REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4060 OF 2009

MODERN DENTAL COLLEGE AND
RESEARCH CENTRE & ORS. .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 4061 OF 2009

CIVIL APPEAL NO 4062 OF 2009

CIVIL APPEAL NO 4063 OF 2009

CIVIL APPEAL NO 4064 OF 2009

A N D

CIVIL APPEAL NO 4065 OF 2009

J U D G M E N T

A.K. SIKRI, J.

In all these appeals, validity and correctness of the common judgment dated May 15, 2009 passed by the High Court of Madhya

Pradesh, Principal Bench at Jabalpur, has been questioned. The appellants in these appeals had filed writ petitions challenging the validity/*vires* of the provisions of the statute passed by the State Legislature, which is known as *'Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007'* (hereinafter referred to as the 'Act, 2007'). The appellants also challenged *vires* of Admissions Rules, 2008 (for short, 'Rules, 2008') and the Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009 (for short, 'Rules, 2009') which have been framed by the State Government in exercise of the power conferred upon it vide Section 12 of the Act, 2007. The aforesaid Act and Rules regulate primarily the admission of students in post graduate courses in private professional educational institutions and the provisions are also made for fixation of fee. In addition, the said Act and Rules also contain provisions for reservation of seats. All the appellants are private medical and dental colleges which are unaided, i.e. they are not receiving any Government aid and are self financing institutions running from their own funds.

2) It is evident from the reading of the impugned judgment that challenge was laid by the appellants to those provisions of the Act and Rules on four grounds. The same are as under:

(i) the challenge to the provisions relating to admission;

(ii) the challenge to the provisions relating to fixation of fee;

(iii) the challenge to the provisions for reservation; and

(iv) the challenge to the provisions relating to eligibility for admission.

3) Insofar as provisions relating to admission, eligibility for admission and fixation of fee are concerned, the main contention of the appellants was that these medical and dental colleges being private unaided colleges, it is their fundamental right under Article 19(1)(g) of the Constitution of India to lay down the eligibility criteria for admission and admit the students as well as fix their fee. Relying upon the eleven Judge Bench decision of this Court in ***T.M.A. Pai Foundation & Ors.*** v. ***State of Karnataka & Ors.***[1], it was argued that right to administer educational institution is recognised as an *'occupation'* and is, thus, a fundamental right to carry on such an occupation as stipulated in Article 19(1)(g). According to the appellants, the provisions in the aforesaid Act and Rules impinge upon the fundamental right guaranteed to these institutions under the Constitution and, therefore, the said provisions are violative of Article 19(1)(g) of the Constitution. Insofar as provision relating to reservation of seats to Scheduled Castes, Scheduled Tribes, etc. is concerned, the emphasis of the appellants was

1 (2002) 8 SCC 481

two fold: First, it was argued that private educational institutions cannot be foisted with the obligation to admit students of reserved class, which was the obligation of the State. Secondly, the provisions of the Act, 2007 made excessive reservations thereby leaving hardly any seats for unreserved categories, which is not permissible in view of the judgment of this Court in ***T. Devadasan*** v. ***Union of India & Anr.***[2] and subsequent decisions reiterating the dicta in ***T. Devadasan***.

As would be noticed hereinafter, the basis of attack to the constitutional validity of the provisions of the Act and Rules remains the same. Additionally, however, the challenge to the said Act and Rules is laid before us also on the ground of the competence of the State Legislature as, according to the appellants, the subject matter falls in the domain that is exclusively reserved for the Parliament.

4) The High Court has repelled the challenge on first three counts holding that the judgment in ***T.M.A. Pai Foundation***, as explained in ***P.A. Inamdar & Ors.*** v. ***State of Maharashtra & Ors.***[3], permits the Government to regulate the admissions as well as fee, even of the private unaided educational institutions and that the impugned provisions are saved by Article 19(6) of the Constitution as they amount to *'reasonable restrictions'*

2 (1964) 4 SCR 680
3 (2005) 6 SCC 537

imposed on the right of admission and fixation of fee, which otherwise vests with the appellants.

