Before S.S. Nijjar & S.S. Grewal, JJ

SHRI GURU RAM DAS CHARITABLE HOSPITAL TRUST AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

C.W.P. No. 12758 of 2003

The 25th September, 2003

Constitution of India, 1950—Arts.14 & 226—Notifications dated 14th May, 2003 & 25th July, 2003 issued by the Government of Punjab—Admission to MBBS/BDS Courses—University issuing prospectus based on notification dated 14th May, 2003—Cl.6 of the prospectus provides for reservation quota for NRI students—Government issuing notification dated 25th July, 2003 in modification of notification dated 14th May, 2003 deleting the NRI quota—Supreme Court approving the principle inTMA Pai's case that there should not be capitation fee or profiteering in fixation of fees—Whether the seats reserved for NRIs violative of the law laid down in TMA Pai's case—Held, no—It cannot be said that higher fees being charged from NRI students would amount to charging of capitation fees—Official record of respondents shows that notification dated 25th July, 2003 has not been issued to implement judgment in TMA Pai's case—Plea that the notification has been issued to implement the law laid down by the Supreme Court is not correct—Government failing to discharge its duty to make a full and candid disclosure in the Court—Conduct of the Government misleading the Court is deprecated—NRI quota is not inconsistent with the law laid down in TMA Pai's case—Government superseding notification dated 14th May, 2003 by notification dated 25th July, 2003 only two days before start of Counselling—Doctrine of estoppel—Applicability of—Prospectus is law for the purpose of academic session to which it relates—After completion of the process of admission notification dated 25th July, 2003 making NRI candidates ineligible for admission—Action of respondents is arbitrary, unreasonable, discriminatory and clearly violative of Art.14—Petitions allowed while directing respondents to make admission to the seats reserved in NRI quota in accordance with Notification dated 14th May, 2003.

Held, that charging of higher fees from foreign/NRI students would not amount to charging capitation fee. Certain number of seats have been permitted to be filled on merit, to be determined on the basis of the Entrance Test to be conducted by the institution itself. It would, therefore, permit the purely private unaided institutions to continue with a suitable alternative to compensate for the NRI quota. They could continue charging higher fees to augument their financial resources.

(Para 27)

Further held, that NRI quota is not inconsistent with the law laid down in TMA Pai's case. The NRI quota can also not be said to be contrary to the observations made by the Supreme Court in Islamic Academy's case. The NRI quota even conforms to the guidelines issued by the Government of India on 14th May, 2003.

(Para 35)

Further held, that the notification dated 14th May, 2003 had been issued *bona fide* in implementation of law as understood by the State of Punjab at that time. We are also of the view that the judgment of the Supreme Court can only be made applicable for the academic Session 2004-2005 with regard to the NRI quota.

(Para 36)

Further held, that the NRI seats have been consistently available since 1993. The NRI students have been consistently told that separate quota for such students exists in the Colleges in the State of Punjab. In fact such reservation exists in Colleges throughout India. For this year also, the candidates have travelled from abroad, from countries as far as U.S.A. They had also made payments in foreign exchange as required under the Prospectus. Thay had obtained the necessary eligibility certificates from the Baba Farid University, Faridkot. Their counselling took place on 27th July, 2003. We are of the considered opinion that in these circumstances it was impermissible for the respondents to modify the original notification dated 14th May, 2003, by deleting the NRI quota.

(Para 41)

Further held, that the notification dated 25th July, 2003 is unenforceable for the Academic Session 2003-2004 as all the candidates have completed the necessary formalities for seeking admission. As a result of the impugned notification, NRI quota candidates will not be able to seek admission in any of the Punjab Colleges. The final dates for making applications for admission has already passed. Therefore, the respondents would be estopped from denying the admission to the candidates against the NRI quota, on the basis of the notification dated 25th July, 2003. There claim for admission will have to be governed by the notification dated 14th May, 2003 as incorporated in the prospectus issued by the Baba Farid University, made applicable to the students from 26th May, 2003.

(Para 51)

Further held, that eligible candidates have been made ineligible at a time when the admission process is complete. This action of the respondents cannot be sustained as it is wholly arbitrary, unreasonable, discriminatory, and therefore, clearly violative of the equality clause enshrined in Article 14 of the Constitution of India.

(Para 57)

Further held, that the respondents have failed to discharge is duty to make a full and candid disclosure in the Court. We would be failing in our constitutional duty if we did not place on record the displeasure of the Court with regard to the conduct of the State Government. We deprecate the conduct adopted by the State of Punjab in an attempt to mislead the Court. We hope and trust that such a course will not commend itself to the State of Punjab in the future.

(Para 61)

P.S. Patwalia, Senior Advocate with D.S. Patiwalia, Advocate, for the petitioners.

H.S. Sran, Addl. Advocate General, Advocate for respondent No. 1

Anupam Gupta, Advocate, for respondent No. 2.

(2) C.W.P. No. 11709 of 2003.

Master Gurleen Singh Randhawa and others

versus

State of Punjab and others.

P.S. Patwalia, Senior Advocate, with D.S. Patwalia, Advocate, for the petitioners.

H.S. Sran, Addl. Advocate General, Advocate, for respondent Nos. 1 and 3.

Mr. Anupam Gupta, Advocate, for respondent No. 2.

(3) C.W.P. No. 11717 of 2003.

Gaurav Pratap Singh and others.

versus

The State of Punjab and others.

Rajiv Atma Ram, Senior Advocate, with Amit Jhanji, Advocate, for the petitioner.

H.S. Sran, Addl. Advocate General, Advocate, for respondent Nos. 1 and 2.

Gopal Krishan Saini, Advocate, for respondent No. 3.

Anupam Gupta, Advocate, for respondent No. 4.

(4) C.W.P. No. 11916 of 2003.

Puneet Pal Singh (minor) and anothers

versus

State of Punjab and others

C.L. Verma, Advocate, for the petitioners.

H.S. Sran, Addl. Advocate General, Advocate, for respondent Nos. 1 and 2.

Anupam Gupta, Advocate, for respondent No. 2.

(5) C.W.P. No. 11777 of 2003.

Miss Geetika Garg Minor

versus

State of Punjab and another

G.S. Dhillon, Advocate, for the petitioner.

H.S. Sran, Addl. A.G., Punjab, for respondent No. 1.

Anupam Gupta, Advocate, for respondent No. 2.

(6) *C.W.P. No. 12534 of 2003.*

Ahbijeet Singla minor through his father

versus

State of Punjab and others

Sandeep Ghangas, Advocate, for the petitioner.

H.S. Sran, Addl. Advocate A.G., Punjab, for respondents Nos. 1 and 2.

Anupam Gupta, Advocate, for respondent No. 2.

(7) *C.W.P. No. 12077 of 2003.*

Neha Bhatia

versus

State of Punjab and others

R.A. Ram, Senior Advocate, with Kanwaljit Bajwa, Advocate, for the peitioner.

D.S. Dhillon, Addl. A.G., Punjab, for respondent Nos. 1 and 2.

Anupam Gupta, Advocate, for respondent No. 3.

(8) *C.W.P. No. 12129 of 2003.*

Sandeep Kaur Sandhu

versus

State of Punjab and others

R.S. Ahluwalia, Advocate, for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for respondent Nos. 1 and 2.

Anupam Gupta, Advocate, for respondent No. 3.

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(9) *C.W.P. No. 12139 of 2003.*

Kanwaljit Kaur D/o Rollu Singh Natt

versus

State of Punjab and others

P.S. Patwalia, Senior Advocate, with TPS Chawla, Advocate for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for State of Punjab.

Anupam Gupta, Advocate, for respondent No. 2.

(10) *C.W.P. No. 12289 of 2003.*

Mansukh Kaur

versus

State of Punjab and others

Gurcharan Dass, Advocate, for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for the respondent— State.

Anupam Gupta, Advocate, for respondent No. 2.

(11) *(C.W.P. No. 12302 of 2003).*

Keerti Pannu

versus

State of Punjab and another

M.J.S. Sethi, Senior Advocate, with Amit Sethi, Advocate for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for respondent No. 1.

Anupam Gupta, Advocate, for respondent No. 2.

(12) *C.W.P. No. 12419 of 2003.*

Parambir Singh Dulai

versus

State of Punjab and others.

Paramjit Singh Dhaliwal, Advocate, for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for the State of Punjab.

Anupam Gupta, Advocate, for respondent No. 3.

(13) *C.W.P. No. 12428 of 2003.*

Surneet Kaur

versus

State of Punjab and others

Raj Mohan Singh, Advocate, for the petitioner.

D.S. Dhillon, Addl. A.G., Punjab, for respondent Nos. 1 and 2.

Anupam Gupta, Advocate, for respondent No. 3.

(14) *C.W.P. No. 12702 of 2003.*

Harsimranjit Singh minor

versus

State of Punjab and others

Baldev Raj Mahajan, Advocate, for the petitioner.

H.S. Sran, Addl. A.G., Punjab, for respondent Nos. and 3.

