

Court No. - 32**Case :-** WRIT - C No. - 888 of 2025**Petitioner :-** Aaghaz Khan And 95 Others**Respondent :-** State Of Uttar Pradesh And 4 Others**Counsel for Petitioner :-** Siddharth Khare**Counsel for Respondent :-** C.S.C.**Hon'ble Saral Srivastava,J.**

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioners and Sri Shashi Nandan, learned Senior Counsel assisted by Sri Ashish Singh and Sri Mohit Singh, learned counsels for the respondents.

2. The petitioners are the students of M.B.B.S. Course of K.M. (Krishna Mohan) University, Mathura (hereinafter referred to as 'College') and have been admitted to the M.B.B.S. First Year Course during the Academic Session 2019-20.

3. The petitioners by means of the present writ petition have assailed the order dated **24.10.2024** passed by the Appellate Authority, U.P. Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) by which, the Appellate Authority has set aside the Government Orders dated 14.07.2017 and 01.07.2019, and referred the matter to the Fee Fixation Committee to determine the fee for the Session 2019-20.

4. The facts, in brief, are that petitioners participated in the National Eligibility-cum-Entrance Test-2019 (hereinafter referred to as 'NEET') conducted by the National Testing Agency (N.T.A.). All the petitioners qualified the NEET Examination. Thereafter, the petitioners participated in the Counseling conducted at the level of Director General, Medical Education & Training, U.P. On the basis of said counseling, petitioners were allotted College.

5. The petitioners alongwith the writ petition have enclosed the relevant extract of the brochure as Annexure-3 to the writ petition indicating the fee structure for NEET, U.G. 2019 for private medical colleges. The name of the College appears at serial number 16. The following fee structure is prescribed:-

NEET UG 2019- Private Medical Colleges-Fee Structure					
Sl. No.	Institution	Tuition Fee	Hostel Fee	Security Fee	Total
...
16.	Krishna Mohan Medical College & Hospital, Mathura	8,50,000	1,50,000	3,00,000	13,00,000

क०सं० 4, 6, 8, 10, 13, 19 पर अंकित मेडिकल कालेज का शुल्क निर्धारण शासनादेश दिनांक 14.7.2017 द्वारा कमशः रु० 9.90 लाख, रु० 8.50 लाख रु० 10.37 लाख, रु० 9.84 लाख, 11.04 लाख एवं 8.50 किया गया है। फीस निर्धारण के संबंध में उक्त कालेजों द्वारा मा० न्यायालय द्वारा योजित याचिका एवं फीस एपीलेट अथारिटी में दायर अपील में पारित निर्देशों के कम में शासनादेश दिनांक 22.9.2016 द्वारा निर्धारित शिक्षण शुल्क रु० 11.30 लाख लिया जा रहा है।

काउन्सिलिंग में प्रतिभाग करने वाले अभ्यर्थियों से अपेक्षा है कि फीस स्ट्रक्चर के संबंध में संबंधित कालेज की वेबसाइट का भी स्वतः अवलोकन करने का कष्ट करे।”

6. The course duration of the petitioners is five years out of which, petitioners have to study upto 4 ½ years, and thereafter, one year of internship. According to petitioners, they are liable to pay fee upto 4 ½ years, and for the internship period, they are entitled to get stipend of Rs.12,000/-.

7. It transpires from the record that a Government Order dated **14.07.2017** was issued with the consultation of Fee Fixation Committee constituted under the provisions of The Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (hereinafter referred to as 'Act, 2006') fixing the fee for the Sessions 2017-18, 2018-19 & 2019-20.

8. As per the Government Order dated 14.07.2017, the fee of the petitioners' institution was fixed for the aforesaid session as

Rs.8,50,000/- per year. It has been informed that the College did not take admission of M.B.B.S. Course for the Sessions 2017-18 & 2018-19 due to non-issuance of Letter of Permission by the Medical Council of India. It has also been informed that the College was given Letter of Permission by the Medical Council of India in the year 2019 for commencing the course for the Session 2019-20. Thereafter, the petitioners were admitted in the College after qualifying NEET Examination, and undergoing the process of counseling.

9. It has been pointed out by the respondents that after the admission in the year 2019, a Government Order dated 01.07.2019 was issued fixing provisional fee for the Session 2019-20. In the Government Order dated 01.07.2019, the name of College appeared at serial number 3 under the heading 'Medical College'. The Government Order dated **01.07.2019** is reproduced herein below:-

"प्रेषक,
डा० रजनीश दुबे,
प्रमुख सचिव,
उ०प्र० शासन ।

सेवा में,
महानिदेशक
चिकित्सा शिक्षा एवं प्रशिक्षण,
उ०प्र० लखनऊ।

चिकित्सा शिक्षा अनुभाग-4

लखनऊ : दिनांक 01 जुलाई, 2019

विषय:- निजी क्षेत्र के मेडिकल कालेजों द्वारा संचालित एम०बी०बी०एस०/ बी०डी०एस० पाठ्यक्रम का शुल्क निर्धारित किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या-एम०ई०-3/2019/यूजीपी/1875 दिनांक 06.06.2019 एवं पत्र संख्या-एम०ई०-3/2019/1874 दिनांक 06.06.2019 का कृपया सन्दर्भ ग्रहण करने का कष्ट करें।

2- अवगत कराना है कि आपके उक्त पत्रों द्वारा निजी क्षेत्र के निम्नलिखित मेडिकल/डेण्डल कालेजों द्वारा संचालित एम०बी०बी०एस०/ बी०डी०एस० पाठ्यक्रमों की शैक्षिक सत्र 2019-20 हेतु फीस/शुल्क निर्धारित किये जाने का प्रस्ताव उपलब्ध कराया गया था-

मेडिकल कालेज-

क्र०स०	सस्था का नाम
1	जी०एस० मेडिकल कालेज एण्ड हास्पिटल, हापुड।
2	प्रसाद इंस्टीट्यूट ऑफ मेडिकल साइंसेज, लखनऊ
3	कृष्ण मोहन मेडिकल कालेज एण्ड हास्पिटल, मथुरा
4	सुभारती मेडिकल कालेज, मेरठ

डेण्टल कालेज -

क्र०स	सस्था का नाम
०	
1	पूर्वांचल इंस्टीट्यूट ऑफ डेण्टल साइंसेज, गोरखपुर।
2	सुभारती डेण्टल कॉलेज, मेरठ।

3- इस सम्बन्ध में निदेश हुआ है कि निर्धारित किये गये शुल्क के पुनरीक्षण की ओवश्यकता के दृष्टिगत उक्त मेडिकल/डेण्टल कालेजों द्वारा संचालित एम०बी०बी०एस०/बी०डी०एस० पाठ्यक्रमों का विगत शैक्षणिक सत्र (2018-19) हेतु निर्धारित शुल्क ही शैक्षणिक सत्र 2019-2020 हेतु अंतरिम रूप से निर्धारित किये जाने की एतद्वारा स्वीकृति प्रदान की जाती है।

