2. Section 36 clearly indicates that even an interim order can be executed in the same way as a decree. On the basis of that the Execution Petition was held as maintainable. Aggrieved by that the petitioner preferred the C.R.P.

3. It was submitted by the learned Counsel for the respondent that a well considered order has been passed by the Executing Court that when a person disobeys the interim order during the pendancy of the suit, it is always open to either move the Court for contempt or to execute the interim order passed by the Court.

In that view of the matter, no interference is called for. The C.R.P. is dismissed. No order as to costs.

ILR 1998 KAR 4237

TIRATH S. THAKUR, J

Nishanth Hiremath vs Dr. B.R. Ambedkar Medical College & Ors.*

KARNATAKA EDUCATIONAL INSTITUTIONS (PROHIBITION OF CAPITATION FEE) ACT 1984 (KARNATAKA ACT NO.37 OF 1984) — SECTION 5 AND ORDERS ISSUED BY THE GOVERNMENT OF INDIA ON 15TH AND 16TH MAY 1997 IN TERMS OF REGULATIONS FRAMED UNDER INDIAN MEDICAL COUNCIL ACT 1956 AND DENTIST ACT — Petitioners challenged the Tution Fee prescribed to various catagories on many grounds including the one that the Central Government alone is competent to prescribe the fee structure for private Medical & Dental Colleges.- Questions that arose for decision were

(a) Whether the State Government is competent to prescribe Fee structure for Private Medical and Dental Colleges; and if so, whether the same has been validly fixed?

(b) Whether the Orders issued by the Central Government, have been validly issued?

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* W.P. No. 33056/97 & Etc. dated 31st July 1998

HELD

(a) The power to fix the Fee structure for Private Medical and Dental Colleges is in terms of the Central enactments and Regulations exercisable only by Central Government and the State Government cannot independently of any such "Fee structure" evolve or determine the fee payable to such Institutions But so far as Government Medical and Dental Colleges are concerned the order was found valid and was allowed to be in force irrespective of the year of their admission. (Para 23)

(b) - Orders issued by the Central Government are not validly issued. (Para 28)

(c) Directions were given to the Central Government to fix Fee Structure for "Payment & Merit" seats in Private Medical and Dental Colleges in the State of Karnataka and the Fee Structure so fixed shall be applicable for the academic session of 1997-98 and onwards regardless of the year of admission of the students.

CASES REFERRED		**AT PARAS**
1. *AIR 1992 SC 2858 - Miss. Mohini Jain vs State of Karnataka and others*	*(Foll)*	2
2. *AIR 1993 SC 2178 - Unni Krishnan, J.P. vs State of A.P.*	*(Foll)*	2
3. *(1993) 4 SCC 112 - Shahal H. Musaliar & Anr. vs State of Kerala and others*	*(Foll)*	3
4. *1993(4) SCC 276 - T.M.A. Pai Foundation & Ors. etc., etc., vs State of Karnataka and others*	*(Foll)*	4
5. *(1994) 4 SCC 728 - T.M.A. Pai Foundation & Ors. vs State of Karnataka and others*	*(Foll)*	4
6. *(1995) 5 SCC 220 - T.M.A. Pai Foundation & Ors. vs State of Karnataka and others*	*(Foll)*	4
7. *AIR 1996 SC 2652 - T.M.A. Pai Foundation & Ors. etc., vs State of Karnataka & Ors. etc.,*	*(Foll)*	4

8. AIR 1964 SC 1284 - State of Orissa vs M.A. Tulloch	*(Foll)*	*22*
9. 1996(3) SCC 15 - Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigala Medical Educational & Charitable Trust vs State of Tamilnadu & Ors.	*(Foll)*	*22*
10. CA Nos.3576-77/98 dated 16.7.1998 - Medical Council of India vs State of Karnataka & Ors	*(Foll)*	*22*
11. AIR 1990 SC 1277 - M/s Shri Sitaram Sugar Company vs Union of India	*(Foll)*	*26*

Sri H.C. Sundaresh; Sri H.S. Chandramouli; Sri K. Appa Rao; Sri C.M. Raghunath; Sri Mahantesh S. Hosmat; Sri Veeresh B. Patil; Sri T.S. Mahantesh; Sri Satish M. Doddamani; Sri K.B.Y. Ballal; Sri R. Gururajan; Sri S.R. Shivaprakash; Sri M.V. Chandra Shekar Reddy; Sri V.R. Venkateshappa; Sri Umesh R. Malimath; Sri M. Narayana Reddy; Sri P. Chandra Mohan; Sri D.S. Joshi; M/s. Kamath & Kamath; Sri A. Jahavar Babu; Sri S.R. Venkateshappa; Sri Jayavittal Kolar; Sri V.A. Mohan Ranga; Sri Veena I Antin; Sri Manikappa Patil; Sri V.V. Upadhyaya; Sri G.S. Visweswar; Sri K.N.Subba Reddy; Sri B. Veerabhadrappa; Sri R. Sridhar Hiremath; Sri S.A. Nazeer; Sri Basavaprabu S. Patil; Sri D.S. Jayaraj; Sri K.V. Narasimhan; Sri K.S. Ramesh & Associates; Sri K.G.C. Prabhu; Sri B.M. Siddappa; Sri Erappa Reddy; Sri Hegde Associates; Sri M. Rajanna; Sri D. Nagajoythi and Vidyavathi; Sri J. Kottushittar; Sri P. Gopalakrishna; Sri K. Vijayakumar; Sri Sharada; Sri B. Chidananda; Sri B.A. Lokesh; Sri N.S. Srinivasan; Sri S. Basavaraj; Sri C.M. Nagabushan and P.V. Chandrashekar; Sri Gangadhar R. Gurumath; Sri G.S. Konnur; Sri Kaleemulla Shariff; Praveen Kumar Raj Kote; Sri V.T. Rayareddi; Sri C.M. Nagabhushana; Sri M. Sojon Poovayya; Sri.Songamesh G. Patil; Sri Irshad Ahmed K; Sri C. Prakash; Smt. Joythi M; Sri C.L. Vishwanath; Sri N. Kumar; Sri A.N. Radhakrishna; Sri S.A. Kalagi; Sri M.R, Naik; Sri Shivaraj P. Mudhol; Sri K.M. Eswarappa, Advocates for Petitioners

Govt. Advocates for R1 and Sri B.S. Patil; Sri M.R. Naik; Sri B. Veerabhadrappa; Sri M. Papanna; Sri K.L. Manjunath; Sri Zahedulla Mecca; Sri R.H. Chandangowdar;

Sri L.M. Chidandayya; Sri D.N. Nanjunda Reddy; Sri Ashok B. Hindhigeru; Sri G. Gangi Reddy; Sri V. Lakshinarayana; Sri Shylendra Kumar and Sri KAleemulla Shariff; Sri Ashok Haranahalli Advocates for Respondents.

