2025 INSC 518

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. _____ / 2025
(Arising out of Special Leave Petition (C) Nos. 9885 – 9888 / 2020)

The State of Kerala and Ors. ....Appellant(s)

versus

The Principal, KMCT Medical College and Ors. ....Respondent(s)

WITH

Civil Appeal No. _____ / 2025
(Arising out of Special Leave Petition (C) No. 12984 / 2020)

The Principal KMCT Medical College & Anr. ....Appellant(s)

versus

The Admission and Fee Regulatory Committee and Anr. ....Respondent(s)

WITH

Civil Appeal No. _____ / 2025
(Arising out of Special Leave Petition (C) Nos. 4909 – 4910 / 2021)

Altaf Hussain & Ors. ....Appellant(s)

versus

The State of Kerala and Ors. ....Respondent(s)

WITH

Civil Appeal No. _____ / 2025
(Arising out of Special Leave Petition (C) Nos. 12957 – 12958 / 2021)

Sanchana Pious & Ors. ....Appellant(s)

versus

The State of Kerala and Ors. ....Respondent(s)

JUDGEMENT

SURYA KANT, J.

Leave granted.

2. The issue that arises for consideration has emanated from a direction given by the State of Kerala's Admission and Fee Regulatory Committee that a corpus fund be created to subsidize medical education for Below Poverty Line (**BPL**) students admitted to self-financing medical educational institutions in the State. This corpus fund was to be created by remitting to the State Government a part of the fees collected from Non-Resident Indian (**NRI**) students admitted to those colleges.

3. The Kerala High Court, at Ernakulam (**High Court**) *vide* the common Impugned Judgement dated 23.07.2020 has: (***i***) quashed Government Order (MS) No. 107/2018/H&FWD dated 06.06.2018 (**GO dated 06.06.2018**); (***ii***) directed that the amounts collected from each NRI student to create a corpus fund be transferred to the respective institutions and maintained as a separate account to be utilized only for the benefit of students belonging to the economically weaker sections, who may be admitted to such institutions on the basis of allotment; (***iii***) directed such account to be operated only jointly by a nominee of the self-financing institution and a nominee of the State Government; (***iv***) kept it open to the State to promulgate suitable

legislative measures to achieve the object of providing scholarships to students belonging to economically weaker sections of society as observed by this Court in ***P. A. Inamdar and Ors. v. State of Maharashtra***[1]; and has further directed that (***v***) till suitable legislative measures are adopted by the State, no further amounts would be levied or collected from NRI students, already admitted to or to be admitted to NRI quota seats in that academic year, towards the creation or maintenance of the corpus fund.

4. These directions of the High Court have given rise to three sets of cross-appeals preferred by: (***i***) The State of Kerala, who is aggrieved by the quashing of its GO dated 06.06.2018; (***ii***) The self-financing medical colleges, who are challenging the direction that the corpus fund amount be utilized only to subsidize education for students from economically-weaker sections of society admitted to the respective institutions; and finally, (***iii***) The NRI students, who are dissatisfied that the corpus fund amounts have not been refunded to them.

A. FACTS

5. Owing to a parallel set of proceedings before the Courts concerning the Committee's overall functioning, it is vital to understand the detailed facts before analyzing the legal issues.

1 P. A. Inamdar and Ors. v. State of Maharashtra, (2005) 6 SCC 537.

5.1 The Kerala Medical Education (Regulation and Control of Admission to Private Medical Educational Institutions) Act, 2017 (**the 2017 Act**) came into force on 01.06.2017. It was introduced to, among other things, regulate the admission and fixation of fees in private medical educational institutions in the State of Kerala. Sections 3 and 3A of the 2017 Act contemplate the constitution of a Committee, described as the Admission and Fee Regulatory Committee (**Committee**). The Committee was tasked to determine the fees charged to students admitted to private medical educational institutions in Kerala based on the annual information and proposals submitted by those colleges.

5.2 KMCT Medical College moved an application and submitted the prospectus for Academic Year 2017-2018 before the Committee on 01.08.2017, requesting it to fix the fees for NRI students at Rs. 20 lakhs per annum.