कृपया तदनुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।"

10. It is stated that the College/respondent no.5 being aggrieved by the Government Orders dated **14.07.2017** and **01.07.2019**, preferred Writ-C No.21587 of 2019 on 03.07.2019. The prayer made in the said writ petition is being reproduced below:-

"i. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.07.2019, passed by Opposite Party No.3, as contained in Annexure No.1 to the writ petition;

ii. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.07.2017, passed by Opposite Party No.3, as contained in Annexure No.2 to the writ petition;

iii. Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to permit/allow the petitioner institution to receive/collect Rs.11,30,000/- as provisional fee for the academic session 2019-2020 for MBBS Course from the students of the petitioner Institution till the fee is not fixed by the Competent Fee Fixation Committee;

iv. Issue any other order or direction which this Hon'ble Court may deem fit, proper and necessary in the circumstances of the case; and

v. Allow the writ petition with cost in favour of the petitioner."

11. The aforesaid writ petition was got dismissed as withdrawn by the College by order dated 08.07.2019. The order dated 08.07.2019 dismissing the Writ-C No.21587 of 2019 as withdrawn is reproduced herein below:-

“1. Sri Anurag Khanna, Advocate, assisted by Sir Mohit Singh, learned counsel for the petitioner states that this writ petition may be dismissed as withdrawn.

3. Learned Standing Counsel appearing for respondents has no objection.

4. The writ petition is accordingly dismissed as withdrawn.”

12. The College, thereafter, preferred statutory appeal under Section 11 of the Act, 2006 before the Appellate Authority alongwith delay condonation application. Thereafter, the College again approached this Court by filing another writ petition i.e. Writ-C No.23942 of 2019 on the pretext that since the Appellate Authority is not functioning, therefore, the College has filed the present writ petition. Relevant paragraphs of the writ petition i.e. paragraph nos.1 to 4 are reproduced herein below:-

“1. This is the second writ petition being filed by the petitioner on the subject matter. The first writ petition bearing Writ-C No.21587/2019 was dismissed as withdrawn vide order dated 08.07.2019. No other writ petition has been filed on the same subject matter before this Hon'ble High Court either at Allahabad or at Lucknow Bench.

2. That when the first writ petition was filed, the petitioner had not availed the remedy of statutory appeal before the respondent no.4. After withdrawal of the first writ petition, the petitioner filed an appeal before the respondent no.4 on 11.07 2019. However, no appellate authority has been constituted and is non-functional at the moment. Hence, the instant second writ petition is being pressed before this Hon'ble Court.

3. That the petitioner further declares that it has not received any notice, information or copy of any caveat application through registered post or otherwise from any of the respondents or from any other source.

4. That by means of the present writ petition, the petitioner is assailing the illegal and arbitrary impugned orders dated 01.07.2019 and 14.07.2017, passed by the respondent nos.1 and 3 respectively, whereby fixing the arbitrary fees of the petitioner conducting M.B.B.S. Course for the academic session 2019-2020, as low as Rs.8,50,000/- in a most arbitrary, unjustified and mechanical manner. The said impugned orders are also violative of Article 19(1)(g) as well as Article 14 of the Constitution of India as no proper opportunity has been given while passing the impugned orders.”

13. The prayer made in Writ-C No.23942 of 2019 is also reproduced herein below:-

“i. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.07.2019, passed by the respondent no.1, as contained in Annexure No.3 to the writ petition;

ii. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.07.2017 passed by respondent no.3, as contained in Annexure No.4 to the writ petition;

iii. Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to permit/allow the petitioner institution to receive/collect Rs.11,30,000/- as provisional fee for the academic session 2019-2020 for MBBS Course from the students of the petitioner Institution till the fee is not fixed by the Competent Fee Fixation Committee;

iv. Issue any other order or direction which this Hon'ble Court may deem fit, proper and necessary in the circumstances of the case; and

v. Allow the writ petition with cost in favour of the petitioner.”

14. It is manifest from the record that the Writ-C No.23942 of 2019 was got listed without arguing, which is also evident from the order dated 23.07.2019. The order dated 23.07.2019 reads as under:-

“As prayed by learned counsel for the petitioner, list this case in the next cause list.”

15. Subsequently, the Writ-C No.23942 of 2019 was dismissed in default by this Court by order dated 27.01.2023. The order dated 27.01.2023 is reproduced herein below:-

“List revised.

None present on behalf of petitioner to press this petition. Shri Abhishek Singh, Advocate holding brief of Shri Mahendra Pratap, learned counsel for the respondent is present.

Writ petition stands dismissed for want of prosecution.

Interim order, if any, stands vacated.”

16. The Appellate Authority proceeded with the appeal of the College and allowed the same by the impugned order dated 24.10.2024.

17. The respondents have produced the Government Order dated 01.07.2019 and undertaking given by some of the students on record, which with the consent of the learned counsel for the petitioners have been taken on record.

18. Challenging the aforesaid order, Sri Ashok Khare, learned Senior Counsel appearing for the petitioners has contended that once the writ petition bearing Writ-C No.21587 of 2019 filed by the College was dismissed as withdrawn without any leave of the Court to pursue any other remedy, the appeal of the College is not maintainable considering the fact that the prayer made in the writ petition is identical to the prayer which has been made in the appeal.

19. He further submits that the College is also guilty of concealing the material fact before the Appellate Authority in not disclosing the filing of Writ-C No.21587 of 2019, and the order of dismissal passed on the said writ petition. His further contention is that during the pendency of the appeal, respondent College preferred Writ-C No.23942 of 2019 with the same prayer which had been made in the earlier writ petition i.e. Writ-C No.21587 of 2019, the College did not pursue Writ-C No.23942 of 2019 and got the same dismissed in default in the year 2023. It is submitted that in such view of the fact, the proceeding before the Appellate Authority submitted by the College is nothing but an abuse of the process of the Court, and this fact was sufficient to dismiss the appeal. Therefore, the impugned order is liable to be set aside on this ground.

20. He further contends that once the Session has commenced and the petitioners have paid the fees as demanded by the College, any variation or enhancement in fee structure would prejudice the petitioners, therefore, the petitioners were necessary party and ought to have been impleaded as respondents in the appeal. He further submits that though it is not possible for the College to implead all the petitioners but some of the petitioners could have been impleaded in representative capacity to represent the cause of the students, and in such view of the fact, the appeal was liable to be dismissed for non-impleadment/non-joinder of necessary party.