ORDER

Tirath S. Thakur, J

In this bunch of Writ Petitions, the petitioners have called in question the validity of an order dated 22nd October, 1997, issued by the State Government, whereby tuition fee chargeable from candidates admitted to Medical and Dental Colleges in the State has been prescribed under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. They have also assailed the validity of orders dated 15th and 16th of May 1997, issued by the Government of India in terms of Regulations framed under the India Medical Council Act, 1956 and the Dentist Act, prescribing tuition fee payable by students admitted to Private Medical and Dental Colleges in the free and payment seats category. In two of the petitions viz., W.P. No. 21552/98 filed by the Medical College Association and W.P. No. 21655/1998 filed by the Dental College Association, a declaration to the effect that the Central Government alone is competent to prescribe the fee structure under the Regulation aforementioned has also been prayed for. The controversy arises in the following circumstances.

2. The Karnataka Prohibition of Capitation Fees Act, 1984 and the Rules framed thereunder forbid charging of any fee other than what is prescribed in terms of Section 5 thereof. In exercise of the power vested in them the Government prescribed a fee of Rs. 60,000/- per annum by a notification dated 5.6.1989, which came under challenge in Miss MOHINI JAIN vs STATE OF KARNATAKA & OTHERS[1]. The court while striking down paras 1(c) and 1(d) of the Notification, declared that education being a fundamental right flowing directly from the right to life guaranteed by Article 21, no fee which was in excess of what was chargeable from the candidates admitted to Government Institutions could be justified. Close on the heels of

1. AIR 1992 SC 2858

that decision came UNNI KRISHNAN, J.P. vs STATE OF A.P.[2], where the correctness of the view taken in MOHINI JAIN's case was also examined. The Court framed three questions for determination, out of which it answered two leaving the third open. On the first question formulated by it, the Court held that free education at State's expense was a fundamental right only for children upto the age of 14 years. Higher education including professional courses would, observed the Court depend upon the economic development in the Country. In regard to the second question, the Court held that while the right to establish an educational institution could be an occupation; the same was neither a trade nor a business nor even a profession with in the meaning of Article 19(1)(g). Any such right was not however absolute and did not carry with it the right to recognition or affiliation. Leaving the third question open, the Court held that keeping in view the limited outlays for education, private educational Institutions were a necessity in the present day context to supplement the State's efforts in providing education. These Institutions had of necessity to be self financing Institutions, which according to their lordships raised important incidental questions as to how much fee could be charged from those, who were admitted to undergo professional courses in the same and the whether the fee could include even the capital cost incurred on the setting up of such Institutions. The Court also recognised the need for providing for two categories of students admitted to such Institutions viz; students admitted on the basis of merit and those admitted against payment seats. Having said so, the Court formulated a Scheme para 6(a) and (b) where only are relevant for the present and may be gainfully extracted.

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

2. AIR 1993 SC 2178

shall fix the fee once every three years or at such longer intervals, as it may think appropriate.

(b) It would be appropriate if the U.G.C. frames regulations under Section 12A(3) of the U.G.C. Act, regulating the fees which the affiliated Colleges, operating on no-grant-in-aid basis, are entitled to charge. The Council for Technical Education may also consider the advisability of issuing directions under Section 10 of the A.I.C.T.E. Act, regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council and the Central Government may also consider the advisability of such relation as a condition for grant of permission to new medical colleges under Section 10-A and to impose such a condition on existing colleges under Section 10-C."

3. Pursuant to the directions given as a part of the scheme framed by their Lordships, the State Committees fixed the tuition fee payable by the merit and payment category of students. The fee so prescribed was also questioned before the Supreme Court in SHAHAL H. MUSALIAR AND ANOTHER vs STATE OF KERALA AND OTHERS[3] on the ground of being unrealistic with the result that the Court had to issue directions for refixing the same in the following words:-

"Within the next date of hearing the Governments of Karnataka and Tamil Nadu (through Committees appointed by them in that behalf) shall be-consider the fee structure notified by them. It shall be open to the petitioners to place such material as they think appropriate in that behalf before the Governments. The Governments may take a decision in view of such material or such other material as they may have in their possession."

4. Three more orders were thereafter passed by their lordships in T.M.A PAI FOUNDATION & ORS. Etc. Etc. vs STATE OF KARNATAKA AND OTHERS Etc. Etc.[4] T.M.A PAI FOUNDATION AND OTHERS vs STATE OF KARNATAKA AND OTHERS[5] and T.M.A. PAI FOUNDATION AND OTHERS vs STATE OF KARNATAKA AND OTHERS[6]. A reading of these orders shows that the necessity to fix the fee structure by judicial orders of the Court arose on account of the omission of the authorities concerned to do so or their failure

3. (1993) 4 SCC 112 4. 1993(4) SCC 276 5. (1994) 4 SCC 728
6. (1995) 5 SCC 220

to take the relevant factors into considerations. The Court was distressed at the inaction of the Authorities in the matter of evolving a viable and realistic fee structure having regard to the grounds realities as is apparent from the following passage of the order passed by their lordships in T.M.A. PAI FOUNDATION AND OTHERS etc vs STATE OF KARNATAKA AND OTHERS Etc[7].