5) Before we advert to the arguments of the appellants advanced before us in detail, it would be apposite to give the gist of the provisions of the Act, 2007 as well as Rules, 2008 and Rules, 2009 and also the manner in which the High Court has dealt with the issues at hand.

THE ACT, 2007:

6) The Preamble of the Act mentions that it is to provide for regulation of admission and fixation of fee in private professional educational institutions in the State of Madhya Pradesh and to provide for reservation of seats to persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in professional educational institutions. Thus, insofar as the Preamble is concerned, it stipulates that the provisions are made to provide for the *'regulation'* of admission and fixation of fee. Further, the Act encompasses private professional educational institutions of all disciplines and is not confined to medical and dental professions. However, writ petitions were filed raising the grievance against the aforesaid enactment only by medical and dental educational institutions. Institutions imparting other kind of professional education have not felt aggrieved.

7) Be that as it may, for regulating the admission and fixation of fee under Section 4 of the Act, a committee known as *'Admission and Fee Regulatory Committee'* (hereinafter referred to as the 'Committee') is constituted for the supervision and guidance of the admission process and for the fixation of fee to be charged from candidates seeking admission in a private professional educational institution. This Section further provides for composition, disqualification and functions of the Committee.

8) Chapter III which comprises of Sections 5 to 8 deals with *'Admission'*. As per Section 5, the eligibility for admission to such institutions shall be such as may be notified by the appropriate authority. These eligibility conditions are provided in Rules, 2008. Section 6 prescribes *'Common Entrance Test'* (for short, 'CET') on the basis of which admissions would be made and the same reads as under:

> "**6. Common Entrance Test –** In private unaided professional educational institution, admission to sanctioned intake shall be on the basis of the common entrance test in such manner as may be prescribed by the State Government."

CET is defined in Section 3(d) of the Act, 2007 and reads as follows:

> "**(d)** "Common entrance test" means an entrance test, conducted for determination of merit of the candidates followed by centralized counseling for the purpose of merit based admission to professional colleges or institutions through a single window procedure by the State Government

or by any agency authorized by it;"

As per Section 7, any admission made contrary to the provisions of the Act or Rules is to be treated as void. Section 8 deals with *'reservation of seats'*.

9) Insofar as fixation of fee is concerned, the facts which have to be taken into consideration while fixing the fee are provided in Section 9, which is under Chapter IV of the Act, and reads as follows:

> "**9. Factors –** (1) Having regard to -
>
> (i) the location of the private unaided professional educational institution;
>
> (ii) the nature of the professional course;
>
> (iii) the cost of land and building;
>
> (iv) the available infrastructure, teaching, non-teaching staff and equipments;
>
> (v) the expenditure on administration and maintenance;
>
> (vi) a reasonable surplus required for growth and development of the professional institution; and
>
> (vii) any other relevant fact, the committee shall determine, in the manner prescribed, the fee to be charged by a private unaided professional educational institution.
>
> (2) The Committee shall give the institution an opportunity of being heard before fixing any fee:
>
> Provided that no such fee, as may be fixed by the Committee, shall amount to profiteering or commercialization

of education."

As pointed out above, the Government has framed Rules, 2009 creating detailed provisions for fixation of fee, to which we shall be referring to at the appropriate stage.

10) Another provision which needs to be mentioned at this stage is Section 10. This provision provides for appeal that can be filed by a person or a professional institution aggrieved by an order of the Committee. Such an appeal can be filed within 30 days before the Appellate Authority constituted under the said provision. Under Section 12, the State Government may, by notification, make Rules for carrying out the purpose of the Act. Section 13 empowers the State Government to make Regulations consistent with the Act and the Rules made thereunder, *inter alia*, relating to the eligibility of admission, manner of admission and allocation of seats in a professional educational institution, including the reservation of seats, as well as the manner or criteria for determination of fee to be charged by professional educational institutions from the students and the fee that is to be charged by the professional educational institutions.