21. He further submits that once the final fee for the Session 2019-20 has been fixed by the Government Order dated 14.07.2017, any

variation in such fee would obviously prejudice the rights of the petitioners, and since in appeal, the Government Order dated 14.07.2017 had been assailed by the College which has already determined the fee for the Session 2019-20, the petitioners must have been given an opportunity of hearing to represent their cause that the fee fixed by the Government Order dated 14.07.2017 is just and does not need any enhancement or variation.

22. The further submission of Sri Khare, learned Senior Counsel is that in the Act, 2006, the appeal is to be preferred within a period of 30 days from the date of communication of the order, and the appeal in the instant case has been preferred in the year 2019 against the Government Order dated 14.07.2017, and since there was no provision for condonation of delay, therefore, the appeal was liable to be dismissed on the ground of delay and was not liable to be heard on merit.

23. He further submits that the finding of the Appellate Authority that the Government Order dated 14.07.2017 was an *ex parte* order and non-speaking order is perverse inasmuch as it is evident from the Government Order dated 14.07.2017 that the Fee Fixation Committee had issued notice to the College for submitting its proposal which the College did not choose to submit, and the Government Order dated 14.07.2017 spells out the reason in fixing the fees and had been passed after consultation with the Fee Fixation Committee, therefore, the impugned order is not sustainable in law.

24. He further submits that so far the Government Order dated 01.07.2019 is concerned, once the final fee had been fixed by the Government Order dated 14.07.2017 for the Session 2019-20 after following the due procedure as contemplated under the Act, 2006, the said Government Order cannot be annulled or made ineffective by interim Government Order dated 01.07.2019. In other words, he submits that the Government Order dated 01.07.2019 fixing the provisional fee cannot override the Government Order dated 14.07.2017 by which the final determination of fee for the Session 2019-20 has been made.

25. To the aforesaid submission, Sri Shashi Nandan, learned Senior Counsel appearing for the respondents would contend that under the Scheme of the Act, 2006, it is provided that the Committee constituted under the Act, 2006 shall require a private aided or unaided professional educational institution to furnish a prescribed information as may be necessary for enabling the Committee to determine the fee as prescribed under Section 10 of the Act, 2006 that may be fixed by the Institution in respect of each professional course, and the fee so determined shall be valid for such period as notified by the State Government.

26. He submits that in view of Section 4 (8) of the Act, 2006, in the instant case, the Committee asked the College to furnish information for fixation of fee, and accordingly, the College submitted a proposal along with all the necessary documents for fixation of fee for the Session 2019-2020. He further submits that fixation of fee by the Government Order dated 14.07.2017 with respect to College was illegal and arbitrary exercise of power inasmuch as the College did not demand for fixation of fee for the Session 2017-18 onwards for the reason that Medical Council of India did not give Letter of Permission, due to which the College did not admit any students for the Session 2017-18 & 2018-19, and in such view of the fact, the College did not have any occasion to submit any proposal for fixation of fee.

27. He further submits that it is evident from the Government Order dated 22.09.2016 that fee for the Session 2016-17 was fixed as Rs.11,30,000/-, and therefore, in such view of the fact, when once for the Session 2016-17 the fee was Rs.11,30,000/-, there was no justification for reducing the fee for the subsequent Sessions i.e. 2017-18, 2018-19 & 2019-20 fixing the fee as Rs.8,50,000/-. Thus, he submits that since the fee was not fixed as per the Act, 2006, therefore, the Appellate Authority by the impugned order has rightly referred the matter back to the Competent Authority i.e. Fee Fixation Committee who is empowered to determine the fee.

28. He further submits that participation of the petitioners in the College in fee fixation process is not essential for the reason that as per Section 3 (l) of the Act, 2006, it is sanctioned intake which is the basis for computing the expenses and other incidental charges likely to be incurred for imparting the education. His further contention is that since for the Session 2017-18 and 2018-19 there was no intake in the College and only in the year 2019-20 the College could admit the students, therefore, the College submitted proposal for re-fixation of fee after it was allowed to admit the students, and therefore, there is no illegality in the impugned order.

29. He further contends that the petitioners have given a notarized affidavit that they shall undertake to pay revised fee in case there is any revision of fee decided by the U.P. Government or any other authority for the Session 2019-20, or any subsequent Sessions of the Course. Accordingly, he submits that non-disclosure of said fact amounts to concealment of fact, and the writ petition deserves to be dismissed on this ground alone. He further submits that once the students have given undertaking to the effect that they shall pay the revised fee in case if there is any revision of fee, the petitioners cannot resile from undertaking and they are estopped in law from challenging the impugned order.

30. He lastly contends that under the Scheme of the Act, 2006, only the College and Fee Fixation Committee are necessary party for fixation of fee and the students have no role, therefore, there was no occasion for the College to implead the petitioners before the Appellate Authority nor any opportunity of hearing was liable to be afforded to the petitioners. He submits that since the petitioners are not aggrieved by the impugned order as by the impugned order, the Appellate Authority has directed the Competent Authority to make final determination of fee and under the Scheme of the Act, 2006, the students have no role to play in determination of fee, therefore, the submission of learned counsel for the petitioners with regard to violation of principles of natural justice is

devoid of merit.

31. He submits that so far as the filing of earlier writ petitions by the College are concerned, the order passed by this Court in those writ petitions do not come in the way of the petitioners in availing the statutory remedy.

32. Sri Ashok Khare in rejoinder submits that so far as the concealment of undertaking is concerned, it is evident from the record that the fact with regard to undertaking is on record, therefore, there was no intentional or deliberate concealment on the part of the petitioners. In this regard, he has referred to the Government Order dated 06.11.2020 to show that the fee of the College for the Session 2020-21 was fixed at Rs. 11.34 lacs per year. He submits that based on the Government Order dated 6.11.2020, the Principal of the College issued a letter dated 17.12.2020 asking the students to deposit the difference of revised fee of M.B.B.S. Batch-2019.

33. He further submits that the said letter refers to an undertaking given by the students, and based on the said undertaking of the students, the difference of fee was demanded and against the said demand dated 17.12.2020, the students approached the Director, Medical Education, who by order dated 21.12.2020 restrained the Principal of the College from demanding the difference of fee on the basis of Government Order dated 06.11.2020 from the students, who have been admitted in the Session 2019-20, on the ground that the said Government Order dated 06.11.2020 is applicable with respect to Session 2020-21.

34. It is further submitted that a similar letter was again issued by the Director of Education to the Principal dated on 08.01.2021. He submits that once the demand raised by the College on the basis of undertaking given by the students have been annulled by the Director by letter dated 21.12.2020 and 08.01.2021, the petitioners were under bonafide impression that undertaking given by them has been annulled and has become redundant, therefore, non-disclosure of undertaking by the petitioners is not fatal in the instant case.