Anupam Gupta, Advocate, for respondent No. 2.

(15) *C.W.P. No. 13475 of 2003.*

Yadwinder Singh Sohal

versus

State of Punjab and others.

Kanwaljit Singh Ahluwalia, Advocate for the petitioner.

H.S. Sran, Addl. A.G., Punjab, for respondent Nos. 1 and 3.

Anupam Gupta, Advocate, for respondent No. 2.

(16) *C.W.P. No. 14006 of 2003.*

Saravpal Singh

versus

State of Punjab and others.

M.S. Rakhra, Senior Advocate, with A.S. Syan, Advocate, for the petitioner.

H.S. Sran, Addl. A.G., Punjab, for the State of Punjab.

Anupam Gupta, Advocate, for respondent No. 2.

JUDGMENT

S.S. NIJJAR, J.

(1) This common order will dispose of the above noted Civil Writ Petitions.

(2) The petitioners, in all these writ petitions, seek the issuance of a writ in the nature of certiorari quashing the Punjab Government Notification dated 25th July, 2003, to the extent that it abolishes the Non Resident Indian (hereinafter referred to as the "NRI") quota for the admissions to MBBS/BDS courses. The petitioners further seek a direction that the admissions be made to the Medical and Dental Colleges in the State of Punjab in terms of the Notification of the Government dated 14th May, 2003 and on the basis of the Prospectus issued by the Baba Farid University of Health and Sciences on 26th May, 2003.

(3) The facts giving rise to the filing of the writ petitions may be noticed very briefly as all the issues raised are purely legal in nature. Courses leading upto the MBBS/BDS are conducted by Government Colleges as also by the Private Colleges in the State of Punjab. All the Colleges are affiliated to one or other of the Universities within the State of Punjab. The Private Colleges may be aided or unaided. A notification was issued by the State of Punjab on 14th May, 2003 notifying Baba Farid University as the competent University to conduct the Entrance Test for admission to the MBBS/BDS Courses in the Government and Private Colleges in the State of Punjab. The aforesaid University issued a prospectus based on the notification dated 14th May, 2003 and was made available to the candidates seeking admission from 26th May, 2003 onwards. The important dates in relating to the admission procedure have been given at page 1 of the Prospectus which may be reproduced as under :—

"1. Availability of Prospectus	26th May, 2003 onwards
2. Last date of receipt of OMR Application Forms	13th June, 2003 up to 5.P.M.
3. Date of issue of duplicate Admit Card.	26th June, 2003 & 27th June, 2003

4.	Date of conduct of PMET-2003	29th June, 2003
5.	Date before which result will be declared	3rd July, 2003
6.	Dates of issue of Duplicate Result cards	10th July, 2003 & 11th July, 2003
7.	Last date of submission of Admission Application Form	14th July, 2003 up to 5 P.M.
8.	Dates of Interview	will be notified through Press".

(4) Clause—5 (Part-II, Counselling-Admission) of the Prospectus provides for reservation of seats for NRI candidates. Clause—6, of the same part of the Prospectus, provides for filling up N.R.I./N.R.I. sponsored seats. These reservations in the Prospectus are based on Clause—6 of the Notification of the Government of Punjab, dated 14th May, 2003, which is reproduced as under :—

"6. FOR N.R.I. SEATS.

(a) The candidates against N.R.I. seats in the Medical/ Dental Colleges and Ayurvedic/Homoeopathic Colleges will be admitted on merit determined on the basis of marks obtained in the qualifying examination equivalent to 10+2 examination of P.S.E.B./C.B.S.E./I.C.S.E. The equivalence, merit and eligibility of the candidates will be determined by the Baba Farid University of Health Sciences, Faridkot, who will issue eligibility certificate. They are not required to sit in the entrance test. However, they should have passed such qualifying examinations with Physics, Chemistry, Biology and English and should have obtained at least 50% marks. For admission to State Medical/Dental and Ayurvedic College, against N.R.I. seats a candidate shall apply to Baba Farid University of Health Sciences, Faridkot, on the prescribed form for NRI seats.

(b) For admission to the seats reserved for N.R.I. candidates preference will be given as follows :—

(i) First preference will be given to those N.R.I. candidates who are having ancestral Punjab Resident background.

(ii) Second preference will be given to those N.R.I. candidates who are having ancestral background to other States of India.

(iii) Third preference will be given to those Indian Candidates who are sponsored by N.R.I. and sponsorship letter is attached with application.

(iv) Fourth preference will be given to those Indian candidates who are ready to pay fees in Indian Currency equivalent to US$75,000: US$ 30,000: and US$15000 for MBBS, BDS and BAMS/BHMS respectively.

Admission to the candidates under N.R.I. category (i) to (iv) will be made provided they fulfil other terms and conditions as laid down in this notification.

(c) The N.R.I. students will have to give a bank guarantee for the balance of fee if they opt to pay the fees in instalments as provided. Any seats remaining vacant under N.R.I. quota till last date of admission in State Colleges shall go to general merit".

(5) Clause-2 (Part-II, Counselling-Admission), of the Prospectus, provides that the cut off date of the admission will be 30th September, 2003 as per instructions/guidelines of Medical Council of India/Dental Council of India/Central Council of Indian Medicines. It is provided that no admission shall be made after this date under any quota or category even if there are any seats vacant. The notification dated 14th May, 2003 also provides that no admission shall be made even against seats that might arise after cut off date for any reason whatsoever.

(6) Medical Council of India and the Dental Council of India had also by letters dated 11th February, 2003 and 16th February, 2003 specified the schedule for the Entrance Test and admissions in the Medical and Dental Colleges for implementation. According to these letters, the result of the qualifying examination was to be declared on or before 15th May, 2003. Admissions, including counselling was to be completed by all the competent authorities on or before 31st July, 2003. The academic Session was to commence from 1st August, 2003. As noticed earlier, the whole admission procedure is to be completed by 30th September, 2003. The total fee payable by the N.R.I. Candidates for the MBBS Course was US$75,000 or its equivalent in Indian currency and for the BDS Course the N.R.I. candidates have to pay US$ 30,000 or its equivalent in Indian currency. All N.R.I. students have paid US$1,000 at various stages for obtaining the eligibility certificate from Baba Faird University. On 25th July, 2003, the State of Punjab issued the Notification whereby the right to seek admission in the Category of N.R.I. was deleted.

(7) The respondents have sought to justify the Notification dated 25th July, 2003 on the ground that till the Session 2002-2003, the admissions were being made in accordance with the law laid down by the Supreme Court in the case of **Unnikrishnan J.P. and others** *versus* **State of A.P. and others, (1)** The Supreme Court in the case of **TMA PAI Foundation and others** *versus* **State of Karnataka and others (2)** (hereinafer referred to as "TMA PAI case") declared the scheme framed in **Unnikrishnan's** case for admission as unconstitutional, but approved the principle that there should not be capitation fee or profiteering in fixation of fees. Since the date of Medical Test was approaching, State Government issued notification dated 14th May, 2003. Since some of the issues especially in regard to uniformity and fixation of upper limit for fees in medical colleges were under the consideration of the State Government, it was clearly mentioned in the aforesaid Notification that the same could be revised as per the Supreme Court decision. The State Government examined the judgment of the Supreme Court and the guidelines dated 14th May, 2003 issued pursuant to the judgment by the Government of India in detail. Counselling for admission in medical colleges in Punjab

(1) (1993) 4 S.C.C. 111
(2) J.T. 2002 (9) S.C. 1

was to start on 27th July, 2003. Therefore, the revised notification was issued on 25th July, 2003. The fees structure up to Session 2002-2003 was as under :—

"For MBBS Course :

	Government Colleges		Private Colleges	
	No. of seats	Fee	No. of seats	Fee
Free seats	91%	Rs. 13,000 p.a.	50%	Rs. 13,000 p.a
Paid seats	—	—	35% to 42%	Rs. 1,10,000 p.a.
N.R.I. seats	9%	$ 75,000 for the course	8—15%	$ 75,000 for the course

(8) The fees structure for the academic Session 2003-2004 is as under :—

	Government Colleges		Private Colleges	
	Seats	Fee	Seats	Fee
Free seats	100%	Rs. 13,000 p.a.		
Paid seats	—	—	100%	Rs. 1,50,000 p.a.
N.R.I. seats	—	—	—	—

(9) This change was made in view of the quidelines issued by the Government of India to the following effect :—

"(a) that all admissions would be merit based;

(b) the fee structure would be uniform and no student could be compelled to pay for the education of the other students;

(c) the colleges could not charge capitation fee and also could not indulge in profiteering. However, they would be allowed to meet their legitimate expenditure and have a small surplus for future development".