5.3 The Committee, on 27.02.2018, approved the fixation of fees for NRI students at Rs. 20 lakhs per annum for all medical colleges whose fee was to be regulated under the 2017 Act. Notedly, it decided to enhance the fees for NRI students from Rs. 15 lakhs per annum in Academic Year 2016-2017 to Rs. 20 lakhs per annum in Academic Year 2017-2018 and 2018-2019, with the condition that the extra amount of Rs. 5 lakhs would be kept as a 'corpus fund' to provide scholarships to BPL students. The Committee further directed that the corpus fund amount would be remitted to the State Government, as and when so directed by

the State, the Committee, or a Court of Law. This decision was substantiated by quoting paragraph 131 of ***P. A. Inamdar (supra)***, where it was held that the fees collected from NRI students should be utilized to benefit students from economically-weaker sections of society.

5.4 KMCT Medical College, being aggrieved, laid challenge to the Committee's decision before the High Court.

5.5 During the pendency of the writ proceedings before the High Court, the Government of Kerala issued the GO dated 06.06.2018, seemingly to validate and support the Committee's decision dated 27.02.2018. It emphasized that the mainstay of the corpus fund would be the amounts earmarked and collected from NRI students who were admitted to self-financing medical educational institutions in the State. Much like the Committee's decision, the GO dated 06.06.2018 was statedly issued in pursuance of the directions contained in paragraph 131 of ***P. A. Inamdar (supra)***. Compelled by the GO dated 06.06.2018, the self-financing medical colleges consequently began collecting Rs. 20 lakhs per annum as fees from the newly-admitted NRI students, while remitting Rs. 5 lakhs to the corpus fund.

5.6 The Committee, meanwhile, continued to assess the fee proposals submitted by various colleges. In some instances, it rejected the proposals and determined the fees to be charged on its own initiative. Viewing this as an overstep of the Committee's powers and a violation

of the institutions' autonomy, several medical colleges filed writ petitions before the High Court. This resulted in a parallel set of proceedings concerning the Committee's overall powers.

5.7 These proceedings culminated in a common judgment dated 19.05.2020, whereby the High Court remanded the matter to the Committee to re-examine the proposals afresh and to pass suitable orders. The High Court observed that though the Committee had the power to fix the fee to be collected from NRI students, there was no power vested in it under Section 8 of the 2017 Act to direct that a portion of the fee amount be utilized for any other purpose.

5.8 The aggrieved State approached this Court in Civil Appeal No. 606-616/2021, which came to be decided on 25.02.2021,[2] holding that the fee, as proposed by the colleges, should be considered by the Committee. This Court noted that it was no longer *res integra* that the right conferred on the institutions to fix fees for professional courses was subject to regulation. It was reiterated that unaided professional institutions had the autonomy to decide on the fees to be charged, subject to the condition that such fees do not result in profiteering or collection of capitation fees. The Committee was only required to ensure that the fee charged was non-exploitative and reasonable. This Court thus directed the Committee to reconsider the proposals submitted by the colleges, by taking into account the factors mentioned in Section 11

2 Najiya Neermunda v. Kunhitharuvai Memorial Charitable Trust, (2021) 5 SCC 515.

of the 2017 Act and the law laid down in ***Modern Dental College & Research Centre and Ors. v. State of Madhya Pradesh and Ors.***[3]

5.9 While this Court was seized of the above-mentioned matter, various self-financing medical colleges and their NRI students initiated a second round of litigation before the High Court, this time, challenging the amounts collected from NRI students to create the corpus fund to benefit BPL students enrolled in the same institutes. The High Court clubbed these writ petitions with the earlier petition filed by KMCT Medical College, and has decided all these writ petitions through the common Impugned Judgment.

5.10 The High Court, being conscious of the fact that the Committee was considering the fee proposals afresh, as was directed by it *vide* the judgement dated 19.05.2020, restricted its assessment only *qua* the 'validity of the creation of the corpus fund.'

5.11 The question that was formulated by the High Court for its consideration was whether the creation of the corpus fund through the GO dated 06.06.2018 could be sustained in the absence of law in the form of plenary legislation or subordinate legislation. The High Court opined that, regardless of the nature of the levy, such a fee could be imposed only under the authority of law and not merely by an executive order. Since there was no provision in the 2017 Act authorizing the

3 Modern Dental College & Research Centre and Ors. v. State of Madhya Pradesh and Ors., (2016) 7 SCC 353.

Committee or the State Government to levy an amount to be credited to a corpus fund, the GO dated 06.06.2018 could not be sustained. Accordingly, the GO was quashed and the directions, as specified in paragraph 3 above, have been issued.