35. He further submits that the principle of waiver in the instant case on the basis of undertaking would not be attracted for the reason that the petitioners were not aware of all the essential facts, inasmuch as petitioners were not aware of the Government Order dated 14.07.2017 fixing final fee for the Session 2019-20, and if the petitioners were aware of the said Government Order, there was no occasion for the petitioners to give such an undertaking. He further submits that so far as the Government Order dated 22.09.2016 fixing the fee for the Session 2016-17 at Rs.11,30,000/-, the fixation of fee was without any recommendation of the Fee Fixation Committee and was only a provisional fee fixation by Committee. He further submits that subsequently, the final Government Order dated 04.08.2017 was issued, copy of which is annexed as Annexure 15 to the writ petition, fixing fee for the Session 2019-20 for the College at Rs.8.50 lacs. Accordingly, he submits that claim of learned counsel for the respondents that reduction in fee by the Government Order dated 14.07.2017 is arbitrary and against the record lacks merit, and in fact there was no reduction in fee for the Sessions 2017-18 to 2019-20.

36. It is also submitted by Sri Ashok Khare that five petitioners i.e. petitioner nos.3, 32, 33, 35 and 42 have not given any undertaking, and this fact has not been denied by the learned counsel for the respondents.

37. I have considered the rival submissions of the parties and perused the record.

38. The respondents have made statement before this Court that they do not propose to file any counter affidavit, and the writ petition may be heard without any counter affidavit. Therefore, in the absence of any rebuttal to the averments made in the writ petition, they are treated to be correct.

39. The undisputed fact as emerged from the record are that petitioners have been admitted in the College after qualifying the NEET Exam and undergoing the process of counseling for the Session 2019-20. The total period of Course is five years. However, the structure of

the course is that out of five years, the petitioners have to attend the teaching for 4 ½ years and for internship period, they are entitled to stipend. By the Government Order dated 14.07.2017, the fee for the Sessions 2017-18 to 2019-20 was fixed for the College at Rs.8.50 lacs. It is not disputed that the College did not admit any student for the Sessions 2017-18 and 2018-19 due to non-issuance of Letter of Permission by the Medical Council of India, and it is only in the Session 2019-20, after obtaining Letter of Permission, the College admitted the students. The students were required to pay fee at Rs.8.50 lacs. However, the College had taken undertaking from some of the students that in case of revision of fee, they shall be liable to pay revised fee. For ready reference, the undertaking of one of the petitioners i.e. petitioner no.1-Aaghaz Khan is reproduced herein below:-

“UNDERTAKING FOR FEE

I Aaghaz Khan (Name) S/o Shri Sharif Ahmed Khan Mother's Name Shehnaz Khan have allotted K.M Medical College & Hospital, Mathura for the Admission of MBBS Course 2019 during the counseling of U.P. NEET Counseling Allotment No. DGME/UPNEETUG2019/ADMISSION against NEET 2019 Roll No 450202960 and I am taking admission in this medical college.

I hereby undertake, that at the time of admission I am ready to pay the prescribed Tuition Fee as decided by Interim Order of the UP Govt. vide their letter no. 1056/71-4-2019-37/2015 dated 01.07.2019 for this college.

I further undertake to declare that in case of any revision in the fees which is later on decided by the UP Government or any other authority for the session 2019-20 or any subsequent sessions of my course, I am ready to pay the difference for the session 2019-20 or revised fee for the subsequent sessions.

Signature of Father/Guardian

Signature of Student”

40. Now, in the instant case, it is also not disputed that College has earlier approached this Court by filing Writ-C No.21587 of 2019. The relief prayed for in the said writ petition has been extracted above, and the writ petition was subsequently got dismissed as not pressed on 08.07.2019. The order dated 08.07.2019 has also been extracted above.

41. Perusal of order dated 08.07.2019 reveals that the College did not

seek any liberty while withdrawing the writ petition to avail any other remedy or any alternative remedy available in law. After having failed in getting any relief from this Court in the aforesaid writ petition, the College preferred statutory appeal under Section 11 of the Act, 2006 alongwith delay condonation application. In the appeal preferred by the College under Section 11 of the Act, 2006, the College prayed for the following relief:-

“a. Set aside the impugned orders dated 01.07.2019 and 14.07.2017, passed by the respondent Committee, whereby fixed the fees for the Academic Sessions 2019-2020 only of Graduate Medical (MBBS) Course run by the appellant.

b. Direct the respondent to produce complete records on the basis of which the impugned orders has been passed by the respondent Committee.

c. Allow the present appeal and fix the fee for academic sessions 2019-2020 onwards on the basis of proposal submitted by the appellant and allow the Appellant Institution to charge the fee @ Rs.43,63,088/- per students for Graduate Medical (MBBS) Course from the academic session 2019-20 onwards.

d. Pass such other/further order(s) as this Hon'ble Authority deems fit and proper in facts and circumstances of the instant case.”

42. The prayer sought in the statutory appeal by the College is identical to the relief which they have prayed for in Writ-C No.21587 of 2019. The College did not disclose the filing of Writ-C No.21587 of 2019 in the appeal nor disclosed the order of dismissal of Writ-C No.21587 of 2019 as withdrawn without any leave of the Court to file any appeal.

43. It transpires that the Appellate Authority was not functioning, and thereafter, the College again preferred Writ-C No.23942 of 2019 praying for the same relief which has been claimed by the College in the Writ-C No.21587 of 2019 and also in the appeal. It is trite law that second writ petition for the same cause of action and for the same relief is not maintainable. The record reflects that the College did not argue the Writ-C No.23942 of 2019 and got it adjourned on 23.07.2019. Consequently, this Court directed the matter to be listed in the next cause list.

44. It transpires from the record that thereafter, the College did not pursue the Writ-C No.23942 of 2019 and same was dismissed in default by order dated 27.01.2023.

45. On the date when subsequent Writ-C No.23942 of 2019 was dismissed in default, the appeal was pending, but the College did not choose to inform the Appellate Authority about the dismissal of Writ-C No.23942 of 2019 wherein the same relief as prayed for before the Appellate Authority had been claimed.

46. The filing of two writ petitions for the same cause of action with identical prayer without disclosing the same before the Appellate Authority, in the opinion of the Court, is an act of gross negligence on the part of the College and an abuse of process of law. Had the College disclosed about filing of the writ petitions and the order passed in the said writ petitions, perhaps the Appellate Authority would not have entertained the appeal for the reason that two writ petitions for the same relief which have been prayed for before the Appellate Authority, have been dismissed, and therefore, this Court does not appreciate the conduct of the College in misusing the process of law to its advantage.