> "We must express our distress at the inaction of the authorities pursuant to Para 6 of the Scheme aforementioned. Though a period of more than three years have passed by since the decision in Unnikrishnan, (1993 AIR SCW 863) the authorities mentioned in the said paragraph have not come forward with a workable, realistic and just fee structure, with the result that year after year, this Court is practically being forced to fix the fee on a tentative basis. Fixing the fees is not the function of this Court. It is the function of the Government, the affiliating Universities and the Statutory professional bodies like, University Grants Commission, Indian Medical Council and All India Council for Technical Education. At least now, we expect the concerned authorities to move in the matter with promptitude, and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the Orders made by this Court from time to time relating to fee structure. It shall be open to them to evolve such fee structure as they think appropriate, in such terms, and subject to such conditions as they feel are in the interests of the student community, the private professional colleges as also in public and national interest. We hope and trust that the fee structure to be evolved by them would take into consideration the ground realities and would be realistic and practical from the point of view of all concerned. In particular, we request the Central Government, including the Ministry of Education (Ministry of Human Resources Development), to take immediate steps to convene a meeting of all the concerned authorities as contemplated by Paragraph 6 of the Scheme and ensure that a proper fee structure is evolved for the medical, dental and engineering colleges through out the country. It shall be open to the authorities to fix separate fee structure for each of the State, if such a course is warranted. It may also be open to the authorities to fix different fee structure having regard to the location of the Colleges, to wit, a College in the City of

7. AIR 1996 SC 2652

Bombay may be allowed a different level of fees than a similar college (with similar facilities) situated in a rural area. To reiterate, the Central Government and the authorities concerned shall be free to evolve the fee structure in such appropriate manner as they think just and equitable to all concerned. We hope and trust that this would be done within a period of three months from today and the matter brought to the notice of this Court forthwith. We wish to make it clear that with effect from the academic year 1997-98, it shall be the responsibility of the authorities aforesaid to prescribed the fee payable in these colleges."

5. The Medical Council of India had in the meantime framed what are known as Medical council of India (norms and guidelines for fees and guidelines for admission in medial Colleges) Regulations, 1994 under Section 33 of the Indian Medical Council Act, 1956. These Regulations are applicable to M.B.B.S Courses offered by Medical Colleges established and or run by private educational Institutions and such other medical colleges to which the same are made applicable by the Government or the affiliating authority. Regulations 8 of the said Regulations prescribes that the fee structure fixed by the government of India shall be binding on all Institutions covered under Clause 2 of the said Regulations. The Dental Council of India has also framed similar Regulations making an identical provision in the same. Both the Councils had pursuant to the directions given by the Supreme court in Unnikrishnan's case taken steps for collection of data for purposes of prescribing a fee structure for those admitted to private educational institutions in the free and payment seats categories. Auditors engaged for the purpose appear to have undertaken a survey and collected the relevant material, based on which the Councils made their recommendations for fixing an appropriate fee structure to the Central Government. Upon consideration of the said recommendations, the Government of India by orders dated 15th and 16th May 1997 fixed the upper limits of the fee structure for merit and payment seats in private medical and Dental Colleges leaving the actual fee to be levied within the said limit to the fixed by the State Committees set up by the respective State/Union Territories. It also directed that the State Committees shall consist of a Vice Chancellor as the Chairman of the Committee and the State Health Secretary or his nominee and the Director, Medical Education as its Members. The relevant portion of order

dated 15.5.1997, issued by the Government which is similar to the other order dated 16.5.1997 may at this stage be extracted.

"I am directed to state that as required under clause 8(b) of the Medical Council of India (Norms and Guidelines for fees and Guidelines for admissions in Medical College), Regulations, 1994, the Government of India, have fixed the following upper limits of the fee structure for merit and payment seats in private medical Colleges:-

Payment Seats:- An amount of Rs. 1.10 lakhs per student per annum (12 months) shall be payable as fee. Out of this amount a sum of Rs. 20,000/- per student, per annum (fixed) in case of colleges which do not have their own hospital facilities and Rs. 7,000/- per student per annum (fixed) in case of colleges having partial hospital facilities will be paid back to the Government/authority running the hospital utilised by such medical colleges.

Free/Merit seats:- Rs. 13,000/- per student per annum shall be payable as fees.

The upper limits of fee as referred to above will be valid for a period of three years from the acadenic year 1997-98 after which it shall be revewed.

The actual fee to be levied within the above limits will be fixed by State Committees set up by the respective State Govts/ UTs. However, the amount payable by Medical Colleges not having their own hospital or having only partial hospital facilities shall under no circumstances be reduced.

The State/UTs Committees will consist of a Vice-Chancellors (as nominated by the concerned State/UT Govt.) as Chairman, the State Health Secretary or his nominee and the Director, Medical Education. The Committee can co-opt the services of an expert on Public Institution Finance. The Director, Medical Education shall be the Member Secretary of the Committee.

While fixing the fees, the State/UT Committees shall take into consideration the directions given by the Hon'ble Supreme Court of India in its judgment dated 9.8.1995 in the case of T.M.A. Pai vs State of Karnataka in W.P.(C) No. 317 of 1993. The State Committee shall notify the fees so fixed for general information."

6. Even before the issue of the above order, the State Government had interms of an order dated 26th April, 1997 appointed a Committee headed by the Vice Chancellor of the Rajiv Gandhi University of Health Sciences and comprising among others Principals of four medical Colleges in the State of Karnataka to study and recommend the fee structure in Private Medical and Dental Colleges of the State. This Committee submitted a report, on the basis whereof, the Government by order dated 22nd of October, 1997, fixed the fee structure in free and payment category of students as under:-

College	Free Seats.	Payment Seats.
Category 1.	13,000	1,00.000
Category 2.	13,000	90,000
Category 3.	13,000	80,000

7. In so far as Dental Colleges were concerned, the fee for a free seat in Government Colleges was fixed at Rs. 6,000/- whereas in the case of a free seat in Private Dental College the same was fixed at Rs. 8,000/- per student per annum. The fee for a payment seat was on the other hand fixed at Rs. 70,000/- p.a.

8. Aggrieved, the petitioners all of whom are students studying in private Medical and Dental Colleges in the State including some, who are undergoing the said courses in Government Colleges have filed these petitions assailing the validity of the above orders as already noticed earlier. Besides, the students, Associations of Medical and Dental Colleges have also questioned the validity of the fee structure on the ground of the same being unrealistic making it difficult for the Managements of the Colleges to run the Institutions.

9. Several contentions were urged on behalf of the petitioners to which I shall presently refer. Before I do so, I consider it appropriate to first deal with the submissions made by Mr. Veerabhadrappa, Counsel appearing for some of the petitioners, who argued that the classification of seats between Free and Payment seats was arbitrary nor was there any rationale underlying the said classification. It was urged that no legal duty was cast upon the payment category students to pay for the education of the merit students nor did the

meritorious students have any right to be education at the expense of those, admitted in the payment category. It was contended that the guidelines contained in the decision of the Supreme Court in Unnikrishnan's case could not be construed as the law declared by their lordships under Article 14 of the Constitution and that the reference made by the Apex Court to the 11 Judge Bench for examining the correctness of the Scheme formulated in the said decision sufficiently showed that the legal position on the subject was uncertain and in a state of flux. These submissions need notice only to be rejected. The Supreme Court has in Unnikrishnan's case considered the theoretical basis underlying the evolution of the concept of two categories of candidates admitted to private Medical and Dental Colleges and observed thus:-

> "The theoretical foundation for our method is that a candidate/ student who is stealing a march over his compatriot on account of his economic power should be made not only to pay for himself but also to pay for another meritorious student. This is the social justification, behind the fifty per cent rule prescribed in clause (2) of this Scheme. In the interest of uniformity and in the light of the above social theory, we direct the State of Andhra Pradesh to adhere to the system derived by us."