11) It may be mentioned that Circular/Notification dated February 28, 2009 and

March 15, 2009 was issued by the State Government under Section 6 of the Act, 2007 appointing the Professional Examination Board, Bhopal (which is known as VYAPAM) as the agency to conduct the entrance examination for the Post-graduate Entrance Examination of Private Medical and Dental universities and under-graduate examination respectively.

THE IMPUGNED JUDGMENT

12) As already mentioned above, the High Court classified the challenge to the provisions of the aforesaid Act and Rules into four heads and then dealt with each head separately. Insofar as challenge to the provision relating to admission is concerned, the High Court has concluded that the provisions of Section 6 read with Section 3(d) of the Act, 2007, which provide that admissions to the sanctioned intake shall be on the basis of CET followed by centralised counselling by the State Government or by an agency authorised by the State Government, are in consonance with the judgment of this Court in ***T.M.A. Pai Foundation*** and ***P.A. Inamdar*****.** The High Court reproduced paragraphs 58 and 59 of ***T.M.A. Pai Foundation*** wherein this Court emphasised that the admission is to be made on the basis of merit, which is usually determined either by marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the

interview or by a CET conducted by the institution or in the case of professional colleges, by Government agencies. From this, the High Court concluded that since merit has to be the prime consideration and one of the recognised mode of ascertaining the merit is through CET and insofar as professional colleges are concerned, ***T.M.A. Pai Foundation*** itself permitted such CET to be conducted by the Government agencies, there was nothing wrong with the impugned provision. The High Court also held that in paragraphs 67 and 68 of ***T.M.A. Pai Foundation*** this Court had permitted framing of Regulations for unaided private professional educational institutions for conducting such admission tests. The contention of the educational institutions/ writ petitioners to the effect that ***T.M.A. Pai Foundation*** never allowed the State to control admissions in private unaided professional educational institutions so as to compel them to give up a share of available seats to the candidates chosen by the State has been repelled by the High Court by holding that the admission procedure for unaided professional educational institutions, both minority and non-minority, was spelled out in ***P.A. Inamdar*** in paragraphs 133 to 138 clearly holding that for achieving the objective of excellence in admission and maintenance of high standards, the State can, and rather must, in the national interest step in. This judgment, thereby, recognised

the power of the State to hold such CETs in respect of private educational institutions as well. The High Court, in the process, painfully remarked that the admission procedure which was adopted by the private institutions had failed to satisfy the triple test of transparency, fairness and non-exploitativeness thereby compelling the State to substitute the same by its own procedure and sufficient material was produced by the respondents on record to show that prior to the enactment of the Act, 2007, there were number of complaints of malpractices in admissions in the private professional educational institutions which were found to be true.

In nutshell, the High Court took the opinion that having regard to the larger interest of the welfare of the students community to promote merit, achieve excellence, curb malpractices and to secure grant of merit based admission in transparent manner, the Legislature in its wisdom had passed the Act in question, also keeping in mind the prevailing conditions relating to admissions in such institutions in the State of Madhya Pradesh. It, thus, concluded on this aspect that Sections 3(d), 6 and 7 of the Act, 2007 do not impinge on the fundamental right to carry on the *'occupation'* of establishing and administering professional educational institutions.

13) Dealing with the challenge to the provisions relating to fixation of fees, viz. Sections 4(1), 4(8) and 9 of the Act in question, the High Court recognised

the right of these educational institutions, as found in ***T.M.A. Pai Foundation***, that decision on the fee to be charged is to be left to private educational institutions. Notwithstanding, the same judgment gives power to the State to regulate the exercise of power of the educational institution to ensure that there is no *'profiteering'* and Sections 4 and 9 of the Act, 2007 were aimed at achieving that purpose only. In substance, these provisions empower the Committee to satisfy itself that the fee proposed by a private professional educational institution did not amount to profiteering or commercialisation of education and was based on the factors mentioned in Section 9(1) of the Act, 2007. The Court noted that these factors which were mentioned in Section 9(1) were the relevant factors for fixation of fee as they ensured fixation of such fee which would take into consideration the nature of professional courses, the cost of land and building, the available infrastructure, teaching, non-teaching staff and equipment, the expenditure on administration and maintenance, as well as a reasonable surplus required for growth and development of the professional institutions. This was precisely the mandate of ***T.M.A. Pai Foundation***.