47. At this stage, Sri Ashok Khare, has placed reliance upon the judgement of Apex Court in the case of ***State of Orissa and Another Vs. Laxmi Narayan Das (Dead) Though Legal Representatives and Others (2023) 15 SCC 273*** where a civil suit was got dismissed without any liberty to file fresh suit, and thereafter, writ petition was filed and the Apex Court on the principles of constructive res judicata held that writ petition is not maintainable. Paragraph nos.37 to 39 of the said judgement are reproduced herein below:-

“37. On the question, as to whether after the withdrawal of a suit claiming the same relief without having permission to institute fresh one for the same relief, a writ petition will be maintainable before the court, the guidance is available from the judgment of this Court in M.J. Exporters (P) Ltd. v. Union of India (2021) 13 SCC 543, wherein the principle of constructive res judicata was applied. The case concerns a litigant who sought to file a fresh writ petition after withdrawal of the earlier writ petition filed for the same relief without permission to file fresh one. The court held that the principles contained in Order 23, Rule 1 CPC are applicable even in writ proceedings. Para 15 thereof is extracted below:

“15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive res judicata which are laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and which principles are extendable to writ proceedings as well as held by this Court in Sarguja Transport Service v. STAT, (1987) 1 SCC 5.”

38. Having regard to the principles laid down in M.J. Exporters Private Limited (supra), in our view, applying the principles of constructive res judicata, the present writ petition filed by the respondents after withdrawal of the civil suit, was not maintainable, in the sense that it ought not to have been entertained. In case the respondents still wanted to justify filing of the writ petition, they should have at least disclosed complete facts and then justify filing of the writ petition.”

39. The writ petition also ought to be dismissed on the ground of concealment of material facts regarding filing and withdrawal of the civil suit claiming the same relief. Neither in the writ petition nor in the appeal against the order passed in the writ petition, the respondents disclosed the filing of civil suit and withdrawal thereof. It only transpired only that at the time of the hearing of the appeal.”

48. So far as the argument of Sri Shashi Nandan, learned Senior Counsel for the respondents that dismissal of the first writ petition i.e. Writ-C No.21587 of 2019 would not bar the filing of statutory appeal is concerned, this Court is of the view that said contention is devoid of merit for the reason that if such practice is allowed to be followed, the litigation would never attain the finality, and litigant would misuse the process of law to its advantage with impunity.

49. From the aforesaid facts, it can be safely culled out that it is a case of concealment of fact and misuse of process of law by the respondent-College in filing the appeal when two writ petitions i.e. Writ-C No.2587 of 2019 and Writ-C No.23942 of 2019 have already been dismissed by this Court for the same relief without any liberty to avail any other remedy in law.

50. It is also undisputed on record that the students had been admitted on a fee as prescribed by the Government Order dated 14.07.2017. However, according to the College, the fixation of fee by the Government Order dated 14.07.2017 was not assailed by the College for the reason that the College had not been granted Letter of Permission for the Session 2017-18 and 2018-19. According to College, the fixation

of fee by the Government Order dated 14.07.2017 is illegal because the College never demanded fixation of fee.

51. It is submitted that after the College got the Letter of Permission for the Session 2019-20, the Fee Fixation Committee informed the College to submit proposal, and accordingly, the Government Order dated 01.07.2019 was issued. The College being not satisfied with the Government Order dated 01.07.2019 preferred Writ-C No.21587 of 2019 challenging the order dated 14.07.2017 and 01.07.2019. It is also not disputed that the College has obtained an undertaking from some of the students that in case of revision of fee, they shall pay the revised fee.

52. It has been informed that the admission of the students had taken place in September and October, 2019, whereas the appeal was filed on 11.07.2019 by the College before the Appellate Authority. Thus, on the date of admission of students, the appeal of the respondent College before the Appellate Authority was pending and any enhancement of fee or revision of fee or any order against the students interest would seriously prejudice the rights of the students, and in the peculiar facts of the present case where the College did not disclose the filing of two writ petitions which have been dismissed in the appeal before the Appellate Authority which itself could be a ground for dismissal of appeal, and further any order setting aside the order dated 14.07.2017 fixing the final fee for the Session 2019-20 would seriously prejudice the rights of the petitioners, therefore, in view of the peculiar facts, though under the Scheme of the Act, 2006, the students may not have a right to be heard by the Fee Fixation Committee, the students have a right to submit their case before the Appellate Authority and point out the correct facts so that they should not suffer any prejudice.

53. Further, in the facts of the present case when on the date of admission of students, the statutory appeal of the respondent College was pending, and the College had taken undertaking from the students that in case of revision of fee, they would abide by the revision of fee,

any order adverse to the interest of the petitioners by the Appellate Authority would obviously hurt the rights of the petitioners, therefore, in the peculiar facts of the present case, in the opinion of the Court, though the petitioners might not be necessary party but were proper party whose presence were necessary for the effective and proper adjudication of appeal by the Appellate Authority.

54. The Apex Court has also in the case of ***Charutar Arogya Mandal Vs. Justice R.J.Shah (R) Fee Committee & Others 2010 (15) SCC 514*** had granted liberty to the students to plead before the Committee. Paragraph nos. 1 & 2 of the said judgement is reproduced herein-below:-

“1. Leave granted. These matters relate to fee fixation in the medical and physiotherapy colleges. The question of fixation of fee now stands settled by judgment of this Court in P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537. In the light of the said judgment, the impugned judgment of the High Court cannot be sustained and the fee is required to be fixed by the Fee Fixation Committee having regard to the decision in P.A. Inamdar' s case (supra). Accordingly, we set aside the impugned judgment and remit the matter relating to fee fixation for the Academic Years 2003-2004, 2004-2005 and 2005-2006 to the Fee Fixation Committee for fresh fixation of fee in the light of the judgment in P.A.Inamdar's case.

2. It would also be open to the colleges to seek appropriate interim directions from the Committee in respect of the amounts for the year 2005-2006. Similarly, it would be open to the students or their representatives/associations to plead before the Committee that the management has not complied with the directions already made and seek appropriate directions in that regard. Both these aspects would be considered by the Committee and appropriate directions issued.”

55. Though Sri Shashi Nandan, learned Senior Counsel for the respondents may be right that under the Scheme of the Act, 2006, the students have no place for hearing before the Committee as it is a matter between the State Government, Fee Fixation Committee and the College, but in the peculiar facts of the present case for the reasons recorded above, this Court is of the view that the students were proper party and should have been afforded opportunity of hearing by the Appellate Authority, so that the students could have demonstrated before the Appellate Authority that there has been concealment of fact

by the respondent College in appeal as filing of the two writ petitions had not been disclosed by the College, and further they could demonstrate that the Government Order dated 14.07.2017 was issued after complying with the requirement of the Act, 2006. Therefore, in the instant case keeping in view the peculiar facts of the present case, this Court holds that an opportunity of hearing ought to have been afforded to the petitioners by the Appellate Authority before passing the impugned order.

