Committee also clarified that the institutions will not be entitled to charge any fee other than what has been fixed by it. What is significant to be noted in the said order is that except in the case of R.D.Gardi Medical College, Ujjain, and College of Dental Sciences, Rau, Indore, the fee fixed by the Fee Fixation Committee was uniformly applicable for all colleges in a particular discipline, that is one rate of fee for all Dental Colleges, one rate for all Nursing Colleges, one rate of fee for all Ayurvedic Colleges, one rate of fee for all Homeopathic Colleges and one rate of fee for all Unani Colleges. As per the said order dated 31.5.2004, the fees determined were applicable both in regard to management quota seats and State quota seats.

13. By another order dated 15.7.2004, the Fee Fixation Committee made certain modifications to the order dated 31.5.2004 and also made it clear that the fee fixation by order dated 31.5.2004 was only an interim arrangement pending final determination. The Committee made it clear

that it would examine the matter of fixation of fees in further detail and pass final orders regarding the fees subsequently.

14. However, in spite of Fee Fixation Committee clarifying  
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in its order dated 15.7.2004 that the fee fixation made in its order dated 31.5.2004 was only an interim arrangement, the State Government issued an order dated 10.12.2004 finally fixing the following fees for the year 2003-04 for the State quota seats and the management quota seats in regard to one unaided private medical college and five unaided private dental colleges:

Sl. No.	Name of the Institution	State quota seats	Management quota seats
1	RD Gardi Medical College, Ujjain	Rs.38,500/-	Rs.1,64,000/-
2	College of Dental Science, Rau, Indore	Rs.38,500/-	Rs.1,46,000/-
3	Modern Dental College, Indore	Rs.38,500/-	Rs.1,12,000/-
4	RKDF Dental College, Bhopal	Rs.38,500/-	Rs.1,12,000/-
5	Maharana Pratap Dental College, Gwalior	Rs.38,500/-	Rs.1,12,000/-
6	People's College of Science and Research Dental Center, Bhopal	Rs.38,500/-	Rs.1,12,000/-

What was determined by the Fee Fixation Committee as a uniform interim fee fixation without any distinction between the State quota seats and management quota seats was thus adopted by the said government order dated 10.12.2004 as final fee fixation for management quota seats only. In regard to State quota seats, an uniform fee of Rs.38,500/- was fixed by the State. No reasons were assigned for either of the decisions.

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15. In these writ petitions, this court on 10.8.2004

issued an interim direction that the fees prescribed by the Committee shall prevail for the time being though provisional and it would be open to the Colleges to take an undertaking from the students that in case higher fee is payable, they will pay the same.

16. Thereafter, the matter again came up before the Fee Fixation Committee and it made an order dated 9.3.2005 stating that it did not propose to make any fee fixation for the year 2003-04, as this Court in Islamic Academy did not confer jurisdiction on the Fee Fixation Committee to decide the fee structure for 2003-04. However, in regard to the year 2004-05 and subsequent years, the Fee Committee held that it has the jurisdiction to decide the fee structure.

17. The position emerging from the above orders may be summarized thus:

(i) The Fee Fixation Committee prescribed the same fee structure for the State quota seats and the management quota seats by order dated 31.5.2004, as an interim measure by its order dated 31.5.2004, pending final determination.

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(ii) The state government however applied different fee structures for the State quota seats and management quota seats, as per its order dated 10.12.2004, without assigning any reasons.

(iii) As far as academic year 2003-04 is concerned, there was no adjudicatory determination either by the Fee Committee or by any Court or by the State Government which could be considered as final. There is, however, a fixation by the Government by its order dated 10.12.2004 for the year 2003-04 which is not supported by any reasons.

(iv) In regard to State quota seats, there is absolutely no basis or reasoning to show how a lesser annual fee of Rs.38,500/- was arrived at as the annual fee. Even in regard to management quota seats, the determination is by adopting the interim fee arrangement made by the Fee Fixation Committee, as final determination.

18. Therefore, it follows that as far as 2003-04 is

concerned there is no legally valid or binding fee fixation. The fixation of fee involves examination of various accounting aspects with reference to principles/guidelines given in Islamic Academy and Inamdar (supra). It can be done only by a Fee Fixation Committee by giving due opportunity to the concerned colleges and after hearing the State Government. Such a determination of fee becomes necessary in regard to the year 2003-04. In the circumstances, the Government order dated 10.12.2004 fixing 19 the fee for 2003-04 has to be considered only as an interim arrangement pending final determination by the Fee Fixation Committee.

19. In so far as the academic year 2004-2005 is concerned, the position is not much different. As noticed above, the determination by the order dated 31.5.2004 was also provisional, purely as an interim measure. There is no subsequent order of the Fee Fixation Committee fixing the fee for 2004-05. We are, therefore, of the view that for the 2004-05 also, the fixation of fee has to be done by a Fee Fixation Committee after examining the various aspects and after hearing the State Government and the colleges.

20. We may at this stage notice two subsequent developments. The first is that this Court in P.A. Inamdar (supra, decided on 12.8.2005) reiterated the direction in Islamic Academy of Education for constitution of Fee Fixation Committees to deal with fee structure. This Court held as follows:

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

and 161 [Answer to Q.5(c)] of Pai Foundation are relevant in this regard).

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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.

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

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

146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and on a reasonable fee-structure.

147. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of

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this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or adhoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

149. However, we would like to sound a note of caution to such Committees. The learned counsel appearing for the petitioners have severely criticised the functioning of some of the Committees so constituted. It was pointed out by citing concrete examples that some of the Committees have indulged in assuming such powers and performing such functions as were never given or intended to be given to them by Islamic Academy. Certain decisions of some of the Committees were subjected to serious criticism by pointing out that the fee structure approved by them was abysmally low which has rendered the functioning of the institutions almost impossible or made the institutions run into losses. In some of the institutions, the teachers have left their job and migrated to other institutions as it was not possible for the management to retain talented and highly qualified teachers against the salary permitted by the Committees. Retired High Court Judges heading the Committees are assisted by experts in accounts and management. They also have the benefit of hearing the contending parties. We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

151. On Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for

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admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails. However, the observation by way clarification, contained in the later part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by State Government is rendered redundant and must go in view of what has been already held by us in the earlier part of this judgment while dealing with Question No.1."

21. The second development is that the Fee Fixation Committee which was constituted on 4.11.2003 and which passed the orders dated 31.5.2004, 15.7.2004 and 9.3.2005 is

no longer in existence. In pursuance of a new enactment - the Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 ('2007 Act' for short) - a Fee Regulatory Committee has been constituted by the State Government.

22. Having regard to the principles laid down in TMA Pai Foundation, Islamic Academy Education and Inamdar whereby the previous scheme in Unni Krishnan was held to be unconstitutional, in so far as private unaided professional educational institutions are concerned, the question of two fee structures - one for the 'State quota' students and one for the 'management quota' students does not arise. These decisions contemplate the determination of fee structure for each college with reference to the various parameters like

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location, nature of the professional course, investment in infrastructure including land and building, infrastructure and facilities available by way of buildings, labs, equipments, salaries to faculty and staff, the cost of administration and maintenance and reasonable surplus for growth and development of the institution mentioned therein. There can therefore be only one fee structure for all students of a private unaided professional educational institution. This of course does not come in the way of different fee structures being applied in regard to government institutions and aided institutions, nor does it come in the way of weaker sections of students admitted to unaided private professional educational institutions being extended scholarships, grants, fee concessions etc. on a voluntary basis, either by the institutions themselves or by the government.

23. In the peculiar facts of the case and the subsequent events, the counsel for the petitioner Colleges as also the

counsel for the State fairly submitted that they have no objection for the fixation of the fees in regard to the said two years (2003-04 and 2004-05) being done by the Fee Regulatory Committee which has been constituted under the 2007 Act. Though, the said statutory Fee Regulatory Committee is not constituted for fixing the fee for the

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years 2003-04 and 2004-05, interests of justice could be best served by referring the question of fixation of fees for 2003-04 and 2004-05 to the said Fee Regulatory Committee, instead of this Court constituting a separate Fee Fixation Committee for those years.

Re : Civil Appeals

24. In view of our decision in the writ petitions, the civil appeals by the Colleges do not survive for consideration.

25. The State Government has challenged the interim order dated 29.9.2003 of the High Court on the ground that it had not given an undertaking as noted in the order dated 29.9.2003. The High Court has specifically recorded the consensus arrived at among the parties and it relates to only four colleges mentioned in the order and that too for the 2003-04. The interim order also makes it clear that the State's liability will be only where the colleges are not able to recover the amounts from the students. We find that the said order was made in the background of the peculiar facts as the State had prevented the college from recovering any amount in excess of Rs.38,500/- from state quota students. The said order dated 29.9.2003 therefore does not call for any interference.

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Conclusion

26. We, accordingly, allow these writ petitions in part as follows:

(a) It is declared that the fixation of fees so far done, either by the Fee Fixation Committee/State Government for the year 2003-04 and 2004-05 was only as an interim provisional measure, subject to final determination that is yet to be done.

(b) The Fee Regulatory Committee, which was constituted under the 2007 Act, is hereby entrusted with the function of determining the fee structure for the petitioner colleges (unaided private colleges) for the Academic Years 2003-2004 and 2004-2005 after giving due hearing to the colleges concerned and the State Government. It is open to the Committee to consider any written representation submitted by the concerned students also, while fixing the fee for those years. The students are not entitled to claim personal hearing. The Fee Regulatory Committee for this purpose will have all powers that have been vested in it by the 2007 Act. The State Government shall take all steps and do everything necessary to enable the said Fee Regulatory Committee to complete the process of fee fixation expeditiously.

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(c) All questions are left open and nothing stated in the several orders of the High Court or by this Court shall be considered as expression of opinion in regard to fee structure for the said academic years (2003-04 and 2004-05) and the Fee Regulatory Committee shall determine the fees with reference to the facts, figures and material placed before it.

(d) In the event of the fees determined by the Committee being more than what has been collected from the students of 2003-04 and 2004-05, it is open to the colleges to recover the balance by enforcing the bank guarantee or undertaking, if any, obtained from the students. In so far as 2003-04 is concerned, if there is any non-recovery or shortfall in

recovery, with reference to any student, the same shall be made good by the State Government in accordance with the order dated 29.9.2003 (extracted above). It is made clear that the said indemnity by the State Government is only with reference to four colleges mentioned in the order dated 29.9.2003 in regard to 2003-2004. The State will have no liability to pay any difference in fee in so far as other colleges are concerned.

(e) If the fee determined by the Committee is less than what has been already recovered, the concerned College shall

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refund the excess fee collected to the respective student.

27. As no other point is urged and all the petitioners agreed that the only point that was to be decided was in regard to the fees, the remaining issues raised are not decided (and left open) as having become infructuous.

28. As a consequence, all the civil appeals are disposed of in view of the directions given while disposing of the writ petitions.

.....J.  
( R.V. RAVEENDRAN )

.....J.  
( H.L. GOKHALE )

New Delhi;  
September 08, 2010.