(10) It is the case of the respondents that since the Notification dated 25th July, 2003 has been issued to give effect to the decision of the Supreme Court, the peitioners cannot seek enforcement of the Notification dated 14th May, 2003. The revised Notification is justified on the gound that N.R.I. seats are nothing, but a blatant case of "capitation fee" because any student who is willing to pay Indian currency equivalent to US$75,000 is eligible for admission. They are not required to appear in the Common Entrance Test. The provision of N.R.I. seats runs contrary to the law laid down by the Supreme Court in TMA PAI's case (supra) dated 31st October, 2002 and the latest order in the **Islamic Academy of Education and Anr.** *versus* **State of Karnataka and others (3),** dated 14th August, 2003 (TMA Pai Clarification).

(11) Learned counsel for both the sides have been heard in extenso. Very elaborate submissions have been made by both the sides.

(12) Learned counsel for the petitioners have vehemently argued that in TMA PAI's case (supra), the Supreme Court did not even consider the question with regard to the N.R.I. quota. Further more, the N.R.I. quota has been in existence in private as well as Government Colleges since 1993. The Government can, therefore, not be permitted to argue that the N.R.I. quota has been abolished as charging of capitation fee was not permissible.

(13) Mr. Gupta appearing for the respondents, however, submitted that taking into consideration the genesis of the N.R.I. quota, it cannot survive, in view of the law laid down in TMA PAI's case. He submits that N.R.I. quota cannot be permitted under any of the provisions of the Constitution of India. Therefore, the provision of seats for the N.R.I.s was saved by the Supreme Court by series of interim orders. He referred to various interim order passed by the Supreme Court by which the students were permitted to be admitted against the N.R.I. seats.

(3) J.T. 2003 (7) S.C. 1

(14) We have considered the aforesaid submission of the learned counsel. In Unnikrishnan's case (supra), the Supreme Court had evolved a scheme in the nature of guidelines for the governments, recognising and affiliating authorities to impose and implement, in addition to the normal conditions. Clause 6(a) of the scheme was as follows :—

> (6)(a) Every State Government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The Committee shall consist of a Vice-Chancellor, Secretary for Education (or such Joint Secretary, as he may nominate) and Director, Medical Education/Director Technical Education. The Committee shall make such enquiry as it thinks appropriate. It shall, however, give opportunity to the professional colleges [or their association(s), if any] to place such material, as they think fit. It shall, however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate."

(15) The aforesaid scheme was made with a view to eliminate the evil of capitation fee and the absolute discretion which the Managements of Private Colleges were exercising in the matter of admission of students. The main object of this scheme was to ensure that merit prevails in the matter of admission, both in respect of what were called "free seats" as well as in respect of "payment seats". The judgment having been rendered on 4th February, 1993, the scheme was made effective from the academic year, 1993-94 onwards. Review petitions were filed by several institutions seeking the review of the aforesaid judgment. These review petitions were dismissed by the Constitution Bench by order dated 14th May, 1993 in **Unnikrishnan J.P. and others** *versus* **State of A.P. and others (supra)** subject to one clarification, that it should be open to the professional colleges to admit N.R.I. students to the extent of 5% of the total intake in a

given year. These 5% seats were carved out of the 50% payment seats. The aforesaid order dated 14th May, 1993 is as follows :—

"1. The Scheme framed by this Court in its judgment dated 4th February 1993 in Writ Petition (Civil) No. 607 of 1992 and connected matters is modified to the following extent only.

2. It shall be open to the professional college to admit Non-Resident Indian students to the extent of only five per cent of their total intake for a given year. By way of illustration if the permitted intake of a professional college is 100 for a given year, 50 seats out of it will be free seats and other 50 seats will be seats on payment. The five seats for Non-Resident Indian students shall be out of the 50 payment seats. The Non-Resident Indian students shall be admitted on the basis of merit. But in view of the different backgrounds they come from it is for the Management of the college concerned to judge the merit of these candidates, having regard to the relevant factors. The fees payable by such students shall be as may be prescribed by the Committee referred to in clause (6) of the Scheme.

3. The Non-Resident Indian students admitted against these 5 seats need not however take the Entrance examination, if any prescribed for admission to that course. It is made clear that the above provision does not preclude the Non-Resident Indian students from seeking admission either to free seats or payment seats alongwith others on the basis common to all. The observations made in Mohini Jain case in relation to Non-Resident Indian students will stand modified to the above extent."

(16) Thereafter serveral interim orders were passed from year to year. The quota meant for Non-Resident Indian was fixed from 5% to 15% of the seats. Invariably, it was ordered that the interim order was made for the particular session. Basically the reservation for N.R.I.s has remained in terms of the initial order passed on 14th May, 1993.

(17) The N.R.I. quota was carved out of the 50% payment seats because there was revenue shortfall. Therefore, charging of higher fee from N.R.I. students was permitted by the Supreme Court. It has been held in **TMA PAI's case** (supra) that fees to be charged by unaided institution cannot be regulated, but no institution should charge capitation fee. It has also been held that the principle that there should not be capitation fee or profiteering as laid down in Unnikrishnan's case (supra) is correct. It has further been held that reasonable surplus to meet cost of expansion and augmentation facilities does not, however, amount to profiteering. From the above observations, it cannot be inferred that the N.R.I. quota, has been deleted.

(18) In fact, the submissions made by Mr. Gupta are squarely answered in the **Islamic Academy's case** (supra), Question No. 1 was framed as follows :—

> "Whether the educational institutions are entitled to fix their own fees structure ?"

The Supreme Court has held as under :—

> "5. 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 or 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 liad 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 free 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 expension and/or betterment of the institution etc. Of course there can

be no profiteering and capitation fees cannot be charged. It thus need 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 validily of those statutes/regulations, we direct that in order to give effect to the judgment in **TMA PAI's case** the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judgment who shall be nominatd by the Chief Justice of that State. The other member, who shall be nominated by 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 educa[illegible], 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 5. 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 government/ 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."

(19) A perusal of these observations leave no manner of doubt that each unaided institutions have been given freedom to fix its own fees structure, taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefits of the students. It has also been held that profiteering and capitation fees cannot be charged. This is so as imparting of education is essentially charitable in nature. A direction has been issued to the various Governments to give effect to the judgment in TMA PAI's case *(supra),* by constituting a Committee to be headed by a retired High Court Judge. Each educational institution has to place before this Committee its proposed fees structure. It would be at this stage that the institution will have to justify the continuation of the N.R.I. quota or to bring suitable proposals which would have to be approved by the Committee constituted in terms of the directions issued in TMA PAI's case *(supra).* It is a matter of record that the State of Punjab has not constituted such a committee. Notifications dated 14th May, 2003 and 25th July, 2003 have been issued on the basis of the recommendations of the Standing Committee. Therefore, it cannot be held that Notification dated 25th July, 2003 has been issued to give effect to the directions issued by the Supreme Court in TMA PAI's case.

(20) It is not disputed by anybody that from 1993 till 2003 State of Punjab had certain seats reserved for N.R.I. students, even in Government colleges. Even in these proceedings, a number of wirt petitions have been filed by the students challenging the abolition of the N.R.I. quota in Government colleges. It also cannot be disputed

that even after the judgment had been delivered by the Supreme Court in TMA PAI's case *(supra)* on 31st October, 2002, the N.R.I. quota continued in the Government of Punjab. Clarificatory judgment of the Supreme Court in the Islamic Academy's case was not delivered till 14th August, 2003. Yet the impugned Notification was issued on 25th July, 2003. It, therefore, become apparent that the Government had simply changed its mind. There was no change of law between 14th May, 1993 and 25th July, 2003. We are unable to accept the submission of Mr. Gupta that Notification dated 25th July, 2003 was issued as the Notification dated 14th May, 2003 could not survive in view of the law laid down in TMA PAI's case *(supra)*. Had that been the actual reason Notification dated 14th May, 2003 would not have made elaborate provisions as to how the N.R.I. seats were to be filled.

(21) Another justification given by the State for modifying the earlier notification is that Notification dated 25th July, 2003 is in conformity with the guidelines issued by the Central Government on 14th May, 2003 on the basis of TMA PAI's case. We are wholly unimpressed with this argument of Mr. Gupta as well. A perusal of the guidelines shows that these guidelines have been formulated on admission of students and charging of fee in private medical and dental colleges and any other professional institutions imparting education in Health Sciences, in pursuance of the directions of the Supreme Court in the judgment dated 31st October, 2002 in the TMA PAI's case. In the General Principles, it is mentioned as follows :—

"4. GENERAL PRINCIPLES :

*** *** *** ***

"4.1.1 The private unaided educational institutions may admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government (Para 53).

4.1.3 The private unaided educational institutions shall

have the right to determine the scale of fee that it can charge from the students (Para 56). Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee. (Reply to Qn. 5(c). A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee or indulge in profiteering. (Para 69). There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution. (Para 57).

4.1.4 The private educational institutions managed by the minority community shall have the right to preferably admit their community candidates so as to maintain the minority character of the institution. However, there shall be no rigid ceiling such as 50% as held in the St. Stephen's College case. Upto which the candidates from minority community can be admitted (Para 151). An aided minority educational institution would be entitled to have the right of admission of students belonging to the minority group and at the same time would be required to admit a reasonable number of non-minority students. (Reply to Qn. 4)."