5.12 This is how these cross-appeals have arisen for our consideration.

B. CONTENTIONS OF THE PARTIES

6. Mr. Kapil Sibal and Mr. Nikhil Goel, Learned Senior Counsel, appearing on behalf of KMCT Medical College and other self-financing medical colleges in the State, contended that the High Court has partly erred and the Impugned Judgement deserves to be suitably modified in light of the following submissions:

(a) This Court has time and again permitted institutions to charge a higher amount of fees from NRI students as the fees paid by them enable such institutions to strengthen their level of education and enlarge their educational activities. KMCT Medical College has always followed this dictum and has been using the enhanced fees levied on NRI students to grant scholarships to students from economically-weaker sections of society. For instance, in 2014 and 2015, KMCT Medical College awarded scholarships worth Rs. 1.28 crores and Rs. 1.55 crores, respectively, to enable its students

from economically-weaker sections of society to pursue their education.

(b) The fee proposed to be charged from the NRI students was only Rs. 20 lakhs per annum, which is one of the lowest fees in the entire country. KMCT Medical College charges only Rs. 5.5 lakhs per annum as fees for general category students. Thus, if the tuition fee for NRI students was further reduced from Rs. 20 lakhs to Rs. 15 lakhs, by virtue of the corpus fund, the college would be unable to continue financing its day-to-day activities. Consequently, the failure of the High Court to direct a refund, of the amount charged from NRI students towards the corpus fund, to the institutions is violative of Article 19 (1)(g) and Article 30 of the Constitution.

(c) The State or the Executive cannot impose any levy, whatever may be the nature of it, through an executive order, except under the authority of law. At present, there is no provision in the 2017 Act which empowers the State or its machinery to impose any tax or levy of any nature on self-financing medical colleges. The only power granted to the Committee is to satisfy itself that the fees charged by the self-financing medical educational institutions do not lead to profiteering or payment of capitation fees. If the Committee finds the fees charged to be exploitative, it can propose a different fee structure.

(d) Once the High Court quashed the GO dated 06.06.2018 on the ground that the Committee was not authorized under law to create a corpus fund, it could not have permitted such unauthorized action to continue by directing that the amounts collected for the corpus fund be utilized only to subsidize education for other students. The denial of a refund of the illegally-collected fees has put the self-financing medical colleges under financial strain.

(e) KMCT Medical College, like other self-financing medical colleges, specifically requested the Committee to approve its fixation of fees at Rs. 20 lakhs per annum for NRI students, under the expectation that if approved, it would be able to utilize the entire amount of Rs. 20 lakhs for educational purposes and for running the institution. It was improper and imprudent of the Committee to approve the fees of Rs. 20 lakhs per annum, only to retain Rs. 5 lakhs for the creation of the corpus fund.

7. Mr. Shoeb Alam, Learned Senior Counsel, appearing on behalf of the NRI students, supported the quashing of the GO dated 06.06.2018 but contended that the High Court erred in disallowing a refund to them. In furtherance of this, he adduced the following submissions:

(a) NRI students are admitted to colleges on a higher fee scale to subsidize the fees of students from economically-weaker sections of society. When an NRI student is admitted to a particular college, the higher fees paid are utilized to subsidize the fees of a BPL

student in that particular college, alone. It is unfair and unjust that a higher fee charged from NRI students of a particular college be utilized to subsidize the fees charged in another college or multiple other colleges in the State.

(b) Paragraph 67 of ***P. A. Inamdar (supra)*** states that "*each NRI student would subsidize two other students belonging to the economically and socially weaker sections*." Thus, if the fee fixed for a general category student for a particular year is only Rs. 5 lakhs, there is no reason to fix the fees for NRI students above Rs. 15 lakhs as the NRI student would be subsidizing the fees of two other students from economically-weaker backgrounds. As a result, any amount levied as a corpus fund, without the authority of law, is over and above the amount contemplated for an NRI student to bear.

(c) In addition to this, some colleges have forced the NRI students to give post-dated cheques of Rs. 5 lakhs, in advance, to create the corpus fund. The NRI students are thus either liable to be refunded the amounts collected under the guise of setting up the corpus fund or the amounts so collected must be set off against their future fees.