14) While dealing with the provisions in the Act, 2007, which pertained to reservation, the High Court discussed the dictum laid down in ***M.R. Balaji***

& Ors. v. ***The State of Mysore & Ors.***[4] wherein the Constitution Bench of this Court, while interpreting Article 15(4) of the Constitution, held that the said provision was made to subserve the interest of the society at large by promoting advancement of weaker sections of the society and, thus, it authorises the State to make special provision for such weaker sections. The only exception was that such a special provision to be made by the State should not completely exclude and ignore the rest of the society. Further, while making such a provision, the State was supposed to approach its task objectively and in a rationale manner and it has to take reasonable and even generous steps to help the advancement of weaker elements; the requirement of the community at large must be borne in mind and a formula must be evolved which should strike a reasonable balance between the several relevant considerations. Likewise, after the insertion of clause (5) to Article 15 by the Constitution (Ninety-Third Amendment) Act, 2005, another enabling provision was introduced empowering the State to make any special provision by law for advancement of any socially and educationally backward classes of citizens or for the Scheduled Tribes or the Scheduled Castes insofar as such special provision relates to admission to the educational institutions, including the private professional educational institutions, whether aided or

4 (1993) Supp. 1 SCR 439

unaided. Thus, in terms of Article 15(5) of the Constitution, the State was empowered to provide reservation to such weaker sections even in respect of unaided institutions, including minority institutions. In that context, the High Court went into the arithmetic of the seats that have been earmarked under Rule 7 of Rules, 2009 for candidates belonging to different reserved categories in different disciplines or subjects and on that basis came to the conclusion that the distribution of seats to those categories clearly demonstrates that sufficient number of seats have been allotted also for unreserved categories in different disciplines or subjects of post graduate medical and dental courses in Medical and Dental colleges in the State of Madhya Pradesh. In the process, the High Court dispelled the fear of the writ petitioners that the unreserved category candidates scoring high marks than the reserved category candidates will not get seats in the discipline or subjects of their choice.

15) Rule 10 of Rules, 2009 lays down the eligibility conditions for candidates for taking the CET for admission to post graduate medical and dental courses in private unaided medical and dental colleges in the State of Madhya Pradesh. One of the eligibility conditions specified in Rule 10(2)(iii) is that an eligible candidate must permanently be registered by Madhya Pradesh Medical/ Dental Council (and/or MCI/DCI) on or before

April 30, 2009. The validity of this Rule was challenged by some of the writ petitioners on the ground that this Rule bars candidates who are permanently registered with other State Medical/Dental Councils from taking the CET. This contention of the writ petitioners has been accepted declaring Rule 10(2)(iii) of the Rules, 2009 as *ultra vires*. The conclusion of the High Court on this aspect has become final as the State has not filed any appeal thereagainst.

16) In nutshell, the decision of the High Court on the three crucial aspects is on the following premise:

(i) **Re.: Admissions –** Reading Section 6 with Section 3(d) of the Act, 2007, which deals with the CETs, it is held that provisions prescribing a CET for the purpose of admission to private unaided institutions are constitutional and valid since the same are in consonance with the dictum of the Constitution Bench judgment of this Court in the case of ***T.M.A. Pai Foundation***, as per the law specially laid down in paragraphs 58 and 59 of the said judgment. The High Court has pointed out the manner in which the dictum of ***T.M.A. Pai Foundation*** is explained in the Constitution Bench judgment of this Court in the case of ***P.A. Inamdar***, and applying the same the High Court had held that there is no violation of the fundamental rights of the writ petitioners since the provisions constituted reasonable restriction as accepted by and, therefore, saved under

Article 19(6) of the Constitution. Quoting paragraphs 136 and 137 of ***P.A. Inamdar***, the High Court held that the CET prescribed under Section 6 of the Act, 2007 will ensure that the merit is maintained. It is also concluded by the High Court that sufficient material that was placed on record to establish that prior to the enactment of the Act, 2007 clearly exhibited that private unaided institutions were not able to ensure a fair, transparent and non-exploitative admission procedure. As such, the High Court upheld the provisions of the Act, 2007 and the Rules, 2008 read with notifications issued thereunder to be constitutionally valid.