(22) From the above it becomes apparent that the Government of India had clearly understood the ratio of law laid down in TMA PAI's case *(supra)*. The reason for issuing these guidelines was to prevent the private unaided institutions from charging capitation fee, but at the same time ensuring the autonomy of the institutions in Clause 4.1.3 of the Guidelines is identical to the criteria for fixation of fee as laid down in paragraph 5 of the Islamic Academy's case. The aforesaid guidelines cannot, by any stretch of imagination, be read to mean that the fees charged from the N.R.I. students has been disapproved.

(23) Mr. Gupta laid down a great deal of stress on the submission that fees charged from N.R.I. students cannot be justified as it amounts to charging capitation fee. This argument cannot be accepted as the N.R.I. quota was established by the Supreme Court

by way of interim orders, after the decision had been rendered in Unnikrishnan's case *(supra)*. The Supreme Court in the case of **Mohini Jain (Miss)** *versus* **State of Karnataka and others** (4) had categorically declared that it is not permissible in law for any educational institution to *charge capitation fee as a consideration for admission to the said institution. It was held as follows* :—

> "19. This Court in Maneka Gandhi versus Union of India, Ramana Dayaram Shetty versus International Airport Authority of India and Ajay Hasia versus Khalid Mujib Sehravardi following E.P. Royappa authoritatively held that equality is directly opposed to arbitrariness. In Ajay Hasia, this Court observed as under :—
>
> "Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification..... In E.P. Royappa versus State of T.N. this Court laid bare a new dimension of Article 14 and pointed out that Article has highly activist magnitude and it embodies a guarantee against arbitrariness."
>
> The capitation fee brings to the fore a clear class bias. It enables the rich to take admission whereas the poor have to withdraw due to financial inability. A poor student with better merit cannot get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution.
>
> 20. Wo do not agree with Mr. Hegde that the management has a right to admit non-meritorious candidates by charging capitation fee as a consideration. This practice strikes at the very root of the constitutional scheme and our educational system. Restricting admission to non-meritorious candidates belonging to the richer

(4) (1992) 3 S.C.C. 666

section of society and denying the same to poor meritorious is wholly arbitrary, against the constitutional scheme and as such cannot be legally permitted. Capitation fee in any form cannot be sustained in the eyes of law. The only method of admission to the medical colleges in consonance with fair play and equity is by way of merit and merit alone."

(24) In that very judgment, it was held in para 30 as follows :—

"30. For the reasons given above. We allow this writ petition and quash para 1 (d) and 1(c) of the Karnataka State Government notification dated 5th June, 1989. As a consequence paragraph 5 (sic) of the said notification automatically becomes redundant. **We make it clear that nothing contained in this judgment shall be applicable to the case of foreign students and students who are non-resident Indians** (Emphasis supplied). We further hold that this judgment will be operative prospectively. All those students who have already been admitted to the Private Medical Colleges in the State of Karnataka in terms of the Karnataka State notification dated 5th June, 1989 shall not be entitled to the advantage of this judgment and they shall continue thier studies on the same terms and conditions on which they were admitted to the consolidated MBBS course."

(25) A perusal of the underlined portion of the observations of the Supreme Court, would show that the Supreme Court had made a clear distinction between capitation fee charged from Indian students and the higher fee charged from the foreign and NRI students.

(26) Thereafter, as noticed above the Supreme Court approved carving out of the NRI quota by way of interim orders. Therefore, it cannot be said that higher fees being charged from the NRI students would amount to charging capitation fees. Even in TMA PAI's case

(supra), the existence of the NRI quota has been adverted to. In paragraphs 34 and 38 of the aforesaid judgment, it has been observed as under :—

> "34. Material has also been placed on the record in an effort to show that the total fee realized from the fee fixed for "free seats" and the "payment seats" is actually less than the amount of expense that is incurred on each student admitted to the professional college. It is because there was a revenue shortfall that this Court had permitted an NRI quota to be carved out of the 50% payment seats for which charging higher fee was permitted. Directions were given to UGC, AICTE, Medical Council of India and Central and State Governments to regulate or fix a ceiling on fees and to enforce the same by imposing conditions of affiliation/ permission to establish and run the institutions.
>
> 38. The scheme in **Unni Krishnan's** case has the effect of nationalising education in respect of important features, viz. the right of a private unaided institution to give admission and to fix the fee. By framing this scheme which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the Government institutions ; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable....."

(27) These observations also make it clear that there has to be a distinction in the fee structure to distinguish the Government institutions from the private institutions. Furthermore, the Supreme Court recognises that charging of higher fee from NRI students was permitted by the Supreme Court.

(28) It has been accepted by the Supreme Court that private unaided institutions are to be subjected to the minimum amount of control by the Government. In paragraph 36 of the judgment, the Supreme Court observed as follows :—

> "36. The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, inter alia, of selection of students,

and fixation of fees. Affiliation and recognition has to be available to every institution that fulfils the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition ; this completely destroys the institutional autonomy and the very objective of establishment of the institution."

Thereafter, the Supreme Court observed as follows :—

"It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit (Emphasis supplied). It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to povide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes."

(29) In view of the aforesaid observations of the Supreme Court, it would not be possible to hold that charging of higher fees from foreign/NRI students would amount to charging capitation fee. Certain number of seats have been permitted to be filled on merit, to be determined on the basis of the Entrance Test to be conducted by the institution itself. It would, therefore, permit the purely private unaided institutions to continue with a suitable alternative to compensate for the NRI quota. They could continue charging higher fees to augment their financial resources.

(30) The Supreme Court while carving out a separate category for NRI/foreign students had clearly identified the class of candidates who come to India for receiving medical/technical education. This category was extended for the first time in the case of **TMA PAI Foundation and others** versus **State of Karnataka and others (5).** In its interim order dated 11the August, 1995, the Supreme Court set out the sequence of the interim orders by which the NRI quota had been carved out by the Supreme Court. It was noticed that in view of the approaching academic year, 1994-95, the Larger Bench had directed on 5th April, 1994 that the interim order made by the Supreme Court for the year 1993-94 shall continue to govern admission for the academic year 1994-95 as well, in both MEIs and others. The quota of 15% which was fixed for the academic year 1993-94 was permitted to continue for the year 1994-95. Same order was repeated for the academic year, 1995-96. The interim order was necessitated by an amendment effected on 20th May, 1995 in the Karnataka Education Institution (Prohibition of Capitation Fee) Act, 1984 and the rules that had been made thereunder for selection of candidates to Medical Engineering, Dental, Pharmacy and Nursing Courses on 10th March, 1993. The amended rule provided certain preference in favour of Karnataka students in the matter of admission to the professional colleges. The result of the amendment was that no non-Karnataka students could be admitted to these institutions, except the NRIs. The educational institutions both belonging to minority and others filed interlocutory applications complaining that the

(5) (1995) 5 S.C.C. 220

restrictions cause grave prejudice to them in as much as they will not be able to fill up all the payment seats. In these circumstances, the Supreme Court directed as follows :—

> "27. We have also taken note of the grievance relating to the gap between the fees payable by the "free student" and "payment student" and the uniform demand for increasing the NRI/foreign students quota. Hence the following directions, confined no doubt to Academic Year 1995-96 only and limited to medical and dental colleges only :—
>
> (1) So far as NRI quota is concerned, it is fixed at fifteen per cent for the current adcademic year. It shall be open to the management to admit NRI students and foreign students within this quota and in case they are not able to get the NRI or foreign students up to the aforesaid specified percentage, it shall be open to them to admit sutdents on their own, in the order of merit, within the said quota. This direction shall be a general direction and shall operate in the case of all the States where admissions have not been finalised. It is, however, made clear that by virtue of the direction, no student who has already been admitted shall be disturbed or removed....."

(31) The aforesaid observations of the Supreme Court make it abundantly clear that the Managements of the Private Institutions as well as the minority educational institutions were permitted to admit students of their own, in the order of merit, within the NRI quota. The direction was general in nature applicable to all the States. Furthermore, it is to be noticed that the seats which are allotted to Categories (b) (iii) and (b) (iv) of the NRI quota are the left-over seats of categories (b) (i) and (b) (ii). These seats fall within the payment quota. Therefore, even the students belonging to Categories (b) (iii) (b) (iv) do not impinge on the rights of the students claiming admission against the free students. Furthermore, the candidates admitted to Categories (b) (iii) and (b) (iv) have to satisfy the merit criteria laid down in accordance with the judgment of the Supreme Court in TMA

PAI's case, the guidelines issued by the Government of India on 14th May, 2003 and in accordance with the criteria laid down in paragraph 5 of the judgment in the Islamic Academy's case (supra). Therefore, we are unable to hold that the seats allotted to these categories are in any manner violative of the law laid down by the Supreme Court in TMA PAI's case as argued by Mr. Gupta.