8. *Per contra*, Mr. Jayant Muth Raj, Learned Senior Counsel, appearing on behalf of the State of Kerala, put forth the following submissions:

(a) The GO dated 06.06.2018 was issued in pursuance of paragraph 131 of ***P. A. Inamdar (supra)***. The last line of paragraph 131 specifically permitted the Committee to create a mechanism to subsidize education through the fees collected from NRI students, in the absence of State Legislation on the subject. The authority to create the corpus fund thus, came primarily from the Constitution Bench judgement of this Court, which, being the law of the land, need not be supplemented or supplanted by any State Legislation or Regulations.

(b) The conduct of the self-financing medical colleges is questionable as they have collected the corpus fund amount of Rs. 5 lakhs in advance from the NRI students who were admitted in the 2017-2018 batch, even in respect of their second, third, fourth, and fifth years. They collected Rs. 43.6 crores in total but remitted only Rs. 4.15 crores to the State for the purpose of the corpus fund. The college management did the same for the next 5 successive batches of NRI students, i.e. the batches of 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023. Rs. 145.45 crores were collected from these batches for the corpus fund, but only Rs. 2 crores have been remitted to the corpus fund maintained by the Commissioner for Entrance Examinations. Thus, the colleges have retained a total of Rs. 182.9 crores from the batches of 2017-2018 to 2022-2023. As a direct corollary to such action, the State of

Kerala's larger objective, of subsidizing education for students from economically-weaker sections of society, has been frustrated.

9. Mr. Gaurav Aggarwal, Learned Senior Counsel, appearing on behalf of the intervenors, i.e. certain BPL students admitted to various self-financing medical colleges across Kerala, supported the GO dated 06.06.2018 and put forth the following submissions:

(a) The GO dated 06.06.2018 was adopted as a welfare measure by the State of Kerala. The object of the GO dated 06.06.2018 was laudable and the observations of this Court in ***P. A. Inamdar (supra)*** clearly compel the State to adopt such a course of action. The GO dated 06.06.2018 should not have been quashed merely due to the absence of legislative support. The Courts should ordinarily not interfere with a policy decision of the Executive unless the same is *mala fide*, unreasonable, arbitrary, or unfair.

(b) After the High Court directed that no further amount should be credited towards the corpus fund, many BPL students have been finding it difficult to continue their studies due to financial hardships. Not only this, the self-financing medical institutions are exerting pressure on BPL students to remit the regular tuition fees. These students chose to take admission to the respective colleges, with the understanding that they would only have to pay subsidized fees. Since they no longer receive BPL scholarships,

they have been unable to pay their tuition and hostel fees and many of them will be forced to discontinue their studies.

C. ISSUES

10. Having given our thoughtful consideration to the submissions at length, we find that the following issues arise for our consideration:

i. Whether the Committee had the power to determine and direct that a particular amount of the fees charged to NRI students be kept in a corpus fund maintained by the State?

ii. Whether the NRI students are entitled to a refund of the amount so charged or whether it can be set off against fees to be charged for later years?

D. ANALYSIS

D.1 Issue No. 1: Power of the Committee to direct the creation of a corpus fund for scholarships

11. To understand and deduce the powers of the Committee, we must conduct a detailed examination of the two sources from where it is stated to have derived its powers: (***i***) The Constitution Bench Judgement of this Court in ***P. A. Inamdar (supra)***; and (***ii***) Section 8A and Section 11 of the 2017 Act.

D.1.1 The Constitution Bench Judgement of this Court in P. A. Inamdar (supra)

12. Before we delve into the analysis, it will be useful to reproduce the text of paragraph 131 of ***P. A. Inamdar (supra)*** to appreciate the rival submissions raised by the parties. It elucidates that:

> *"**131.** Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In fact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by.* ***The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be***

> ***for the Committees constituted pursuant to the direction in Islamic Academy [(2003) 6 SCC 697] to regulate.***"
>
> [Emphasis supplied]

13. In this regard, the State of Kerala and the intervenor-BPL students have vehemently asserted that this Court, in the above-reproduced paragraph, has unequivocally obligated each institution to subsidize the fees charged to students from economically-weaker sections of society through fees paid by NRI students. Until suitable legislation is made by the State, the Committee is obliged to regulate such subsidization. The Committee, therefore, was justified in creating the corpus fund.