(ii) **Re.: Fee Regulation –** With regard to the challenge to Sections 4(1), 4(8) and 9 of the Act, 2007 read with Rule 10 of the Rules, 2008, it is held that the power of the Fee Regulatory Committee under the provisions was only *'regulatory'* and the purpose of which was to empower the Committee to be satisfied that the fee proposed by the private professional institutions did not amount to profiteering or commercialisation of education and was based on intelligible factors mentioned in Section 9(1) of Act, 2007 providing a canalised power which was not violative of the fundamental rights of the private professional institutions to charge their own fee.

(iii) **Re.: Reservation –** The challenge to Section 8 of Act, 2007 and Rules 4 &

7 of Rules, 2008 relating to reservations were not seriously pressed by the appellants in view of the amendment to Article 15, whereby clause (5) was inserted, by the Constitution (Ninety-Third Amendment), 2005. In any case, the High Court has examined the said provisions and concluded that sufficient number of seats were allotted for the unreserved category in different disciplines and subjects, and that a reasonable balance had been struck between the rights of the unreserved category candidates and the reserved category candidates.

17) The aforesaid background, as narrated by us, would make it clear that the attack to the constitutional validity of the Act, 2007 read with Rules, 2008 and Rules, 2009 primarily touches upon the following three aspects:

(i) The impugned provisions usurp the rights of educational institutions to conduct exam and admit the students. It is argued that this right has been specifically recognised in ***T.M.A. Pai Foundation***, which legal position is reiterated in ***P.A. Inamdar***. Therefore, right to admission of students in unaided recognised educational institutions is to be exercised by these institutions. Even if CET is to be held for this purpose, it is these institutions which can join together and hold such a test. The only obligation is that the selection process needs to be fair, transparent and non-exploitative. The State can step in and oversee/supervise the process

of admission, which is to be essentially taken by the educational institution to ensure that the aforesaid triple test of fair, transparent and non-exploitative selection process is followed. It is argued that the power given to the State would be only regulatory in nature and under the garb of this power the State cannot take away the right to admit the students which vests with the educational institutions. In nutshell, the submission is that holding of CET by the State under the provisions of the Act, 2007 read with the Rules framed thereunder amounts to impinging upon the fundamental right of the appellants to establish and manage professional educational institutions, which is now brought at par with the rights of minority institutions to establish such institution given to them under Article 30 of the Constitution. It was further argued that whereas the power of supervision on the part of the State may amount to reasonable restriction and, therefore, that would satisfy the test laid down in Article 19(6) of the Constitution, but taking away the power of admission entirely by conducting CET and even counseling would fall foul of the fundamental right to carry on occupation guaranteed under Article 19(6) of the Constitution and such provisions cannot be saved under Article 19(6) of the Constitution as well as they disturb the Doctrine of Proportionality. It was submitted that the State's intervention, if at all, can only be with

consensual arrangement and not otherwise.