(32) At this stage, it may be noticed that Mr. Patwalia, had submitted at the very outset, that in view of the directions issued by the Supreme Court, the respondents will have to submit the fee structure in the Sessions 2004-2005, before the Committee which would be constituted by the State Government in accordance with the directions given by the Supreme Court in Islamic Academy's case (supra). No Committee has been constituted till date by the respondents. The petitioner-Institute Sri Guru Ram Das Charitable Hospital Trust has not had the opprotunity to justify the fee structure before any Committee constituted in accordance with the judgment of the Supreme Court. Therefore, the respondents are wholly unjustified in issuing the notification dated 25th July, 2003.

(33) Assuming however, that the NRI quota, cannot survive in view of the judgment in TMA PAI's case (supra), would the respondents be justified in enforcing the changed criteria for the Session 2003-2004 ? According to Mr. Gupta, once the Court accepts that the NRI quota cannot survive the TMA PAI's case, the law declared in the aforesaid judgment would have to be made applicable from the current Session. In support of the submissions, learned counsel has relied on a judgment of the Supreme Court in the case of **L.C. Golak Nath and others** versus **State of Punjab and another (6).** In paragraph 51, the S.C. observed as follows :—

> "51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution : (2) It can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law

(6) AIR 1967 S.C. 1643

binding on all the courts in India ; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions" is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

(34) We have no hesitation in holding that the judgments of the Supreme Court which declare the law of the land can be made prospective only by the Supreme Court. This is the ratio of law laid down in the case of **Managing Director, ECIL, Hyderabad, and others** versus **B.K. Karunakar and others (7).**

(35) A similar view has been expressed by the Full Bench of this Court in **Anil Sabharwal** versus **State of Haryana and others (8).** Mr. Gupta had also referred to the Commentary in Lloyd's Introduction to Jurisprudence, in which the following observation has been made :—

"Traditionally in England when precedents are overruled the overruling is given retrospective effect. Retrospective overruling is a legacy of the declaratory theory of precedent. As Blackstone put it, "if it be found that the former decision is manifestly unjust or absurd, it is declared, not that such sentence was bad law, but that it was not the law. In the United States by contrast, and now in other countries as well, the courts have developed a handful of judicial techniques, characterised generally as prospective overruling. Judges are thus enabled to apply the existing law to past transactions and a newly created formulation to future instances. This importance of such techniques may be seen by examining cases like **Morgans** versus **Launchbury and Knuller** versus **D.P.P.** Would Morgans have gone the same way if the House of Lords had not realised that creating a new test of liability would retrospectively affect innumerable accidents over a previous period of eight years, where insurance policies had been effected in reliance on the old law ? Would Lord Reid have been

(7) (1993) 4 S.C.C. 727
(8) 1997 (2) P.L.R. 7

> so fearful of overruling Shaw in Knuller if there had not been over thirty convictions for conspiracy to corrupt public morals in the eleven years between the two cases ? Twice recently Lord Simon has averted to the introduction of such a technique by English judges. He thought "professional opinion" was opposed to prospective overruling and certainly Cross, Friedmann and Lord Devlin have expressed doubts about the value of introducing the technique in England. It is not, however, without its supporters. And it has certain attractions."

(36) Whatever may be the position in England, the doctrine of prospective over-ruling has been accepted in India. The power of course has been confined to the Supreme Court. It is not available to the High Court.

(37) As noticed earlier, we have no hesitation in holding that the law declared by the Supreme Court has to be implemented in letter and spirit. But the aforesaid principle would not be infringed in the facts and circumstances of the present case. We have already held in the earlier part of the judgment that NRI quota is not inconsistent with the law laid down in TMA PAI's case. The NRI quota can also not be said to be contrary to the observations made by the Supreme Court in Islamic Academy's case (supra). The NRI quota even conforms to the guidelines issued by the Government of India on 14th May, 2003. The clarificatory judgment in Islamic Academy's case was not delivered till 14th August, 2003. The respondents had also correctly interpreted the law laid down in the TMA PAI Foundation's case, on 31st October, 2002. They had correctly issued the notification dated 14th May, 2003. In this notification they had accepted that seats would be reserved for NRI students. The reservation was made in Government Colleges as well in Private Colleges/Institutions. The Government of Punjab had accepted the benefits of higher fees charged from the NRI students for a period of over one decade. Therefore, we find it difficult to now accept that the State of Punjab has issued the notification dated 25th July, 2003 being anxious to implement the law declared by the Supreme Court of India in TMA Pai's case. As noticed earlier, the aforsaid judgment was rendered on 31st October, 2002. No other legal or factual event occurred between 31st October, 2002 to 14th May, 2003 and 25th July, 2003, to justify the reversal of the decision earlier taken by the State of Punjab.

(38) We are of the considered opinion that the notification dated 14th May, 2003 had been issued bona fide in implementation of law as understood by the State of Punjab at that time. We are also of the view that the judgment of the Supreme Court can only be made applicable for the academic Sessions 2004-2005 with regard to the NRI quota. This view of ours finds support from the fact that the decision about the minority status of the institutions in accordance with the law laid down by the Supreme Court has been deferred for implementation with effect from Sessions 2004-2005. This single fact is sufficient to negative the submissions of Mr. Anupam Gupta that the notification has been issued to implement the law laid down by the Supreme Court. Mr. Gupta had submitted that if the notification dated 25th July, 2003 had not been issued, the State of Punjab would have violated the law of the land and would be open to the issuance of a writ of mandamus, by the High Court for implementation of the judgment. The aforesaid anxiety, however, has not prevented the State from maintaining the status-quo with regard to the determination of the minority status of the institttions claiming such a status. These facts are available from the record which has been produced before this Court by the respondents where the Chief Minister had clearly deferred the taking of the decision with regard to the minority status of the aforesaid institutions till next year. We, therefore, hold that the reason given for issuing Notification dated 25th July, 2003, is not supported by the record produced by the State of Punjab.

(39) All the learned counsel for the petitioners had argued that the respondents are estopped from enforcing the notification dated 25th July, 2003 at such a late stage. Mr. Gupta, on the other hand, argued that the doctrine of estoppel would not apply in admission cases.

(40) We are unable to place such a broad embargo on the applicability of the doctrine of estoppel as suggested by Mr. Anupam Gupta. Here, we may with advantage refer to the principle of estoppel as described by Lord Denning in **W.J. Alan and Co.** versus **El. Nasar Export (9),** as follows :—

> ".....The principle of waiver is simply this if one party by his conduct, leads another to believe that the strict rights arising under the contract will not be insisted

(9) (1972) 2 QB 189

upon, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict legal rights when it would be inequitable for him to do so.....There may be no consideration moving from him who benefits by the waiver. There may be no detriment to him by acting on it. There may be nothing in writing. Nevertheless, the one who waives his strict rights cannot afterwards insist on them. His strict rights are at any rate suspended so long as the waiver lasts. He may on occasion be able to revert to his strict legal rights for the future by giving reasonable notice in that behalf, or otherwise making it plain by his conduct that he will thereafter insist upon them.....But there are cases where no withdrawal is possible. It may be too late to withdraw ; or it cannot be done without injustice to the other party. In that event he is bound by his waiver. He will not be allowed to revert to his strict legal rights. He can only enforce them subject to the waiver he has made....."

(41) Lord Denning has further defined the principle of estoppel in **Evenden** versus **Guildford Footbal Club (10),** as under :—

".....Promissory estoppel.....applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intended to induce a person to act upon it and he does act upon it....."

(42) Applying the aforesaid principles of law, it would be difficult to accept the submission of Mr. Gupta that the respondents have validly superseded the Notification dated 14th May, 2003 by the Notification dated 25th July, 2003. As noticed earlier, the State Government has accepted the NRI quota even in Government Colleges consistently since 1993. The Government has been charging the same fee as the private Colleges. The private institutions have been allocated very few seats to be filled by the NRI students. The bulk of the seats

(10) (1975) 1 QB 917

are allocated to Government Colleges. This is evident from the break-up of the seats as recorded in Annexure "A" to the Notification which is as under :-

DETAIL OF COLLEGES AND SEATS

(i) For MBBS and BDS :

Name of the College	Intake capacity	Free State Quota	Seats CBSE Quota	Paid NRI Seats	Seats Paid Seats
A. Regular and Recognised Institutions					
1. Govt. Medical College, Amritsar	150	115	22	13	—
2. Govt. Medical College, Patiala	150	115	22	13	—
3. Guru Gobind Singh Medical College, Faridkot	50	38	8	4	—
4. Shri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (*1)	50	13	—	4	8
5. Dayanand Medical College, Ludhiana	70	35	—	10	25
6. Govt. Dental College and Hospital, Amritsar	40	30	6	4	—
7. Govt. Dental College, Patiala	40	31	6	3	—
8. Shri Guru Ram Dass Institute of Dental Sciences and Research, Amritsar (*1)	60	15	—	5	10