14. *Per contra*, KMCT Medical College, other self-financing medical colleges, and some NRI students contend that ***P. A. Inamdar (supra)*** does not grant the Committee the power to create a corpus fund; the power to do so resides only with the State. The relevant paragraph only grants the Committee the ability to regulate admissions to the NRI quota to prevent its misutilization.

15. It is clear that paragraph 131 of ***P. A. Inamdar (supra)*** validates and encourages the idea of charging higher fees to NRI students in order to subsidize education for students from economically-weaker or backward sections of society, who are admitted to those colleges. This aligns with the ideals of a welfare State. It cannot possibly be contested that the Committee, in the instant case, has not been constituted in

line with the directives given by the 5-judge Bench of this Court in ***Islamic Academy of Education v. State of Karnataka***.[4]

16. On a thorough reading of the paragraph, it further appears that the powers granted to the Committee only concern the rules of allotment of seats in the NRI quota, with particular emphasis on preventing misutilization of the allotted quota and seats. The Committee is also permitted to frame such rules only till the time the State fails to do so. From the phrase, "*To prevent misutilisation of such quota or any malpractice referable to NRI quota seats,*" which precedes the State's mandate to enact a suitable Legislation or frame Regulations, it is clear that the Committee constituted in ***Islamic Academy (supra)*** has been authorized to regulate NRI admissions. The power conferred on the Committee, in this regard, is necessarily meant to prevent misutilization of the NRI quota or any malpractice referable to that quota. Conversely, the above-reproduced paragraph is silent on the creation of any mechanism to subsidize fees for other students and does not confer any power on the Committee in this regard. It is difficult to accept that the Committee can create a corpus fund on the strength of the transitional powers given to it in ***P. A. Inamdar (supra)***. The power to formulate creative solutions, such as a corpus fund, to benefit students from economically-weaker sections of society resides only with the State, which should be introduced through appropriate Legislation or Regulations.

4 Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697, para 7.

17. The last line of paragraph 131, which mentions that the Committee will act as per the directions issued in ***Islamic Academy (supra)***, leaves no room to doubt that the powers of the Committee to regulate NRI seats are not boundless. For better appreciation, it will be useful, at this stage, to refer to paragraph 7 of ***Islamic Academy (supra)***, which pertains to the constitution and the powers of the Committee. It reads as follows:

> *"7. 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 has not yet considered the validity of those statutes/regulations,* ***we direct that in order to give effect to the judgment in T.M.A. Pai case [(2002) 8***

> ***SCC 481] 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 the 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."*
>
> [Emphasis supplied]

18. It becomes evident from the above extract that the Committee may only decide whether the fees proposed by the institution are exploitative or

not. ***Islamic Academy (supra)*** makes no mention of the Committee's discretionary power to divert a part of the approved fees for any purpose, howsoever noble it may be, including for the purpose of creating a corpus fund. Once the colleges submit their proposals to it, the Committee must examine all the heads to determine whether such proposed fee is reasonable. The Committee is also empowered to propose an alternative fee structure in the event of profiteering or charging of capitation fee by the college.

19. A conjoint reading of paragraph 131 of ***P. A. Inamdar (supra)*** and paragraph 7 of ***Islamic Academy (supra)*** amplifies the idea that the Committee's power is not limitless. Such a combined reading leads us to the conclusion that: (***i***) the Committee is competent to prescribe fees in respect of the NRI quota in self-financing medical educational institutions until the State enacts appropriate Legislation or Regulations; and (***ii***) the Committee cannot draw unlimited powers under the guise of 'regulation of NRI quota/seats.' In other words, the Committee can only make rules for admission to such seats and can review the fees charged to NRI students to ensure that they are not exploitative. This is the cumulative power granted to the Committee within which it must act. The Committee cannot perforate these bounds unless and until its power is expanded through a suitable Legislation or upon a direction by this Court.

20. In light of the above, it is evident that paragraph 131 of ***P. A. Inamdar (supra)*** does not clothe the Committee with the power to create a corpus fund for the benefit of economically-weaker students. It only directs the State to come up with a suitable plan to subsidize their education through the fees charged from NRI students. The Committee cannot usurp the powers vested in the State in this regard.