56. Now, coming to the contention of Sri Khare, learned Senior Counsel appearing for the petitioners that under the Scheme of the Act, 2006, the appeal is to be filed within a period of 30 days from the date copy of the order is received, and under the Act, 2006, there is no provision for condoning the delay in filing the appeal and provision of Limitation Act would not apply inasmuch the Appellate Authority is not a Court, and in this regard he has placed reliance upon the judgement of the Apex Court in the case of ***Ganesan Represented by its Power Agent G. Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and Others, 2019 (7) SCC 108***. Paragraph Nos. 60 to 60.2 are reproduced herein-below:-

“60. We, thus, answer Questions (2) and (3) in the following manner:

60.1 The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a court.

60.2 Section 29 (2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the Act, 1959 is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.”

57. It appears that there is no provision under the Act, 2006 providing for condonation of delay, however, in the instant case Rule 7(4) of the Uttar Pradesh Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) (Appellate Authority Procedure) Rules, 2013 (hereinafter referred to as the 'Rules, 2013') provides that where petitioner seeks condonation of delay, he shall file a separate

application supported by an affidavit. So incorporation of Rule 7 (4) of the Rules, 2013 shows that the Legislature has intended to confer power of condonation of delay upon the Appellate Authority.

58. Sri Khare, learned Senior Counsel in this regard has submitted that under the Rules, 2013, the Appellate Authority is to decide the appeal within a period of six months, and thus, Legislature did not intend to confer power to condone the delay upon the Appellate Authority. This Court finds that the said argument of Sri Khare lacks substance for the reason that the appeal under Section 11 of the Act, 2006 is to be filed within 30 days and after 30 days, it becomes time barred. So when an appeal is filed after 30 days from the date of communication of order, a delay condonation application is to be filed for condoning the delay in filing the appeal, even if the time for deciding the appeal is six months.

59. It is relevant to mention that had there been no intention of the Legislature to confer power upon the Appellate Authority to condone the delay in filing the appeal, the Legislature would not have inducted Rule 7(4) of the Rules, 2013. Thus, it implies that the power to condone the delay is embedded with the Appellate Authority under Section 11 of the Act, 2006. Therefore, this Court is not convinced with the argument of Sri Khare, learned Senior Counsel with regard to condonation of delay.

60. Perusal of the Government Order dated 14.07.2017 reveals that it has been issued after consultation with the Fee Fixation Committee. The order further reveals that the Fee Fixation Committee before fixing the fee had issued notices to all the Colleges including the respondent College by letters dated 31.05.2017, 08.6.2017, 27.06.2017, 05.07.2017 and 08.07.2017, but the College did not respond to the aforesaid notices nor submitted any proposal, and accordingly, on the basis of minimum standard, the fee had been fixed.

61. Though, it is contended by Sri Shashi Nandan, learned Senior Counsel for the respondents that there was no occasion for the College

to approach the Fee Fixation Committee nor there was any occasion to the Fee Fixation Committee to issue notice to the College when the College did not demand the fixation of fee, and it is only after the College got permission to admit the students from the Medical Council of India, the College became aggrieved by the Government Order dated 14.07.2017 and has challenged the same, therefore, in such view of the fact, the Appellate Authority has rightly held that the Government Order dated 14.07.2017 has been passed without affording opportunity of hearing to the petitioners, this Court may note that the respondent College does not dispute the fact that Fee Fixation Committee had issued notices to the College for fee fixation for the Session 2017-18, 2018-19 and 2019-20 on 31.05.2017, 08.6.2017, 27.06.2017, 05.07.2017 and 08.07.2017, yet the College did not submit any proposal, therefore, this Court is of the opinion that the the Fee Fixation Committee has acted in accordance with the Act, 2006, inasmuch as under Section 10(2) of the Act, 2006, the Fee Fixation Committee is supposed to give an opportunity of hearing before fixing any fee.

62. There is no counter affidavit on record, and there is no pleading to the effect by the College that it has not received any such notice from the Fee Fixation Committee, and therefore, in such view of the fact, this Court finds that once the College admit that it has received the notices issued by the Fee Fixation Committee under Section 10(2) of the Act, 2006, it was incumbent upon the College to appear before the Fee Fixation Committee and apprise the Fee Fixation Committee about the correct facts that since the College did not have any intake for the Sessions 2017-18 and 2019-20, therefore, they do not want any fixation of fee for the Sessions 2017-18 and onwards, and they would approach again the Fee Fixation Committee for the fee fixation only after they get permission to admit the students in the College. In such view of the fact, this Court is of the view that the Government Order dated 14.07.2017 had been passed complying with the requirement of the Act, 2006, and this relevant aspect has been ignored by the Appellate Authority while

holding that opportunity of hearing was not afforded to the respondent College.

63. In such view of the fact, this Court is not impressed with the argument of Sri Shashi Nandan that once the College did not appear before the Fee Fixation Committee for fixation of fee, there was no occasion for the Fee Fixation Committee to fix the fee for the Sessions 2017-18 to 2019-20.

64. This Court also finds substance in the submission of Sri Ashok Khare that the finding returned by the Appellate Authority that the order dated 14.07.2017 is vague, non-speaking is perverse and against the record inasmuch as the Government Order dated 14.07.2017 reveals that elaborate reasons have been given and it has been recorded in the Government Order dated 14.07.2017 that the provision contemplated under the Act, 2006 has been followed and complied with while fixing the fee.

65. It has also been submitted by Sri Shashi Nandan that under the Scheme of the Act, 2006, it is the Fee Fixation Committee which invites the proposal from the College and when in the year 2019 the Fee Fixation Committee invited the College for filing proposal, only then the College submitted proposal for fee fixation. In this regard, he has placed relevant extract of paragraph-4 of the order passed by the Appellate Authority in the appeal, which is reproduced herein-below:-

“4.The proposal on behalf of the appellant was duly received in the office of the respondent on 07.06.2019. By means of said proposal, the appellant has proposed the fee of Rs.43,63,088/- per student for MBBS course for the Academic Session 2019-20.”

66. From the relevant extract of paragraph-4 of the order of Appellate Authority, reproduced above, it is not clear whether any proposal was sought by the Fee Fixation Committee from the College. Though, the said paragraph refers two letters dated 03.06.2019 and 07.06.2019 by the Director General of Medical Education, but from paragraph-4, it is not clear whether these two letters had been issued by the Director

General of Medical Education on its own or on any application submitted by the College for fixation of fee. In the absence of any counter affidavit, it is very difficult to comprehend that the Fee Fixation Committee initiated the proposal for fixation of fee inasmuch as once the Fee Fixation Committee has already fixed the final fee for the Session 2019-20 by Government Order dated 14.07.2017, there was no occasion for the Fee Fixation Committee to initiate a proposal for re-fixing the fee, and there is every likelihood that the College after getting the permission for intake for the Session 2019-20 approached the authority for fee fixation, on which the Government Order dated 01.07.2019 had been issued fixing the provisional fee. In such view of the fact, the submission of learned counsel for the respondent that it is the Fee Fixation Committee who invited proposal from the College in the year 2019 for fixation of fee is not borne out from the record in the absence of any counter affidavit. Had any counter affidavit been filed on record, that would have thrown some light on it.