10. It is not in the light of the above legally permissible for this Court to re-open an area of controversy, which stands authoritatively concluded by their lordships nor would any debate as to the wisdom or the workability of the Scheme formulated by their lordships be conducive to judicial discipline. It is also futile for the petitioners to wish away the effect of the decision rendered by the Apex Court or to argue that the said decision does not constitute a binding precedent. The fact that the correctness of the scheme formulated by the Court has been referred to a 11 Judge Bench for examination also does not affect the efficacy of what has already been held by the Court till such time the larger Bench expresses a different view. A reference to a larger Bench cannot even otherwise deprive the earlier declaration of the law by the Court of its efficacy. Such decisions continue to hold the field till such time they are over-ruled. Besides, admissions to private Medical and Dental Colleges are for the present being regulated by the provisions of the Scheme and the Statutory Rules framed pursuant to the directions contained in the same. Such admissions including the fee structures prescribed

by the competent Authority shall therefore have to be judged on the touch-stone of the Scheme and the rules, on the subject. I have in that view no difficulty in rejecting the submission of Mr. Veerabhadrappa, that the validity of the classification of the seats or the philosophy underlying the same can or should be examined by this Court.

11. But for the above the rest of arguments advanced by learned Counsel for the parties by and large revolved round two primary questions that fall for consideration. These are:-

(i) Whether the State Government is competent to prescribe the fee structure for Medical and Dental Colleges, established in the State and if so, whether the same has been validly fixed and

(ii) If the answer to question (i) be in the negative, whether the orders issued by the Central Government, have been validly made.

I propose to deal with the questions ad seriatim.

12. Re: question (i) :- The order issued by the State Government owes its authority to the powers vested in it under Section 5 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, The said order, it is significant to note does not refer to orders dated 15th and 16th May, 1997 issued by the Central Government, whereby the actual fee payable was left to be determined by the State Committees. The question therefore is whether in the light of the provisions framed under the Central Enactments, the State Government could invoke the powers vested in it under Section 5 of the Act, afore-mentioned in respect of Medical and Dental Colleges in the State. It was argued on behalf of the petitioners that the Regulations of the Medical Council of India and the D.C.I. having been framed under the Central enactments viz., the Indian Medical Council of India Act, 1956 and the Dentist Act, 1940 the same would have over-riding effect denuding any authority other than the one recognised by the said Regulations of the power to prescribe the tuition fee in respect of Private Medical and Dental Colleges. The Authority to fix the fee structure for such Colleges in the Country, argued learned Counsel for the petitioners, vested only with the Central Government to the exclusive of all others including the State Governments concerned. This line of reasoning was supported by

Mr. Ashok Haranahalli, Counsel appearing for the Union of India and M/s. Nanjundareddy and Seshachala, Counsel for the M.C.I. and the Dental Council of India. They urged that the Central enactments covered the entire field in regard to not only the permission to establish Medical and Dental Colleges in the Country, but also their recognition and the standards of education imparted therein. It was contended that the Scheme of the two Central enactments on the subject as also the Regulations framed thereunder pursuant to the directions issued by the Supreme Court in UNNIKRISHNAN's case left no scope for any authority other than the authorities under the Central enactments to prescribe the fee structures for such Colleges. The power to notify the fee so prescribed could however be exercised by the State Government under Section 5 only for ensuring that any demand or recovery of fee in excess of the one prescribed under the Regulations could be made a basis for initiating appropriate prosecution proceedings under the State enactment, but any such power to notify could not, according to the learned Counsel, be invoked in derogation of the fee structure prescribed by the competent authority under the Regulations.

13. Mr. Ramesh, learned Government Advocate, appearing for the State Government, on the other hand, argued that the power to fix the fee structure in respect of private Medical and Dental Colleges flowed from the provisions of Section 5 of the State Act, which could not be abrogated by the Regulations framed under a Central enactments. He urged that the fee prescribed by the State Government was pursuant to the Scheme framed by the Supreme Court and the directions contained in the same.

14. The order issued by the State Government is in two parts - one relating to the fee structure prescribed for Government Medical and Dental Colleges and colleges of the autonomous Institutions and the other relating to private Medical and Dental Colleges. In so far as the order prescribes the fee payable by students admitted to Government and other Colleges established by autonomous Institutions like KIMS, Hubli and VIMS, Bellary, two contentions were urged on behalf of the petitioners. Firstly, it was contended that the Committee appointed by the Government was not required to submit any proposal for enhancement of fee in such Colleges. Secondly, it

was urged that the enhancement of fee from Rs. 2,000/- to Rs. 8,000/- was without any basis and was exorbitant to the extent of being irrational. There is no merit in either one of these submissions. By Notification dated 5.6.1987, the fee payable by a student admitted to a Government College was fixed at Rs. 2,000/-. This was enhanced to Rs. 8,000/- in the case of Government Medical Colleges and Rs. 6,000/- in the case of Dental Colleges by Government Order dated 5.9.1995; ever since when the students admitted to such Colleges are paying the enhanced amount prescribed by the Government. The impugned order does not direct any further enhancement. What appears to have happened is that the amount of fee prescribed by government order dated 5.9.95 was not, being charged from those admitted to Government Colleges prior to 1995-96 who continued to pay fee at the rate of Rs. 2,000/- p.a. only. An audit objection regarding short collection us also raised as is apparent from the letter of the Director Medical Education dated 23.7.1998 addressed to the Government. The impugned Government Order simply directs that a fee of Rs. 8,000/- shall be payable by all students regardless of the year of their admission. In the process those of the students who were paying only Rs. 2,000/- by reason of their having been admitted prior to 1995-96, are also required to pay at Rs. 8,000/- p.a. from the year 1997-98 onwards. There is neither any legal infirmity nor irrationality in making the prescribed fee amount payable by even those who had because of an erroneous interpretation of Government Order dated 5.9.95 paid only Rs. 2000/- p.a., even for the period following 1995-96. The continuance of that position would have in fact been anomalous which was rightly rectified by government Order dated 22.10.1997.