D.1.2 Section 8A and Section 11 of the 2017 Act

21. Given that we have established the confines of the directions in ***P. A. Inamdar (supra)***, it is also necessary to ascertain whether the State has accounted for the proposed scholarship scheme/corpus fund through the aegis of the 2017 Act, which constitutes the Committee and regulates its functions.

22. Before we proceed further, we must take a glance at Section 8A and Section 11 of the 2017 Act. These provisions read as follow:

> "***8A. Powers and functions of the Fee Regulatory Committee:*** *(1) The Committee shall exercise the following powers and perform the following functions, namely: (a) require a private medical educational institution to furnish, within a specified date, information, documents or records as may be necessary for enabling the Fee Regulatory Committee to determine the fee that may be charged by the institution in respect of each medical course;*
>
> *[***]*
>
> *hear complaints with regard to admission in contravention of the provisions of this Act or the rules made thereunder either on receipt of a complaint or suo motu and shall:*
>
> *[***]*

(2) The [Fee Regulatory Committee] shall, for the purpose of making any enquiry under this Act, have all the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely: (a) summoning and enforcing the attendance of any witness and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavit.

(3) The fee determined by the Fee Regulatory Committee shall be applicable to a student who is admitted to a private medical educational institution in that academic year and shall not be revised till the completion of his course in the said institution or University. No private medical educational institution shall collect a fee amounting to more than one year's fee from a student in an academic year. Collection of more than one year's fee in an academic year shall be construed as collecting of capitation fee and shall be liable to be proceeded against.

(4) The Fee Regulatory Committee may, if it is satisfied that there has been any violation by such institution of the provisions of this Act or the rules made thereunder regarding [***] fees, it may recommend to the Government to take the following actions against such institution, namely:

(a) impose a monetary fine up to ten lakh rupees on the institution together with interest thereon at the rate of twelve per cent per annum which shall be recovered as if it were an arrear of public revenue due on land;

(b) order the institution to refund to the student within such time as specified in the order, any amount received by the institution in excess of the fees fixed by the Fee Regulatory Committee or any amount received by way of capitation fee or any amount received for profiteering:

Provided that if the institution fails to refund the amount within the specified time to the student, the same shall be recoverable along with interest thereon at the rate of twelve per cent per annum as if it were an arrear of public revenue due on land and paid to the student;

(c) recommend to the University or the appropriate authority to withdraw the recognition of the institution;

(d) any other course of action, as it deems fit.

(5) Before recommending to the Government to initiate actions under subsection (4) the institutions shall be given a reasonable opportunity of being heard.

11. Factors for determination of fee: *(1) the Fee Regulatory Committee shall determine the fee considering the following factors, namely:*

(a) the location of the private medical educational institution;

(b) the nature of the medical course;

(c) the cost of land and building;

(d) the available infrastructure, teaching and non-teaching staff and other equipments;

(e) the expenditure on administration and maintenance of the medical educational institution;

(f) a reasonable surplus required for growth and development of the medical educational institution;

(g) any other relevant factor.

(2) The Fee Regulatory Committee shall, before fixing any fee, give the institution a reasonable opportunity of being heard:

Provided that no such fee as may be fixed by the Committee shall amount to profiteering or commercialization of education."

23. Relying upon these provisions, the NRI students and the self-financing medical colleges support the Impugned Judgement to the extent that the GO dated 06.06.2018 was quashed on the premise that the State could not levy any amount without statutory backing permitting such levy. They contend that, at present, there is no provision in the 2017 Act which empowers the State or its machinery to impose any fee or levy of any nature on self-financing medical educational institutions for the purpose of creating a corpus fund.

24. *Per contra*, the State of Kerala and the intervenor-BPL students contend that the GO dated 06.06.2018 did not offend any provision of the 2017 Act and was issued as a welfare measure by the State; to ensure that meritorious students belonging to weaker sections of society receive the opportunity to pursue quality education. The GO dated 06.06.2018 specifically authorized the Committee to levy an amount towards the creation of a corpus fund for such laudable purpose. There was thus, no need for the insertion of any provision in the Statute.