9. Guru Nanak Dev Dental College and Research Institute, Sunam	60	30	—	9	21
10. Dashmesh Institute of Research and Dental Sciences, Faridkot	60	30	—	9	21
B. Approved Institution (year to year basis)					
1. National Dental College, Gulabgarh, Dera Bassi	60	30	—	9	21
2. Baba Jaswant Singh Dental College, Hospital & Research Institute, Ludhiana	100	50	—	15	35
3. Luxmi Bai Institute of Dental Sciences, Patiala	60	30	—	9	21

(ii) For BAMS and BHMS

Sr. No.	Name of the College	Intake capacity	Free Seats	NRI Seats	Paid Seats
A.	Regular and Recognised Institutions				
1.	Govt. Ayurvedic College, Patiala	40	36	4	—
2.	Sri Laxmi Narain Aurvedic College, Amritsar	50	25	8	17
3.	Dayanand Ayurvedic College, Jalandhar	50	25	8	17

4.	Sat Sai Mulidhar Ayurvedic College, Moga	40	20	6	14
5.	Lord Mahavira Homoepathic Medical College Kitchlu Nagar, Civil Lines, Ludhiana	50	25	7	18
6.	Sri Guru Nanak Dev Homoepathic Medical College Canal Road Barewal, Near PAU, Ludhiana	100	50	15	35
7.	Homoepathic Medical College, Hanumangarh Road, Bye Pass, Abohar	50	25	7	18
8.	Institute of Homoepathic Medical Education and Research, Chunni Kalan, Distt. Fatehgarh	50	25	8	17
9.	Kalyan, Homoepathic Medical College, Tarn Taran	50	25	8	17
B.	Approved Institutions. (year to year basis)				
1.	Desh Bhagat Ayurvedic College, Mandi Gobindgarh	50	25	7	18
2.	Mai Bhago Ayurvedic College, Muktsar	50	25	7	18
3.	Guru Nanak Ayurvedic College, Muktsar	40	20	6	14
4.	Guru Nanak Ayurvedic College and Research Institute, Malerkotla Road, Gopalpur (Ludhiana)	50	25	7	18

5.	Homeopathic Medical College, Hoshiarpur	50	25	7	18
6.	Shaheed Kartar Singh Sarabha Ayurvedic Medical College, V.P.O. Sarabha, Ludhiana	40	20	6	14
7.	Babeke Ayurvedic Medical College, V.P.O. Daudhar, Moga	50	25	7	18
8.	Smt. Urmila Devi Ayurvedic College of Medical Sciences and Hospital, V.P.O. Kharkan, Distt. Hoshiarpur	50	25	8	17

* Institutions shown at Sr. No. 4 and 8 of (i) A shown with * mark (1) have been declared as minority institutes,—vide Punjab Government Notification No. 18/33/2001-GC(6)/4513, dated Chandigarh the 3rd April, 2001. So the notification for entrance test 2003 shall be applicable only to 50% of the total intake capacity."

(43) The NRI seats have been consistently available since 1993. The NRI students have been consistently told that separate quota for such students exists in the Colleges in the State of Punjab. In fact such reservation exists in Colleges throughout India. For this year also, the candidates have travelled from abroad, from countries as far as U.S.A. They had also made payments in foreign exchange as required under the Prospectus. They had obtained the necessary eligibility certificates from the Baba Farid University, Faridkot. Their counselling took place on 27th July, 2003. We are of the considered opinion that in these circumstances it was impermissible for the respondents to modify the original notification dated 14th May, 2003, by deleting the N.R.I. quota. Learned counsel for the petitioner have rightly argued that the admissions for the academic Sessions 2003-2004 have to be governed by the notification dated 14th May, 2003. The Common Entrance Test has been held on the basis of the Prospectus

issued by the Baba Farid University, on the basis of the notification dated 14th May, 2003. After the test had been held and the result had been declared and the petitioners had been given the eligibility certificate by the Baba Farid University, it was too late in the day for the respondents to effect a change in the notification dated 14th May, 2003, which is the basis of the Prospectus issued by the Baba Farid University, Faridkot, which was made available to the students with effect from 26th May, 2003.

(44) Mr. Gupta, however, submitted that the prospectus was subject to alterations or modifications without any prior notice. Therefore, the petitioners cannot claim that the admission can only be based on the basis of the Notification dated 14th May, 2003. He further submitted that even otherwise the prospectus is amenable to amendment at any stage before the admission process is completed. He further submitted that no equity could possibly arise in favour of the N.R.I. candidates who were not even required to take the competitive entrance test. Mr. Gupta has also submitted that the proposition of law that the admissions have to be made on the basis of the Prospectus issued prior to the test, is contrary to the law laid down by the Supreme Court. He relied on a judgment of the Supreme Court in **Charles K. Skaria and others** versus **Dr. C. Mathew and others (11).** In this case, at one stage, in paragraph 24 of the judgment, the Supreme Court has observed that the "Prospectus is not the scripture". Thereafter, the learned counsel relied on a judgment of the Supreme Court in the case of **Rajiv Kapoor and others** versus **State of Haryana (12).** He also relied on a judgment of the Supreme Court in **Kamal Bhatia and others** versus **State of Punjab and others (13).** Learned counsel also relied on **Varinder Singh and others** versus **State of Punjab and others (14),** and submitted that if the power to amend is reserved in the Prospectus and the amendment is made to the Prospectus, in pursuance of that power, then no exception can be taken by any party.

(45) We are unable to accept the submission made by the learned counsel. The law has been settled by a string of authorities that the Prospectus is law for the academic Session to which it relates.

(11) AIR 1980 S.C. 1230
(12) JT 2000 (3) S.C. 635
(13) AIR 2001 S.C. 117
(14) 1997 (4) RSJ 223

(46) In the case of **Ravdeep Kaur** versus **The State of Punjab and others (15).** It has been held that the eligibility for admission has to be seen according to the Prospectus issued before the Entrance Test. In the case of **Amardeep Singh Sahota** versus **State of Punjab and others (16),** a Full Bench of this Court considered the similar situation and held in paragraph No. 17, as under :—

> "17. It may at this stage further be stated that the Notification dated July 13, 1992 goes contrary to the policy which was laid down for admission in the Notification dated May 20, 1992, on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the Prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. **In Revdeep Kaur** versus **The State of Punjab and others,** I.L.R. (1985) 1, Punjab and Haryana, 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since, the Prospectus issued for admission to the 1992-93 Course in the Medical College has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law".

(15) I.L.R. 1985 (1) Pb. & Hy. 345
(16) 1993 (4) S.L.R. 673

(47) Thereafter in the case of **Raj Singh** versus **The Maharashi Dayanand University and others (17),** another Full Bench of this Court has affirmed the raito of law laid down in the aforesaid two cases.

(48) In the case of **Rahul Prabhakar** versus **Punjab Technical University, Jalandhar and others (18),** after referring to the aforesaid cases, a Full Bench of this Court has held as follows :—

> Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test, 1997, have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the Co-ordinator or the competent authority, as the case may be, the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected".

(49) Same proposition of law has been reiterated by Another Full Bench of this Court in the case of **Indu Gupta** versus **Director of Sports, Punjab and another (19).**

(50) The ratio of law laid down by a Full Bench of this Court would be binding on the Division Bench. We are further of the opinion that the Supreme Court in Rajiv Kapoor's case (supra), has not, in any manner, diluted or altered the ratio of law that the Prospectus is law for the purpose of Academic Session to which it relates. In the

(17) 1994 (2) S.L.R. 581
(18) 1997 (5) S.L.R. 163
(19) 1999 (4) R.S.J. 667

aforesaid case, after referring to the Full Bench in **Amardeep Singh Sahota's case** (supra), has observed in paragraph 10 of the judgment as follows :—

> "10. The High Court in allowing the writ petition purported to follow an earlier judgment of the Full Bench of the very High Court reported in **Amardeep Singh Sahota** versus **State of Punjab,** 1993 (2)PLR 212. On carefully going through that judgment, we find that the Full Bench did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly in respect of reserved category of seats, but on the other hand, it specifically deprecated the decision to do away with the requirement of minimum marks criteria in respect of seats reserved for sports category and that too by passing orders after the examinations were held under a scheme notified in the Prospectus. As a matter of fact the Full Bench, ultimately directed, in that case, that selections for admission be finalized in the light of the criteria specified in the Government orders already in force and the Prospectus, after ignoring the offending notification introducing a change at a later stage".

(51) These observations do not advance the case projected by Mr. Gupta. The Supreme Court noticed that the Full Bench had deprecated the decision to do away with the requirement of minmum marks criteria in respect of the seats reserved for sports category. The Supreme Court came to the conclusion that the Government orders which were under challenge in **Rajiv Kapoor's case (supra)** did not introduce for the first time either the Constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. The Supreme Court held as follows in paragraph 11 of the judgment.