(ii) Likewise, it is argued by the appellants that as a facet of Article 19(1)(g) of the Constitution, right to fix the fee is conferred upon these educational institutions which are unaided and, therefore, the State cannot assume that power to itself. Here again, the power of the State was limited to that of '*policing*', viz., to ensure that the fee fixed by the educational institutions does not amount to '*profiteering*' and that it does not result in '*commercialisation*' of the education. According to the appellants, to ensure this, the only mechanism that can be provided is the *'Complaint Mechanism'* whereunder after the fee is fixed by the educational institution and if there is grievance of the students or parents or even the authorities against the same there can be a scrutiny by the appropriate committee (to be set up for this purpose) to see that the fee fixed is not excessive and meets the parameters laid down in ***T.M.A. Pai Foundation***. It was conceded that while doing so the State can also, as a watchdog, ensure that no capitation fee is charged from the students by the educational institutions. It was submitted that contrary to the above, in the instant case, the provisions of Act, 2007, read with Rules thereunder, authorize the Committee set up by the Government to fix the fee thereby denuding the institutions of their right completely, which is anathema to the right of

the educational institution to carry on their *'occupation'* of running the educational institutions, as a fundamental right.

(iii) Third challenge is to the provision of Section 8 of Act, 2007 and Rules 4 and 7 of Rules, 2008 dealing with the reservations.

18) Mr. K.K. Venugopal, learned senior counsel appearing for some of the appellants, spearheaded the attack to the impugned judgment with his usual fervor, panache and dexterity. Dr. Rajeev Dhawan was the other senior counsel who made his own detailed submissions with a melange of legal acumen, coupled with passion, thereby exacerbating the attack. They were joined by Mr. Raval, Mr. Ajit Kumar Sinha and Mr. Rakesh Dwivedi, learned senior counsel, who supported them in great measure. Their forceful onslaught was bravely faced and defended by Ms. Vibha Dutta Makhija, learned senior counsel who appeared for the State of Madhya Pradesh. Others, who supported her in countering the submissions of the appellants, depicting in the process the other side with terse and astute aphorisms of the stark ground realities, were Ms. Pinky Anand, learned Additional Solicitor General, Mr. Vikas Singh, learned senior advocate and Mr. C.D. Singh, learned Additional Advocate General. Whether the defence has been able to blunt the attack of the appellants

and has emerged successful in its endeavor would be known at the final stages of the judgment when the arguments of both sides are suitably dealt with by this Court.

19) The central theme of the arguments of the learned counsel for the appellants was that by the impugned legislation the State seeks to wipe out the choice available with the appellants institutions to devise their own admission procedure and the provisions of Section 6 read with Section 3(d) necessitate that the admission be carried out only on the basis of a CET to be conducted by the State Government or any agency appointed by it. Section 7 of the Act provides that the admission in violation of the provisions of the Act (i.e. in a manner otherwise than by a CET conducted by the State Government or the agency appointed by it) would be void. In addition, Section 9 of the Act provides for the Committee defined under Section 3(c) of the Act to *'determine'* and *'fix'* the fees to be charged by the appellants and thereby completely trample the rights of the appellants to determine and charge the fee. The Committee is not an independent Committee but is manned by Government officials and, therefore, effectively the State Government has devised the said mechanism to fix the fees of the private colleges. Section 8 provides for reservation in private institutions, including post-graduate courses, which the appellants

submit is impermissible in light of the law laid down by this Court in the case of ***Ashok Kumar Thakur*** v. ***Union of India & Ors.***[5].

20) It is their submission that right available to the appellants institutions is to devise their own admission procedure, subject to the condition that the procedure so devised ought to be *'fair'*, *'transparent'* and *'non-exploitative'*. Thus, the rights available to the institutions under Article 19(1)(g) includes a right to admit students on a fair basis and as such the appellants can choose to admit students on the basis of the CET conducted by an association of institutions coming together (as has been provided in ***P.A. Inamdar***) or one conducted by the State and the choice also includes to a right to admit students on the basis of the CET conducted by the Central Government. The right to choose is the right that is available to the individual institutions under Article 19(1)(g) and the impugned legislation which abrogates the said right falls foul of Article 12 of the Constitution of India.