15. Besides the Colleges being Government Institutions, the power to prescribe a suitable fee could be legitimately claimed by the government especially when the Regulations framed by the M.C.I. and the Dental Council have no apply to such Institution nor were such Institutions brought within the purview of the Scheme framed by the Supreme Court in Unnikrishnan's case. That apart, the fee of Rs. 8,000/- p.a. fixed by Government Order dated 5.9.1995 which is not under challenge is also not so exorbitant having regard to the fee structure otherwise prevalent in similar Institutions established in private sector as to render the same irrational or discriminatory. As a matter of fact, the Supreme Court had itself fixed the fee payable

for free seats in a private Medical College at Rs. 20,000/- for the academic year 1996-97. A fee of Rs. 8,000/- per annum for a similar seat in a Government or an autonomous Institutions cannot therefore be said to be either exorbitant so highly excessive as to warrant interference with the same. The challenge to the order is to that extent repelled and the fee prescribed thereby upheld.

16. In so far as the said order prescribes fee payable to private Medical and Dental Colleges, the competence of the State Government to prescribe the same shall have to be examined in the light of the provisions of the Indian Medical Council Act, the dentist Act, and the decision of the Supreme Court in Unnikrishnan's case. The Indian Medical Council Act, 1956 was enacted to provide for recognition of the Medical qualifications granted by Medical Institutions and to prescribe standards of Post Graduate Medical Education for the guidance of Universities and to advise Universities in the matter of securing uniform standards for such education. Section 16 of the Act, empowers the Medical Council to ask for such information as Council may require from time to time as to the Courses of study and the examinations undertaken in order to obtain such qualifications. Section 17 envisages appointment of Inspectors by the Council for inspection of Medical Institutions, Colleges, Hospitals or to attend any examination held by any University or Medical Institution for the purpose of recommending to the Central government recognition of medical qualifications granted by that University or Medical Institutions. Section 19 empowers the Council to represent to the Central government for the withdrawal of recognition should it appear to the Council that the course of study and the examination to be undertaken in, or the proficiency required from candidates at any examination held by, any University or Medical Institutions or that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such university or medical Institution do not conform to the standards prescribed by the Council. Section 19A, empowers the Council to prescribe minimum requirement for granting recognized Medical qualifications, where as Section 33 empowers it to make Regulations generally to carry out the purposes of the Act, including those providing for the Courses and period of study and practical training to be undertaken, the subjects of examination and the standards of proficiency therein

to be obtained by the Universities or Medical Institutions for grant of recognised medical qualifications.

17. By Indian Medical Council (Amendment) Act, 1993, which came into force with effect from 27th August, 1992 and replaced the Ordinance promulgated earlier Sections 10A, 10B and 10C were introduced prescribing the procedure for permission to establish new Medical Colleges or to start new courses of study and providing for the non-recognition of the medical qualifications in certain situations and the time for obtaining permission for certain existing Medical Colleges, the amendment also brought in Clauses (fa), (fb) and (fc) in Section 33 of the Act, empowering the Council to make Regulations regarding the form of the Scheme, the manner in which the same has to be preferred and the fee payable under Section 10A of the Act. In terms of a newly added clause(fb), the MCI could make Regulations regarding any other factors under clause (g) of sub-section (7) of Section 10A. The statement of objects and reasons for introduction of these amendments show that the Amendments had been necessitated to prevent a mushroom growth of the Medical Colleges in the Country especially because certain State Government were giving approval for setting up of such Colleges without insisting upon the provision of the basic pre-requisits such as Hospital equipments, Labouratories or qualified faculty members. The introduction of the Amendments had the effect of taking over the power to permit the establishment of such Institutions from the State Governments and vest the same in the Central Government which alone is now competent to grant such permission not only for new Institutions but even for new courses of study. Any increase in the intake capacity of such Institutions can also be made only under the Orders of the Central Government in accordance with the provisions of the amended Act. In other words, all important facets of Medical Education in the country such as the authority to permit the establishment of Institutions offering the same, their recognition de-recognition, addition of new courses and increase in their intake capacity, are now governed by the Central legislation. The Act provides for a constant monitoring of the standard of education imparted in such institutions and withdrawal of recognition granted to the same, if the same falls below what is prescribed by the Council. Similar amendments were carried out in Dentist Act 1948 also.

18. The question then is whether the Scheme of the two enactments envisages a matter so important as the method of making admissions to such Institutions and the fee structure applicable to the same being kept out of their purview. The answer must in my opinion be in the negative, not only because the enactments do not leave any grey area for being covered by any State Legislation but also because the Supreme Court has in UNNI KRISHNAN's case unequivocally declared that the Medical Council of India case in exercise of its powers under Section 10A impose compliance with the fee structure prescribed under the Regulation as a condition precedent for grant of permission to establish new Institutions. It can do so under Section 10C qua Institutions already in existence. Before I refer to the observations made by the Supreme Court, let me deal with the provisions of the Medical Council Act at some length.

19. Sections 10A, 10B and 10C of the Medical Council of India Act, seen in the light of the power to monitor the standards of Education imparted in Medical Colleges under Sections 18,19, 19a of the Act, sufficiently show that the Government of India and the M.C.I. exercise plenary control over the new and existing institutions alike. This control is not confined only to Academic Standards, but extends to a critical examination of their economic viability also. This is evident from the scheme required to be submitted by such Institutions under Section 10A of the Act, prescribed by what are known as Establishment of New Medical Colleges Regulations 1993 framed by the Medical Council of India in exercise of its power under Section 10A Read with Section 33 of the Act. A reading of the Scheme would show that the same not only prescribes the eligibility criteria but stipulates various other requirements to be satisfied by the Organisations eligible to make an application. The Scheme recognises only Universities, State Governments, Union Territories, autonomous bodies, Societies, Public religious or charitable Trusts as eligible to apply. It is note worthy that the qualifying criteria prescribed by the Scheme inter alia requires the eligible Organisation to abide by the provisions of the Act and Regulations framed thereunder. The Scheme stipulates that such Organisation shall qualify for permission to establish new Medical Colleges only if the conditions prescribed are fulfilled. Apart from the other conditions that are stipulated, the applicant is required to disclose that it has a