> "11. So far as the cases before us are concerned, the High Court, not only held that the Government order dated 21st May, 1997 issued after the declaration of the results of the entrance examination held pursuant to the Prospectus issued for 1997, could not be followed but went a step further to hold that except the Prospectus

in question nothing else could be looked into and that the Government orders had the effect of varying the criteria laid in the Prospectus in the matter of selections to the seats reserved for HCMS candidates. We are unable to appreciate this reasoning. The Government orders dated 21st May, 1997, did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the orders dated 21st May, 1997 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview, were still required to be complied with and they could not have been given a complete go-bye, as has been done by the High Court".

(52) A perusal of the aforesaid observations clearly shows that the Supreme Court proceeded on the basis that the notification dated 21st May, 1997, did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordane with the laid down criteria. It merely modifies the pattern for allotment of marks under various heads from the total marks. The Supreme Court also observed that even if the modified criteria envisaged under the orders dated 21st May, 1997 was not to be taken into consideration, the earlier orders were still required to be complied with and they could not have been given a complete go-bye as has been done by the High Court. This precisely is the ratio of law laid down by this Court in Ravdeep Kaur's case (supra) wherein it has been held that "the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law". This ratio was approved in Amardeep Singh Sahota's case (supra). Therefore, we are of the opinion that the ratio of law laid down by this Court in Amardeep Singh Sahota's case (supra) is in consonance with the law laid down by the Supreme Court in Rajiv Kapoor's case (supra). The aforesaid observations make it clear that the Prospectus would

include the notifications issued by the Government. In the present case also, the Prospectus included notification dated 14th May, 2003. The petitioners are claiming that the admissions have to be made on the basis of the aforesaid notification which is part of the Prospectus issued for the Academic Session 2003-2004. The ratio of the law laid down by the Supreme Court in Rajiv Kapoor's case (supra), has also been considered by a Division Bench of this Court in Kamal Bhatia's case (supra). In this judgement, the Division Bench held as follows :—

> "6 .....Thus, the Supreme Court held that in addition to the prospectus the orders of the Government also governed the admission. It is, therefore, clear that controversy before the Supreme Court was not whether the criteria mentioned in the prospectus could be changed or not but was merely whether the orders of the Government could also be taken into account on an issue which had been left open in the prospectus. The Apex Court had merely disagreed with the findings of the High Court that the admissions in question had to be made in terms of the stipulations contained in the prospectus issued by the University and in assuming that the Government had no authority to issue directions laying down any criteria other than the one contained in the prospectus. The Supreme Court had no occasion to deal with the issue whether the ceriteria mentioned in the prospectus could be changed subsequent to the holding of the test or not.
>
> 7. In the case in hand the specific concession given in the prospectus to the candidates admitted through LEET-99 is sought to be withdrawn after the entrance test has been already conducted and result thereof declared. This according to us is not permissible.....".

(53) These observations of the Division Bench make it amply clear that the notification dated 25th July, 2003, is unenforceable for the Academic Session 2003-2004 as all the candidates have completed the necessary formalities for seeking admission. As a result of the impugned notification, NRI quota candididates will not be able to seek

admission in any of the Punjab Colleges. The final dates for making applications for admission has already passed. Therefore, we have no hesitation in holding that the respondents would be estopped from denying the admission to the candidates against the NRI quota, on the basis of the notification dated 25th July, 2003. Their claim for admission will have to be governed by the Notification dated 14th May, 2003 as incorporated in the Prospectus issued by the Baba Farid University, made available to the students from 26th May, 2003.

(54) This view of ours also finds support from the Division Bench judgement of this Court in the case of **Mamta Bansal** *versus* **State of Punjab, (20)**. In the aforesaid case also, the respondent—State of Punjab had tried to alter materially and in substance the earlier Notification dated 25th May, 2001 which had ben published in the newspaper on 25th June, 2001. This notification had been issued by the Government for conducting the Punjab Medical Entrance Test, 2000 (PMET-2000) for admission to Medical Colleges. By the subsequent Notification dated 21st August, 2001, it was provided as follows :—

"Notification :

The 21st August, 2001.

No. 5/2001-5HB3/4304—The Governor of Punjab is pleased to partial modify notification dated 25th May, 2001 issued,—*vide* No. 5/1/2001-5HB3/3009, dated 25th May, 2001 to the extent the paragraph 8 (1) and (b) wherein minimum marks to be obtained by Schedule Caste/Schedule Tribe or other Backward Classes as well as by Sports persons and physically handicapped persons have been prescribed. It has now been decided to withdraw these minimum qualifying marks so far as candidates belonged to Schedule Caste/Schedule Tribe or other Backward Classes as well as Sports persons and handicapped persons are concerned. Now their eligibility will be determined as per the policy followed for admission for the academic Session P.M.E.T. 2000.

Chandigarh : (Sd.) . . .,

The 21st August, 2001 N.S. RATTAN,
Principal Secretary to Government,
Punjab Department of Medical
Education and Research."

(20) 2002 (1) S.C.T. 1030

(55) Counsel for the petitioners in that case had made the following submissions :—

"13. From the pleadings of the parties, it is clear that the petitioners in the five Writ Petitions challenged the issuance of the notification, mainly on the pleas that :—

(a) The respondents have no power to alter substantially or otherwise indicating criteria for admission provided under the brochure, once it has been notified and acted upon.

(b) The impugned notification not only diminishes but completely destroys the basic precept for admission to such courses i.e. rule of merit. Not only diminishing but completely doing away with the rule of merit.

(c) The State Government has no jurisdiction or sanction, to dilate much less to completely do away with, minimum statutory academic standards prescribed by the Medical Council of India, to be maintained by holding competitive entrance examinations for admission to graduate medical courses.

(d) The petitioners have a vested right, as on the conclusion of the counselling for reserved categories for M.B.B.S. and B.D.S. Courses, a right has vested in them for allocation of vacant seats, which would stand transferred to general category.

(e) The notification in question lacks legislative competence and sanction. Even if the act is treated to be executive in its nature, it has been done without any assent of the Governor. As a matter of fact it has not even been brought to the notice of the Governor and as such is vitiated ;

(f) The impunged notification has been issued in contradictory terms with undue haste and without application of any mind ;

(g) In any event, the impunged notification, even if held to be otherwise valid, cannot be permitted to operate retrospectively as it would amount to unsettling the settled rights."

(56) In the aforesaid case, counsel for the respondents had made the following submissions :—

"14. While, according to the petitioner in C.W.P. No. 12156 of 2001 and the respondents in other writ petitions :—

(a) The notification is valid, has been issued in accordance with law and does not disturb any existing rights ;

(b) In fact the petitioners have no vested right to claim the seats. It was only an anticipated right, if at all ;

(c) The issuance of the notification was only an executive act and, thus, there was no occasion for the Government/the Cabinet to seek assent or even bring the facts to the notice of the Governor ;

(d) In order to accomplish the purpose of the reservation policy framed by the State issuance of notification in question was necessary ;

(e) The Government is competent to make any changes in the terms and conditions stated in the brochure. In the present case there is hardly any change. The subsequent notification dated 21st August, 2001 is only explanatory."

(57) The Division Bench, after considering the submissions made by the learned counsel observed as follows :—

"17. The prospectus issued by the University is a complete and composite document. It not only contains introduction, scheme for conducting the entrance test, declaration of result, general instructions and method of admission, but also contains Government Notifications, policy of the Government and different kinds of certificates which were required to be furnished

by a candidate in accordance with the requirement contained therein. A candidate was expected to familiarise himself fully and consciously about the terms and conditions of the brochure. These conditions, amongst others, specifically provide dual eligibility criteria—one relating to eligibility for taking the entrance test and second with reagrd to admission to medical courses. The candidates, who upon declaration of the result could not satisfy the second criteria of obtaining 50% or 40% marks, as the case may be, were rendered ineligible for admission to the MBBS and BDS Courses, still they may be eligible to take admission to other courses like BAMS, BHMS, Bachelor of Physiotherapy, and Bachelor of Nursing Courses etc. Clause 8(b) of the notification dated 25th May, 2001 permitted the candidates to take up the other courses even if they had less than 50%/40% marks in competitive examination but not less than 30%/20% marks. What has been attempted by the notification dated 21st August, 2001 is making the ineligible candidates eligible for admission to MBBS and/or BDS Courses. On the face of it, it is apparent that it is a substantial and material alternation in the previous notification/brochure duly published and pursuant to which the entrance test had already been held, result declared angb at a stage when the counselling was being done. Thus, it has to be examined whether by such alteration, the candidates, who had already earned bar of ineligibilty, could be rendered eligible in view of the settled position of law and specific terms and conditions of the brochure/ notificaiton."

(58) Thereafter, the Division Bench considered the ratio of the Full Bench decision of this Court which have already been noticed above. The question posed in paragraph 17 above, has been answered as follows :—

"22. Every decision of the Government is supposed to be taken in good faith and preferably on data based studies. The Government, in its wisdom, thus, had come to the

conclusion that introduction of minimum qualifying marks in the competitive examination even by the reserved classes candidates was called for. Such a decision taken in May, 2000 at the time of publication of notification hardly calls for any such alteration, which amounts to a complete somersault to policy decision. The policies in regard to education matters ought to be framed with considerable thought, caution and with due care to the attendant factors. But once such a policy decision is taken, it ought not to be altered frequently and that too without any compelling circumstances and without giving proper and sufficient notice to all concerned."