67. Sri Shashi Nandan, learned Senior Counsel for the respondents as well as learned Standing Counsel could not point out any provision under which a final Government Order dated 14.07.2017 issued after complying with the requirement of the Act, 2006 could be overridden by a provisional Government Order issuing provisional fee fixation, and in such view of the fact, the impugned order on merits is also not sustainable.

68. Now, coming to the submission of Sri Shashi Nandan, learned Senior Counsel for the respondents with regard to concealment of undertaking in the writ petition, the record reveals that the State Government had issued a Government Order dated 06.11.2020 fixing fee for the College at Rs.11,34,000/- for the Session 2020-21. The College had issued notice to the petitioners demanding the difference of fee by letter dated 17.12.2020 in which the undertaking of the students also finds reference in one of the paragraphs. Relevant extract of letter dated 17.12.2020 is reproduced herein-below:

“Accordingly, all students of Batch 2019 were admitted while accepting Interim Fee of Rs. 8,50,000/- and an undertaking was also received from these students to submit the difference fee on receipt of formal permanent letter of fee from the Government of Uttar Pradesh.”

69. Against the letter dated 17.12.2020, the petitioners approached the Director General of Medical Education, who by letter dated 21.12.2020 directed the College to charge fee fixed for UG-2019 as the Government Order dated 06.11.2020 is in reference to the Session 2020-21. Extract of the letter dated 21.12.2020 is reproduced herein-below:-

“ प्रेषक,

महानिदेशक,
चिकित्सा शिक्षा एवं प्रशिक्षण,
उत्तर प्रदेश।

सेवा में,

प्रधानाचार्य/प्रबन्धक,
कृष्ण मोहन मेडिकल कालेज,
मथुरा।

संख्या:- एम०ई०-3/यू०जी०-2019/2549 लखनऊ:दिनांक 21.12.2020

विषय: यू०पी० नीट यू०जी० 2019 से प्रवेशित अभ्यर्थियों से यू०जी०-2020 के अन्तर्गत शुल्क निर्धारण सम्बन्धी शासनादेश दिनांक 06.11.2020 के आधार पर शुल्क लिये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक ई-मेल के माध्यम से प्राप्त पत्र दिनांक 21.12.2020 की प्रति प्रेषित करते अवगत कराया गया है कि आपके कालेज प्रबन्धन द्वारा यू०जी०-2019 से प्रवेशित अभ्यर्थियों से यू०जी०-2020 के अन्तर्गत शुल्क निर्धारण सम्बन्धी शासनादेश दिनांक 06.11.2020 के आधार पर शुल्क की मांग की जा रही है।

उक्त के सम्बन्ध में अवगत कराना है कि नीट यू०जी०-2019 के सम्बन्ध में निर्गत शुल्क निर्धारण सम्बन्धी शासनादेश दिनांक 01.07.2019 के द्वारा अंतरिम शुल्क निर्धारित करते हुए शैक्षणिक 2018-19 हेतु निर्धारित शुल्क ही अभ्यर्थियों से लिया जायेगा। इसके अतिरिक्त शासनादेश दिनांक 01.07.2019 के द्वारा अभ्यर्थियों से रु० 3.00 लाख सिक्योरिटी एवं रु० 1.50 लाख छात्रावास शुल्क निर्धारित करते हुए किसी भी अभ्यर्थी से अग्रिम शुल्क के रूप में कोई धनराशि न ली जायेगी।

अतः आपको निर्देशित किया जाता है कि शैक्षणिक सत्र 2019 से प्रवेशित अभ्यर्थियों से शैक्षणिक 2018-19 हेतु निर्धारित शुल्क ही लिया जायेगा। किसी भी दशा में वर्तमान शैक्षणिक सत्र 2020-2021 हेतु शासनादेश दिनांक 06.11.2020 द्वारा निर्धारित शिक्षण शुल्क, हास्टल, सिक्योरिटी एवं विविध मदों में निर्धारित शुल्क नहीं लिया जायेगा। इसका कड़ाई से अनुपालन सुनिश्चित किया जायें।

संलग्नक:- उपरोक्तानुसार

भवदीय

(के०के० गुप्ता)

70. Similar letter has again been written by the Director General of Medical Education on 08.01.2021. Thus, in view of the aforesaid fact, it is not a case where there is deliberate concealment of fact rather the fact of undertaking is on record and the petitioners may have been under *bonafide* belief that since based on the undertaking, the College had demanded revision of fee by letter dated 17.12.2020 which had been annulled by the Director General of Medical Education by two letters dated 21.12.2020 and 08.01.2021 respectively, therefore, undertaking given by them had lost its efficacy, and perhaps for this reason, they did not make any specific averment in the writ petition regarding undertaking.

71. It has also been urged by the learned counsel for the respondents that the petitioners are bound by the undertaking and principle of estoppel is attracted in the present case in view of Section 115 of the Evidence Act. Perusal of the undertaking, which has been extracted above, discloses that none of the ingredients of Section 115 of the Evidence Act are present in the present case, therefore, the contention of learned counsel for the respondents is not accepted.

72. The petitioners are the students and have qualified after their best effort in the NEET Examination, and thereafter, they had undergone counseling and got admission. After a rigorous process of admission, the petitioners got admission in M.B.B.S., therefore, the petitioners had no option but to give undertaking as demanded by the respondent College as they were in fear of losing admission in case they do not furnish the undertaking demanded by the College. Therefore, in such circumstances, undertaking given by the students in the opinion of the Court is not given out of their free will but under a fear of losing admission in M.B.B.S. Course which they have obtained after clearing a rigorous process of admission.

73. Even all the students have not given undertaking as in the instant case, it is admitted by the respondents that the petitioner nos. 3, 32, 33,

35 & 42 have not given any undertaking. In view of the fact that the respondent College has not taken undertaking from all the students, the respondent College cannot act arbitrarily and discriminate the identically placed students, therefore, the principle of estoppel as claimed by the respondent College is not applicable in the facts of the present case.