feasible and time bound programme to set up the proposed Medical College besides the required infra structural facilities including adequate hostel facilities for Boys and Girls. In Part II of the Application prescribed under the scheme, the applicant is inter alia required to disclose the means of financing including contribution of the applicant, grants and donations etc. The revenue assumptions on the basis of which the Project is proposed to be set up including the fee structure and the estimated annual revenue from various sources is also required to be set. The operating results including income statement, cash flow Statement and projected balance sheets, are also required to be submitted. It is therefore evident that the Regulations not only deal with the standard of education to be imparted in the Institutions set up under the Act, but recognise a direct nexus between such standards and the means by which the same can be achieved. It would not therefore be incorrect to say that the scheme of the Act and the Regulations take care of not only the academic standards but attach significance to the economic feasibility of maintaining such standards in the context of sources of finance and the revenue assumptions on which the Institutions proposes to run the College. This is understandable for the Academic Standards depend to a very large extent on the quality of Medical and Scientific equipment, plant and machinery, availability of adequate building, including that required for housing of the staff, students Hostels, Laboratories, Auditoria; Animal House, Mortuaries and such other infrastructural facilities. These facilities would in turn require not only capital outlay but also recurring expenditure which makes generation of adequate funds and identification of the sources from which such funds would flow absolutely essential for purposes of working out the economic and academic viability of setting up of any such Institution and maintaining the prescribed standards. Prescribing the fee structure for institutions set up to impart medical education specially when the concept of self financing institutions has been recognised by the Supreme Court is therefore a significant feature which is and ought to be an essential feature of the Act. Suffice it to say that the enactments do not after their Amendment recognise the duality of control over such Institutions.

20. The observations made by the Supreme Court in para 6(b) of the Scheme formulated by their lordships to the effect that the statutory authorities like M.C.I. frame appropriate regulations

prescribing the fee structures have therefore to be seen and appreciated in the context of the scheme of the Act. So viewed, there is no difficulty in holding that the fee structure applicable to Private Medical and Dental Colleges can be regulated by Statutory Regulations framed under the two Central enactments. The Medical Council has accordingly framed Medical Council of India (Norms and Guidelines for fees and Guidelines for Admissions in Medical Colleges), Regulations 1994. Regulations 8 of the said Regulations, which relevant for our purposes runs thus:-

> "Fee Structure - (a) The term "fees" as applicable to 'free seats' and "Payment Seats" shall cover all the institutional fees including tuition fee.
>
> (b) The fee payment for payment seats in private medical colleges shall be fixed by the Government of India from time to time. The fee structure fixed by the Government of India shall be binding on institutions covered under Clause 2 of these regulations."

21. It is evident from the above that the power to fix the fee structure is exercisable by the Government of India which is in terms of clause(b) (supra) binding upon all the Institutions covered under Regulation 2. Although the Regulations are not happily worded and leave much to be desired, yet it is manifest that the essential purpose underlying Regulation 8 is to identify the authority competent to prescribe the fee structure and to make the same binding on all the Institutions. Two aspects may at this stage be noticed. One relates to the power of the Central Government to fix the fee payable against 'merit seats' in private educational institutions and the other to the disparity between the fee payable by candidates admitted to such colleges and those admitted to Government Colleges. It was contended on behalf of the State that the power to fix the fee interms of Regulations 8 (supra) was exercisable by the Government of India only in so far as the payment seats in private medical colleges are concerned. The words "Fee Payment for payment seats in private Medical Colleges shall be fixed by the Government of India" were according to the learned Counsel, capable of only one interpretation namely that the power to fix the fee exercisable by the Central government was limited only to payment seats in private medical colleges. The argument nodoubt attractive at its face value is not

sound enough to be upheld. There are two reasons why I say so. Firstly because the Regulation when read as a whole does not exclude free seats in Private Medical Colleges from their purview. Clause(a) of Regulation 8, refers to fee payable both qua the free seats and payment seats in private medical Institutions. Clause(b) of Regulation 8 also refers to the 'fee structure' which is made binding upon all Institutions. The expression 'Fee structure' is wide enough to include not only fee fixed for the payment seats in private medical colleges but even free seats in such Colleges. That apart, the Scheme of the Regulations does not suggest as though the Rule framing Authority had intended the fees payable against a free seat in a private medical college to be determined by any other Authority. The Regulations also do not indicate that the fee payable against a merit seat has to be the same as may be chargeable from a candidate undergoing any such course in a Government Medical College. If the intention was to prescribe a uniform fee for merit candidates in private colleges and those admitted to Government Colleges it may have been possible to say that the exclusion of fee for merit seats from the purview of Regulation 8, was deliberate. In any such situation, the question of fixing the fee payable by a merit student admitted to a private college may not have arisen for the fee payable by him would have been the same as was prescribed for students admitted to Government colleges. That however is not so. Even when the Supreme Court had been fixing the fee structure tentatively, the fee payable by a student admitted to a Government College was different from that payable by a merit student admitted to a private College. For the year 1996-97, while the fee payable by such a student in a Government College was Rs.8,000/- that payable by a merit student in a private College was fixed by the Supreme Court at Rs.20,000/-. The Court has thus recognised the difference between candidates admitted to Government Medical Colleges on the one hand and those admitted to private medical colleges on the other in so far as the fee payable by them was concerned. I am therefore inclined to hold that the provisions of Regulation 8 and the orders that have been passed by the Supreme Court from time to time do not envisage fixation of fee payable by merit students in private Colleges by any authority other than the Central Government.

22. The validity of the Regulations has not been questioned nor was it argued that the same go beyond the power conferred upon

the M.C.I. by Section 33 of the Act. Such being the position, the Act and the Regulations entirely cover the field relating to the fixation of the fee structure leaving no room for the State Government to prescribe a fee in derogation of what is prescribed under the Central Act. It follows that to the extent Section 5 of the State Act purports to empower the State Government to prescribe a fee structure for private Medical and Central Colleges in the State, the same is repugnant to the power conferred upon the Central Government in terms of the Regulations framed by the M.C.I. and the Dental Council of India. As held by the Supreme Court in STATE OF ORISSA vs M.A. TULLOCH[8] the provisions of the two legislations containing contradictory provisions is not the only criterion for determining repugnancy. Such repugnancy may arise even on account of a superior legislature making a law, covering the entire filed. This principle was reiterated by the Supreme Court in THIRUMURUGA KIRUPANANDA VARIYAR THAVATHIRU SUNDARA SWAMIGALA MEDICAL EDUCATIONAL AND CHARITABLE TRUST vs STATE OF TAMILNADU AND OTHERS[9] where the questions that fell for consideration was whether proviso to Section 5(5) of State Act, was repugnant to the provisions of Sections 10A, 10B, and 10C of the Indian Medical Council Act, 1956 in as much as, the State Act, required the permission of the University established under the former Act to establish a medical College in the State before such College could be affiliated to it. The Court held that both the provisions dealt with the establishment of Colleges and since Section 10A covered the entire field, the proviso to Section 5(5) of the State Act, requiring prior permission of the State Government for establishing such a College was repugnant to Section 10A of the Central Act. This position has been re-affirmed by their lordships in MEDICAL COUNCIL OF INDIA vs STATE OF KARNATAKA AND OTHERS[10] where the effect of the provisions of the Medical Council of India Act, on the provisions of Karnataka Universities Act and Karnataka Capitation Fee Act, under which the State Government had enhanced the intake capacity of Medical Colleges in the State without the M.C.I., permitting such enhancement was being examined by the Apex Court. The Court declared that the Indian Medical Council Act, prevails over any State enactment to the extent the same is