25. It is well-settled law that a recourse to expropriatory measures cannot be sheltered under a piece of subordinate Legislation, save and except where the power is drawn from the competent Legislation. The power to levy tax or fee cannot be delegated to the Executive unless the principal Statute expressly authorizes to do so. Though the Committee indeed enjoys vast powers and functions under Section 8A of the 2017 Act, as reproduced above, such power is exercisable only for the purpose of determining the fee structure of the self-financing medical educational institutions. To put it in simpler terms, there is nothing discernible in Section 8A of the 2017 Act, based on which the Committee can assert its power to divert a part of the fee determined by it or issue a direction regarding how such diverted fee is to be utilized. We also find that Section 8A of the 2017 Act does not permit the levy of any amount which will ultimately be retained by the State, regardless of its purpose. Similarly, Section 11 of the 2017 Act does not require the Committee to consider the creation of scholarships as a relevant factor to determine

and approve the fee proposal submitted by a particular institution. Even assuming that the creation of a corpus fund for scholarships can be protected under the omnibus clause (g) of Section 11, whereunder the Committee can take into account "*any other relevant factor*" while determining the fee structure, such power cannot be exercised unless the Legislature authorizes the Committee to create a corpus fund or to prescribe its utility.

26. For the reasons aforesaid, the High Court was correct in striking down the GO dated 06.06.2018 as devoid of any authority of law.

27. At this juncture, it is pertinent to clarify that though we appreciate the State's initiative to implement the welfare measures envisioned in paragraph 131 of ***P. A. Inamdar (supra)***, the same cannot be justified when it is implemented without the proper authority of law. Howsoever laudable, pious, or noble the objective behind the GO dated 06.06.2018 may be, it cannot be legitimized unless its genesis is traceable to a legislative action.

D.2 Issue No. 2: The NRI students' entitlement towards a refund or set-off

28. Since we have firmly set forth that the corpus fund could not have been created or maintained by the Committee, we must turn our attention to the next pressing issue, i.e. whether the NRI students are entitled to a refund of the amount so collected or whether it should be set-off against fees charged for later years?

29. The NRI students contend that when the imposition of such an amount has been held to be illegal, there is no reasonable justification for the State or the self-financing medical colleges to retain it. Further, these students claim that paragraph 67 of ***P. A. Inamdar (supra)*** only requires an NRI student to subsidize two other students' fees. Accordingly, it is their specific contention that when the fees for regular students are set at Rs. 5 lakhs per annum, the NRI students cannot be charged more than Rs. 15 lakhs per annum.

30. Contrarily, the self-financing medical colleges contend that the fees charged under the heading of 'corpus fund' should be returned to them to enable their continued functioning. The amounts collected for the corpus fund were unfairly deducted from the proposals submitted, leaving the colleges to function with fees much lower than what was genuinely projected by them. The fees charged from NRI students are utilized not only to subsidize education for students from economically-weaker backgrounds but also for various upkeep and continuous development expenses to improve the quality of education.

31. The State of Kerala, however, contends that though the self-financing medical colleges were required to remit Rs. 5 lakhs received from each NRI student to the corpus fund, they have not been doing so. As a result, the colleges have retained a total of Rs. 182.9 crores from the batches of 2017-2018 to 2022-2023.

32. Two 5-judge Benches of this Court in ***Islamic Academy (supra)*** and ***Modern Dental College (supra)*** have unequivocally held that the Government cannot fix rigid fee structures for self-financing institutions. Further, each institute must have the freedom to fix its own fee structure by taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. These institutes are permitted to generate surplus, which must be used for the betterment and growth of that educational institution. 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. Though the fees may differ from one institution to another, owing to the quality of education imparted, no institution can be permitted to charge excessive or exploitative fees leading to profiteering or charging of capitation fees.

33. The cited judgements have further explained that the fees collected from NRI students can be utilized for a variety of purposes, including but not limited to subsidizing fees for other students through scholarships. Accordingly, the fees for NRI students cannot be determined solely considering the factor of subsidization of education; all the above-stated factors must be taken into account. Resultantly, the NRI students' contention that their fees should be restricted to only subsidize the education of only two students from economically-weaker

sections of society falls flat and cannot be considered a valid reason for a refund.