74. This Court finds substance in the argument of Sri Ashok Khare that principle of waiver in the present case would not attract inasmuch as the petitioners were not aware of the essential fact that final fee had already been fixed by the Government Order dated 14.07.2017, and had the petitioners been informed about the fixation of final fee by Government Order dated 14.07.2017, there was no occasion for the petitioners to give any undertaking. In this regard, he has placed reliance upon the judgement of the Apex Court in the case of ***Associated Hotels of India Ltd. Vs. S.B. Sardar Ranjit Singh, AIR 1968 SC 933***. Paragraph no.14 of the said judgement is reproduced herein below:-

“14. It is argued that the respondent waived the requirement of consent to the sub-letting. Any sub-letting in breach of the provisions of Cl.(b) of the proviso to S. 13 (1) is an offence punishable under S. 44. Assuming that the landlord can waive the requirement as to consent, it is not shown that the respondent waived it. A waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. See Dhanukdhari Singh v. Nathima Sahu, (1907) 7 Cal. WN 848 at p.852. It is said that the respondent knew of the sub-lettings as he frequently visited the hotel. It appears that he visited the hotel up to 1953 and he must have known of the occupation of R.N. Kapoor Indian Art Emporium and Pan American World Airways. But he came to know of the other lettings in January 1958 only. Moreover, the precise nature of the grant was never communicated to the respondent. The Courts below rightly held that the respondent did not waive his right to evict the appellant on the rounds mentioned in Cls. (b) and (c) of the proviso to S. 13 (1).”

75. Though, learned counsel for the respondents has pointed out that it is mentioned in the chart at page-67 of paper book which has already been extracted above, that candidates who are participating in counseling should check the fee structure on the website of the College,

therefore, the Government Order dated 14.07.2017 was in the knowledge of the petitioners, and as such they are estopped in law from challenging the order dated 14.07.2017. This Court may note that the note on page-67 has already been extracted above. This Court again reproduce the relevant note on page-67 for convenience:-

“काउन्सिलिंग में प्रतिभाग करने वाले अभ्यर्थियों से अपेक्षा है कि फीस स्ट्रक्चर के संबंध में संबंधित कालेज की वेबसाइट का भी स्वतः अवलोकन करने का कष्ट करे।”

76. The aforesaid note only states that the candidate should check the fee structure on the website of the College. The respondent College has not filed any counter affidavit stating that they had uploaded the Government Order dated 14.07.2017, and in the absence of any specific pleading by the respondents to the effect that the Government Order dated 14.07.2017 was also uploaded on the website of the College, this Court cannot presume that the Government Order dated 14.07.2017 was uploaded on the website of the College.

77. Before concluding the judgement, this Court may note that Sri Khare, learned Senior Counsel for the petitioner has passed on a chart indicating the fee paid by each students for the various Sessions. The difference in fee is only because of the difference in hostel charges as the different charges are fixed for different category of rooms, i.e. general room, air cooled room and air conditioned room. The chart is reproduced herein-below:-

**“DETAILS TO PAYMENT MADE BY PETITIONERS FROM
2019-2020 Till 2023-2024**

1. 2019-2020

(i) Tuition Fee	Rs.8,50,000/-
(ii) Security Amount	Rs.3,00,000/-
(iii) Hostel Charges	Rs.1,50,000/, Rs.2,50,000/, Rs.3,50,000/- (depending upon the room allotted being a normal room/ air cooled room/ air conditioned room)
(iv) Registration Fee	Rs.1,00,000/-
(v) Misc. Expenses	Rs. 61,750/-
(vi) Mess Charges	Rs.1,65,000/-

Total Rs.16,26,750/, Rs. 17,26,750/- or Rs.18,26,750/-

2. 2020-2021

(i) Tuition Fee	Rs. 8,50,000/
(ii) Hostel Charges	Rs.1,50,000/, Rs.2,50,000/, Rs.3,50,000/- (depending upon the room allotted being a normal room/ air cooled room/ air conditioned room)
(iii) Misc Expenses	Rs.61,750/-
(iv) Mess. Charges	Rs.1,65,000/-

Total Rs.12,26,750/, Rs.13,26,750/- or Rs.14,26,750/-

3. 2021-2022

(i) Tuition Fee	Rs.8,50,000/-
(ii) Hostel Charges	Rs.1,50,000/, Rs.2,50,000/, Rs.3,50,000 (depending upon the room allotted being a normal room/ air cooled room/ air conditioned room).
(iii) Mess Charges	Rs.1,65,000/-

Total Rs.11,65,000/, Rs. 12,65,000/- or Rs.13,65,000/-

4. 2022-2023

(i) Tuition Fee	Rs.8,50,000/-
(ii) Hostel Charges	Rs.1,50,000/, Rs.2,50,000/, Rs.3,50,000 (depending upon the room allotted being a normal room/ air cooled room/ air conditioned room).
(iii) Mess Charges	Rs.1,65,000/-

Total Rs. 11,65,000/, Rs.12,65,000/- or Rs.13,65,000/-

FOR ADDITIONAL SIX MONTHS

(i) Tuition Fee	Rs.4.25,000/-
(ii) Hostel Charges	Rs.75,000/, Rs.1,25,000/, Rs. 1,75,000/- (depending upon the room allotted being a normal room/ air cooled room/ air conditioned room)
(iii) Mess. Charges	Rs.82,500/-

Total Rs.5,82,500/, Rs.6,32,500/-or Rs.6,82,500/-

Total studies were spread over a period of 4 and a 1/2 year. The IInd year was for a period of 1 and a half year. The petitioners have made payment for 4 and a half year in accordance with details mentioned above. Apart from aforesaid, an amount of Rs. 15,100/- was paid towards examination fee for Ist year, IInd year and IIIrd year while an amount of Rs.40,000/- was paid towards examination fee in the IVth year.

DETAILS OF TOTAL FEES PAID

	Normal Room	Air-Cooled Room	Air Conditioned Room
2019-20	16,26,750/-	17,26,750/-	18,26,750/-
2020-21	12,26,750/-	13,26,750/-	14,26,750/-
2021-22	11,65,000/-	12,65,000/-	13,65,000/-
2022-23	11,65,000/-	12,65,000/-	13,65,000/-
Additional Six Month	5,82,500/-	6,32,500/-	6,82,500/-
Total	57,66,000/-	62.16.000/-	66,66,000/-

78. The College has prayed for fixation of fee before the Appellate Authority at the rate of Rs.43,63,088/- per students for M.B.B.S. Course for the Session 2019-20, whereas the students who opted normal room had paid Rs.57,66,000/-, the students who opted air cooled room had paid Rs.62,16,000/- and the students who opted air conditioned room had paid Rs.66,66,000/-.

79. From the aforesaid fact, it is evident that the students have paid more fee than what has been claimed by the respondent College in the appeal, and for this reason also, the impugned order does not sustain.

80. Thus, for the reasons given above, this Court is of the view that the order dated **24.10.2024** passed by the Appellate Authority is not sustainable and is hereby set aside. The respondent College is restrained from raising any enhanced fee from the petitioners.

81. Accordingly, the writ petition is **allowed** with no order as to costs.

Order Date :-24.1.2025

Sattiyarth/NS