21) The counsel for the appellants traced the history of judicial journey by referring to the judgment in in ***Unni Krishnan, J.P. & Ors.*** v. ***State of Andhra Pradesh & Ors.***[6] In that case, this Court considered the

5 (2007) 4 SCC 361
6 (1993) 1 SCC 645

conditions and regulations, if any, which the State could impose in the running of private unaided/aided recognized or affiliated educational institutions conducting professional courses. The extent to which the fee could be charged by such institutions and the manner in which admissions could be granted was also considered. The Court thereafter devised a scheme of *'free seats'* or the state quota seats and *'payment seats'* or the management quota seats, under which a higher fee could be charged from the students taking admission against the *'payment seats'* and a lesser fee would be charged from students occupying the *'free seats'*. This Court held that a fee higher than that charged by the Government institutions for similar courses for the *'payment seats'* can be imposed, but that such fee could not exceed the maximum limit fixed by the State. With regard to private aided recognized/affiliated educational institutions, the Court upheld the power of the Government to frame rules and regulations in matters of admission and fees, as well as in matters such a recruitment and conditions of service of teachers and staff.

22) The learned counsel emphasised that the aforesaid control mechanism failed and the position was remedied by this Court in ***T.M.A. Pai Foundation***. It held that if the institutions are entirely self-financing, the State shall have minimal interference and the interference can be made

only for the purposes of *Maintaining Academic Standards*. Besides this, it was held that the colleges enjoy the greatest autonomy and the same ought to be protected. The Court has considered the scope of the *'reasonable restrictions'* that can be provided by the State under Article 19(6) of the Constitution and held that the said power does not confer upon the State to take over the control of the affairs of the institutions which have been held to be reasonable restrictions. The appellants referred to the observations made in paragraph 54 with great emphasis:

> "54. The right to establish an educational institutional can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

It was argued that this Court, by overruling ***Unni Krishnan***, has recognised the need and importance of private educational institutions and the necessity of giving them the requisite autonomy in their functioning, management and administration.

23) The submission was that this Court in ***T.M.A. Pai Foundation*** laid down the following principles and the scope of the rights enjoyed by the private

institutions imparting professional education:

(a) that the institutions have a fundamental right to establish, run and maintain professional institutions and the rights flow from Article 30(1) in respect of minority institutions and Article 19(1)(g) in respect of minority as well as non-minority private unaided institution;

(b) the private institutions that do not receive any aid out of State funds enjoy a greater autonomy in their day-to-day functioning and the autonomy includes:-

(i) a right to admit students;

(ii) a right to set up a reasonable fee structure;

(iii) a right to appoint staff (teaching and non-teaching); and

(iv) a right to take action if there is dereliction of duty on the part of any employees.

and

(c) the fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions which would not be protected under Article 19(6) of the Constitution.

24) Continuing the narration of judicial pronouncement, the appellants' counsel submitted that in spite of the said observations and the law laid down by this Court in ***T.M.A. Pai Foundation*** defining the scope of the right of the

private institutions to run and manage the professional colleges, some States did not adhere to the same and issued Government Orders relying on the observations made by this Court in paragraph 68 of the said judgment. The said orders were challenged before this Court, which came to be decided in the case of ***Islamic Academy or Education & Anr.*** v. ***State of Karnataka & Ors.***[7], which laid down certain broad modalities and creation of Committees for *'regulating'* the admission procedure and the fee structure. It was submitted that certain States enacted laws which were again in violation of the fundamental rights and, therefore, the same were challenged before this Court. The matter was referred to a larger Bench, which answered the reference in the case of ***P.A. Inamdar***, wherein it was held as under:

> "132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost. If they do so, they lose the protection of Article 30(1).
>
> > "There is nothing wrong in an entrance test being held for one group of institution imparting same or similar education. Such institutions situated in one State or in

7 (2003) 6 SCC 697

more than one State may join together and hold a common entrance test.....”

xx xx xx

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

xx xx xx

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

Explaining their understanding of ***T.M.A. Pai Foundation*** and ***P.A. Inamdar*** in their own way, a passionate plea was made not to allow such legislations to remain on statute books which were palpably unconstitutional.

25) In addition to the aforesaid issues, which are founded on Article 19(1)(g) of the Constitution, additional arguments raised in this Court touch upon the