34. When a self-financing medical educational institution presents its fee proposal for a particular academic year, it has done so keeping in mind its own needs, present and future. It is the responsibility of the Committee to consider all the comprehensive requirements and the principles enunciated in ***Islamic Academy (supra)*** and ***Modern Dental College (supra)***, when assessing those proposals. The Committee must ascertain that the fees proposed will not exploit the students and lead to profiteering by the management of the medical colleges. This is why such Committees have been set up, not just in Kerala, but in various States across the country.

35. Since the self-financing institutions are the best judge of their own needs and expenses, there appears to be no reason why they cannot retain the amount that was to be transferred to the corpus fund, when those amounts came out of the fee structures already approved by the Committee. By approving the proposals at the relevant time, the Committee has signified that the fees proposed to be charged were reasonable and did not amount to profiteering.

36. In the same vein, self-financing medical educational institutions that were aggrieved by the Committee's actions and sought reconsideration of their proposals from 2017-2018 onwards by virtue of directions

issued by this Court in ***Najiya Neermunda v. Kunhitharuvai Memorial Charitable Trust***,[5] are also entitled to retain the amount claimed by the State under the heading of 'corpus fund,' if any.

37. After allowing the colleges to retain the fees which were to be diverted towards the corpus fund, we are of the considered view that the self-financing medical educational institutions are under the obligation to provide quality education to the BPL students who were admitted to those colleges. No additional fees of any nature, therefore, shall be charged from the BPL students, over and above the subsidized fee that they were required to pay as per the Committee's approved fee structure. To clarify, a substantial part of the amount which we have allowed the colleges to retain shall have to be utilized by them for subsidizing the education of the BPL students. The Committee or the State Government shall, in this regard, be well within their right to direct the colleges to furnish their accounts and establish that the directions issued hereinabove have been complied with. To this extent, the self-financing medical educational institutions are merely designated as the trustees of the 'corpus fund' amount, without permitting it to be utilized by them as per their own free will. Such an arrangement shall continue till an appropriate Legislation is enacted by the State.

5 Najiya Neermunda v. Kunhitharuvai Memorial Charitable Trust, (2021) 5 SCC 515.

38. This batch of appeals and their parallel proceedings have caused confusion and chaos for medical education in the State of Kerala for years. This case seems to be the closing act, which will hopefully provide finality and certainty to all the stakeholders.

E. CONCLUSION AND DIRECTIONS

39. In light of above discussion, we deem it appropriate to allow the appeal by the self-financing medical colleges in part; dismiss the appeals filed by the State of Kerala and the NRI students; and modify the Impugned Judgment of the High Court dated 23.07.2020, with the following directions and conclusions:

i. The High Court was correct in quashing the Government Order (MS) No. 107/2018/H&FWD dated 06.06.2018;

ii. If the State seeks to establish a corpus fund or any other such mechanism to subsidize education for students from weaker backgrounds, in line with the vision enshrined in ***P. A. Inamdar (supra)***, it may do so by enacting suitable Legislation to that effect;

iii. The self-financing medical colleges are entitled to retain the fees transferred to the State for the creation of the 'corpus fund' substantially for the purpose of subsidizing the fees charged to BPL students admitted to those colleges, as per the directions contained in paragraph 37 of this judgement;

iv. The BPL students, who were admitted on the basis of scholarship schemes or who are to be admitted in future, shall not be required to pay the full, regular fees. They will continue to pay fees at the subsidized rate fixed by the State or the Committee. If they have paid any fees, over and above the subsidized amount promised, they are entitled to a refund of the amounts so paid. Alternatively, those amounts may be set-off against the fees to be charged for later years. Such a refund must be made within 3 months;

v. The State of Kerala is directed to release the fees collected for the creation of a corpus fund back to the respective colleges within a period of 3 months without prejudice to the right and responsibility assigned in paragraph 37 of this judgement;

vi. The NRI students are not entitled to a refund of the amount transferred to the State for the creation of the 'corpus fund.' They are directed to pay the entire fees to their respective colleges, as approved by the Admission and Fee Regulatory Committee, if not already done, within 3 months; and

vii. The State of Kerala or the Admission and Fee Regulatory Committee is at liberty to direct the colleges to furnish their accounts to establish that the directions given herein have been complied with.

40. Ordered accordingly. Pending applications if any, are to be disposed of in the above terms.

.....J.
(SURYA KANT)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
MAY 16, 2025