8. AIR 1964 SC 1284 9. 1996(3) SCC 15
10. C.A.Nos.3576-77/98 dd 16.7.98

repugnant to the provisions of the said Act, even though the State Act may be relatable to entries 25 and 26 of this Act. It also declared that Regulations framed under Section 33 of the M.C.I., Act with the previous sanction of the Central Government were statutory in character. The State Acts, the Court held, had to give way to the provisions of the Central enactment. The Court observed:-

> "The State Acts, namely, Karnataka Universities Act and Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in Collection of capitation fee by colleges and for that the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the Regulations."

23. I therefore have no difficulty in holding that the power to fix the fee structure for private Medical and Dental Colleges is in terms of the Central enactments and the Regulations referred to earlier exercisable only by the Central Government and that the State Government cannot independently of any such fee structure evolve or determine the fee payable to such Institutions. The fee prescribed by the Central Government in exercise of its statutory powers can however be notified by the State Government under Section 5 of the Capitation Fee Act, so that recovery of any amount in excess of what is prescribed can be dealt with as an offence punishable under Section 17 of the said Act. That is how both the enactments can be harmoniously construed without being brought into direct conflict with each other. The first part of Question (i) is answered accordingly, which makes it unnecessary for this Court to examine the second aspect viz., whether the fee prescribed by the State Government has been validly prescribed. Since however the said aspect was also argued at some length, I may as well deal with the same no matter briefly. It was contended on behalf of the petitioners that the fee fixed by the State Government was unrealistic and based on no material or data whatsoever. The Committee constituted by the State Government it was argued, had not undertaken any survey or examined the economics of the Institutions while recommending the fee structure, which the Government have accepted without a critical examination of the same. These submissions find substantial support from the record produced by Mr. Ramesh, learned Government

Advocate. The record, it is noteworthy comprises a few handwritten pages, from which all that appears is that the Committee had held its meetings on three occasions i.e., on 12th May 1997, 17th June 1997 and 3rd July, 1997. As to what transpired in the said meetings is not however borne out nor does the record contain any material collected or considered by the Committee on the basis whereof which made its recommendations. In the matter of fixing the fee structure, the Committee was not only required to examine the economics of running the Institutions, but also take the ground realities into considerations. This could be done only if the Committee had some material before it on the basis whereof it would arrive at a just and fair conclusion. It could as well have carried out a study or engaged on agency for collecting the requisite information from the Institutions as a relevant input for purposes of determining as to what would be a fair and realistic fee structure. No such exercise obviously was undertaken nor is any reason for the omission forth coming. The manner in which the Committee proceeded is therefore most unsatisfactory to say the least. While it is true that in matters like evolving a fee structure, it is difficult to be a correct to the last penny and the authority examining the issue shall have to be given some play at the joints to work out what is fair and proper in its opinion, yet any such process of evaluation cannot be allowed to be whimsical as it is bound to appear if it is unsupported by any material. The least which the Committee ought to have done was to collect the relevant date and adopt some norms for purposes of arriving at its conclusion and making its recommendation. Its failure to have done so was bound to vitiate any decision taken by the Government who had also done no more than accepting the recommendations made to them. I consider it unnecessary to dilate further on this aspect having regard to the fact that on the question of competence of the State Government qua private Medical and Dental Institutions my answer has been in the negative.

Re:question (ii):-

24. Two aspects were argued in so far as this question is concerned, one relating to the alleged non availability of any material to support the outer limits fixed by the Central Government and the other pertaining to the delegation of the power to fix actual fee payable to the State Committees. It was contended by Mr.

Veerabhadrappa, Counsel appearing for some of the petitioners that the Central Government did not have any material to justify the fixation of the upper limits stipulated in the impugned orders which according to the learned Counsel were very high from the point of view of students. It was also urged that the Government of India could not have delegated its statutory duty of fixing the fee structure in favour of the State Committees, who had no role to play under the Regulations.

25. Mr Naik, Counsel appearing for the Association of the Managements on the other hand canvassed that the fee prescribed by the Central Government was lower then what had been recommended to it by the M.C.I., and the Dental Council based on the date collected by them in the survey undertaken by their agencies. He submitted that the fee structure evolved by the Central Government needed to be reviewed and suitably hiked to enable the Colleges to continue functioning. Both Mr. Naik as also Counsel appearing for other petitioners assailed the order passed by the Central Government on the ground of violation of principles of natural justice. It was contended that not only because of the nature of the powers exercised but also the observations made by the Supreme court in the orders referred to earlier, it was essential that the Managements as also the students were given an opportunity of being heard before Government could prescribe the fee structure.

26. Mr. Haranahally, Counsel appearing for the Central Government argued that the Central Government had before it the recommendations of the Medical Council of India and the Dental Council as also recommendations by various State Governments as to the fee structure that could be prescribed under Regulation 8. He contended that the decision of the Central Government was based on a fair and objective consideration of the said material and could not therefore be dubbed as arbitrary or fanciful. He urged that the powers exercisable by the Central Government under Regulation 8 were legislative in character, to which the principles of natural justice had no application. In support he placed reliance upon the decision of the Supreme court in M/S SHRI SITARAM SUGAR COMPANY vs UNION OF INDIA[11]. It was also contended that the Central Government had not delegated to the State Governments the power

11. AIR 1990 SC 1277

to fix the actual fee payable for the Colleges in their respective States as argued on behalf of the petitioners. Instead all that the orders issued by the Government meant to convey was that in case any College was prepared to charge an amount lower than that was stipulated by the Central Government, it would be at liberty to do so.