(59) We are of the considered opinion that the aforesaid observations are fully applicable to the facts and circumstances of the present case. In fact the situation in the present case is worse. The Division Bench in **Mamta Bansal's case** (supra) was concerned with some ineligible candidates being made eligible. In the present case, eligible candidates have been made ineligible at a time when the admission process is complete. This action of the respondents cannot be sustained as it is wholly arbitrary, unreasonable, discriminatory, and therefore, clearly violative of the equality clause enshirned in Article 14 of the Constitution of India.

(60) Before parting with this judgement, we would like to place on record that the State Government has not been quite candid in its disclosure of the information to this Court in the written statement. It is by now settled beyond cavil that all litigants are duty bound to make a true disclosure of all the relevant facts and materials, that may have a bearing on the lis, pending before the Court. This duty is accentuated when proceedings are pending in the High Court, under Articles 226/227 of the Constitution of India. We may take the opportunity to refer, at this stage, to the oft- quoted judgment of the Supreme Court in the case of **S.P. Chengalvaraya Naidu (deâd) by L.Rs.** *versus* **Jagannath (dead) by L.Rs. and others (21),** as follows :—

"**KULDIP SINGH, J** :—"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice

(21) AIR 1994 S.C. 853

Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/ decree --- by the first court or by the highest court --- has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence....."

(61) In view of the law laid down above, we have meticulously examined the record. We are, however, constrained to observe that the official record does not support the plea of the respondents that the notification dated 25th July, 2002 has been issued to implement the judgment in TMA PAI's case (supra). The actual anxiety of the Government was to comply with the ratio of law laid down in **Indra Sawhney and others** *versus* **Union of India and others (22)** where it was held that aggregate of all the reservations in a given year should not exceed 50% . A perusal of the record has revealed that there was an anxiety at the Government level that all the reservations put together would exceed 50% of the seats available in the State of Punjab. The total reservation came to 70% of the seats. It was pointed out in the office file on a number of occasions that the Supreme Court in the case of **Indra Sawhney and others** *versus* **Union of India and others (supra)** had held that reservation to different categories has to be restricted to 50% and any reservation more than 50% becomes unconstitutional. Therefore, efforts were being made to find out method to bring down reservation to the permissible level. Out of the total reservation which came to 70% of the seats, included 25% seats reserved for Schedule Castes/Schedule

(22) AIR 1993 S.C. 477

Tribes and 5% seats reserved for Backward Classes. 10% of the seats were reserved for other categories which are mentioned in the Notification as follows :–

"4. **RESERVATION IN STATE MEDICAL/DENTAL AND AYURVEDIC COLLEGES.**

Reservation will be made on the total available number of seats and not on State quota for the categories noted below belonging the State of Punjab and to the extent mentioned against each.

(i)	S.C./S.T.	25%
(ii)	Backward Classes	5%
(iii)	Border Area/Backward area (1% each)	2%
(iv)	Sports person	1%
(v)	Children/Grand Children of freedom Fighters	1%
(vi)	Disabled persons	1%
	(a) Blindness or low vision	1%
	(b) Hearing Impairment	1%
	(c) Orthopaedically Handicap	1%

Note 1.—Candidates of a sub category under (vi) above are not available /eligible than the seats will be carried to the other sub category under the provision of handicapped. The candidates under this category shall be eligible only if they are otherwise fit to pursue Medical/Dental studies as declared at the Medical examination by the Board.

Note 2.—Orthopaedically handicapped shall not be eligible for admission to Dental Colleges.

(vii)	(a) Children/Widows of defence personnel killed or disabled to the extent of 50% or more in action.	1%
	(b) Wards of gallantry awardees.	
	(c) Children of the Serving defence personnel and ex-servicemen.	

(viii)	A. Children/wards of officers and Jawans of Punjab Police, PAP and Paramilitary Forces.	1%
	Precedence sub categorywise shall be as under :	
	(a) Winners of President Police Medal for Gallantry, including posthumous awardees.	
	(b) Winners of Police Medical for Gallantry conferred by President of India, including posthumous awardees.	
	(c) Killed or disabled to the extent of 50% or more in action including cases of Home Guards.	
B.	(a) Children and Wards for serving para military personnel and ex-paramilitary personnel.	
	b) Remaining category in policy, if any.	
(ix)	Children of November, 1984 riot affected diaplaced persons, children of the innocent civilians killed or 100% disabled in terrorist violence or during operation by the security forces acting in aid of civil power.	1%

(62) The total of these reservations came to 40%. Thereafter, 15% seats had been reserved for the All India quota and 15% for the NRI quota. These figures are available at page 5 of the main file containing the Notifications and file orders, being file No. 5/19/03—5HB III. In the note dated 8th May, 2003, it was clearly mentioned that the reservation had to be brought down to 50%. Even after the reservation was to be calculated by excluding the 15% seats meant for All India quota, the reservation still remains 55%. According to the office note, the percentage had to be brought down to 50%. The note further mentions "the categories whose reservations needs to be reduced would be a policy decision may kindly be decided so that the notification can be revised accordingly. PSMER may kindly see in view of his minutes on page 4 ante.

Level

Hon'ble Minister Ashok Rane 8th May, 2003
Supdt./Health III"

(61) The note on page 4 dated 2nd May, 2003 indicates that the Minister concerned was of the opinion that the reservation for Schedule Caste had to be implemented on the total number of seats and not on the state quota. He had, thereafter, directed that the draft notification be issued accordingly. Even after the notification was issued, the controversy within the government seems to have continued. From a perusal of the file, it appears that there were divergence of opinions. One view was that the reservation for Schedule Castes be reduced from 25% to 20% and for the Backward Classes from 5% to 2%. The other view was that the aforesaid reservation had continued for a long time. On 12th May, 2003, there was a suggestion that a brief note may be given in the Notification that at the time of interview, the final reservations shall again be notified restricting it to 50% as per the Supreme Court judgment. From the perusal of the record, it has therefore, become evident that the anxiety of the respondents-State was not the implementation of the judgment in TMA PAI's case. The anxiety was to implement the judgment in Indra Sawhney's case. Seen in this light, it becomes evident that the NRI quota has been deleted in the Notification dated 25th July, 2003 for reasons wholly unconnected with the stamping out the menace of capitation fee being charged by the private aided/unaided educational institutions. We would not like to opine on the correctness or othewise of the various opinions expressed in the official file. We are, however, constrained to observe that the State Government has not disclosed to this Court the correct reason for issuing the Notification dated 25th July, 2003. The Court relies on the averments made in the written statement filed by the respondent-States. Very often, the court does not even call for the record. This course is adopted on the presumption that the government would present a true and faithful account of the events precedings the issuance of any notification, if challenged in courts of law. We are of the opinion that the respondents have failed to discharge its duty to make a full and candid disclosure in the Court, in this case. We would be failing in our constitutional duty if we did not place on record the displeasure of the court with regard to the conduct of the State Government. We deprecate the conduct adopted by the State of Punjab in an attempt to mislead the court. We hope and trust that such a course will not commend itself to the State of Punjab in the future.

(62) It has also been brought to our notice that after the issuance of the Notification dated 25th July, 2003, the State has under taken an exercise for fresh distribution of seats on 27th July, 2003. The NRI seats in Government Colleges are shown to have been filled from State general quota provisionally. The counselling of the candidates who had applied in the NRI Category was cancelled on 31st July, 2003. Directions were also issued to the petitioners-Institute in CWP No. 12758 of 2003 to cancel the admissions granted to the NRI students. The petitioners in the aforesaid CWP No. 12758 have, therefore, made an additional prayer for quashing the letters dated 7th August, 2003 and 8th August, 2003 (Annexures P-24 and P-25). The aforesaid actions of the respondents are only consequential to the Notificaiton dated 25th July, 2003. Therefore, they stand or fall alongwith the Notificaiton dated 25th July, 2003.

(63) In view of the above, the Notification dated 25th July, 2003 is quashed to the extent that it deletes the NRI quota of seats which have been reserved under the Notification dated 14th May, 2003. The directions issued to the petitioners in CWP No. 12758 of 2003 by letters dated 7th August, 2003 and 8th August, 2003 (Annexures P-24 and P-25) are quashed. The respondents are directed to make admission to the seats reserved in the NRI Quota strictly in accordance with the Notification dated 14th May, 2003 for the Session 2003-2004.

(64) These present writ petitions are allowed in the aforesaid terms. In view of what has been narrated above, it would be a fit case to impose heavy costs on the State of Punjab. This, however, would serve no purpose as ultimately, the burden will have to be shared by the general public. In view of the above, we impose no costs.

R.N.R.