27. A perusal of the two orders passed by the Central Government, would however show that what is prescribed by the Central Government by the said Orders is only the upper limit of the fee structure. The orders specifically use the expression "Government of India have fixed the following upper limits of the fee structure". Again the orders use the expression "the upper limits of fee as referred to above will be followed for a period of 3 years for the academic year 1997-98 after which it shall be reviewed". It then proceeds to direct that the "actual fee to be levied within the above limits will be fixed by the State Committees set up by the respective State Governments/UTs." The orders then direct the constitution of such Committees and their composition. They also direct that the State Government (UT Committee) shall take into consideration the directions given by the Supreme Court in its Order dated 9th of August 1996 passed in T.M.A PAI vs STATE OF KARNATAKA and that the State Committees shall notify the fee so fixed for general information. It is therefore much too evident to bear repetition that what is prescribed by the Central Government is only the upper limits of the tuition fee chargeable by private Medical and Dental Colleges in the Country. The actual fee has in terms of the said orders to be evolved by the State Committees within the said upper limits. It is not therefore correct to suggest that what is stipulated in the orders is the fee structure itself and not the upper limits of the same nor does the interpretation placed by Mr. Haranahalli on the orders find any support from the language employed in the same. The Orders are in fact capable of only one interpretation viz:, the Government of India have only prescribed the upper limits of fee leaving the actual fee to be determined by the State Committees. The question however is whether Regulation 8 of the M.C.I. Regulations referred to earlier permits a delegation of this kind. The answer has to be in the negative. Neither the Acts nor the Regulations framed thereunder envisage or permit a delegation of what is essentially a duty to be performed and a power to be

exercised by the Central Government. Any such delegation may in fact amount to abdication of the designated statutory authority of its powers in favour of an authority, which has no role to play under the Regulations. The power to fix the fee structure was vested in and ought to have been exercised only by the Central Government without leaving the same to be determined by the State Committees. It is no doubt true that the order passed by the Supreme Court in the Scheme formulated in Unnikrishnan's case envisage that the State Committees would work out the fee structures, but such Committees would have no role to play after the statutory Rules were framed and authorities for prescribing the fee structure designated in the same. This is apparent from para 6(c) of the order in Unnikrishnan's case, which reads as under:-

> "The several authorities mentioned in sub-paras (a) and (b) shall decide whether a private educational institution is entitled to charge only that fee as is required to run the college or whether the capital cost involved in establishing a college can also be passed on to students and if so, in what manner. Keeping in view the need, the interest of general public and of the nation, a policy decision may be taken. It would be more appropriate if the Central Government and these several authorities (U.G.C., I.M.C. and A.I.C.T.E.) co-ordinate their efforts and evolve a broadly uniform criteria in this behalf. Until the Central Government, U.G.C,. I.M.C. and A.I.C.T.E. issue orders/regulations in this behalf, the Committee shall be subject to the orders/regulations, issued by Central Government, U.G.C., I.M.C. or A.I.C.T.E., as the case may be."

28. Since the M.C.I., and the Dental Council have framed Regulations in which the authority competent to prescribe the fee is designated it was the authority so empowered, which alone could have discharged that function. Inasmuch as the authority competent under the Regulations failed in the discharged of its duty and delegated its functions to a Committee not recognized under the rules, it committed an error, which is apparent on the face of the record. The impugned orders issued by the Central Government are therefore liable to be quashed on that short ground alone.

29. In the light of the above, it is unnecessary for this Court to examine the nature of the power exercised by the Central

Government and whether or not the principles of natural justice would be applicable to the same. It would also be unnecessary in that view to consider whether the Central Government really had any material before it to justify the upper limits of the fee structure prescribed by it. Keeping in view, however, the fact that the petitioners may be affected by any decision that the Central Government may take as regards the fee structure applicable to them and since the impugned Government Orders are being quashed for fresh orders on the subject, I see no reason why the Central Government cannot while issuing fresh orders examine the representations and the material, if any, which the petitioners may choose to produce before it. Consideration of any such material would not however imply that the petitioners have a right to be heard before the Government take any final decision prescribing the fee structure. Question (ii) is also for the above reasons answered in the negative.

30. In the result, these petitions succeed and are hereby allowed, but only to the following extent:-

1) Karnataka State Government Order dated 22nd of October 1997, in so far as the same prescribes fee for private Medical and Dental Colleges in the State of Karnataka shall stand quashed as incompetent. The said order shall however remain effective in so far as the same fixes the tuition fee for Government Medical and Dental Colleges and makes the same payable by all candidates irrespective of the year of their admission.

2) Central Government Orders dated 15th and 16th of May, 1997 prescribing the upper limits for the payment and free seats and delegating the fixation of the actual fees to the State Committee shall also stand quashed in so far as the same pertain to private medical and Dental Colleges in the State of Karnataka.

3) The Central Government shall within a period of two months from today fix the fee structure for payment and merit seats in private Medical and Dental Colleges in the State of Karnataka taking into consideration the representation and the material, if any, produced along with the same by the petitioners provided such representations are received by the Central Government within three weeks from today.

4) The fee structure prescribed by the fresh orders that the Central Government may pass shall be applicable for the academic session 1997-98 onwards regardless of the year of admission of the students covered by the same.

5) Pending fresh orders by the Central Government, the Managements of the institutions shall be entitled to charge only such fee as was prescribed for the immediate past year, i.e., 1996-97. Any such payment or recovery shall however be subject to the fee structure that may eventually be notified by the Central Government entitling the Managements and the students to claim additional amounts or refunds as the case may be depending upon whether the fee prescribed by the Government is higher or lower than what has already been received or paid by them.

6) Writ Petitions filed by students undergoing medical and Dental Courses in Government Medical Colleges shall however stand dismissed and the parties left to suffer their own costs.

ILR 1998 KAR 4264

H.N. NARAYAN, J

Sri Ananda Raj vs A. Crusoe Raj*

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908) Section 60(1) (b) - Tools of Artisan are not liable for attachment and sale in Execution of a Decree — Whether "LATHE" used in Engineering work shops is a Tool of Artisan? It is not a Tool of Artisan. High Court did not agree with the Ruling of Rajasthan High Court on this point reported in HAJARIRAM vs GHANASHYAM DAS, AIR 1972 Rajasthan 62.

The Rajasthan High Court in HARJIRAM vs GHANSHYAM DAS, relying upon the definition of tool given in the Inperial Dictionary of the English Language (1969) and the Oxford English Dictionary (1933) Vol. XI, held as follows:

*Civil Revision Petition No.297/1998 dated 17th April 1998