



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) S.B. Civil Writ Petition No. 11734/2018

1. Indira Gandhi Memorial Mahavidyalaya, Ganeshpuram, Jaghina Road, Bharatpur Through Secretary Ramveer Singh Son of Shri Mohan Sing, Aged 48 years Resident Of Village And Post Jaghina, Bharatpur Raj..
2. Mahalaxmi Mahavidyalaya, Nangla Medsingh, Jheel, Bayana, District Bharatpur Through Secretary Sanju Dhakar Son of Shri Ninua Dhakar, Aged 33 Years, Resident Of Village Nangla Medsingh, Post Beerampura, Tehsil Bayana, District Bharatpur.
3. L.H. Degree College, Pichuna, Tehsil Roopwas, District Bharatpur Through Secretary Kedar Nath Sharma son of Shri Bhudev Prasad Sharma, Aged 41 Years, Resident Of Pichuna, Tehsil Roopwas, District Bharatpur.
4. Padmini Devi Girls College, Weir, District Bharatpur Through Secretary Bacchu Singh Son Of Shri Girraj Prasad, Aged 48 Years, Resident Of Todawala Mohalla, Near Kumher Gate, Weir, Bharatpur.
5. Baba Bhopsingh Mahila Degree College, Village Post Lakhanpur, Tehsil Nadbai, District Bharatpur Through Secretary Rakesh Parihar Son of Deewan Singh, R/o Yaduraj Nagar, Bharatpur.

----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary, Department Of Higher Education Department, Secretariat, Jaipur.
2. Commissioner, College Education, Jaipur, Rajasthan.

----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 11998/2018

St. J.k.l. Education Society, Jaipur, Through Its Secretary Dr. Suresh Sharma S/o Shri H.s. Sharma, Aged About 46 Years, R/o 3590, K.g.b. Ka Rasta, Johari Bazar, Jaipur Rajasthan

----Petitioner

Versus



1. State Of Rajasthan Through Secretary, Department Of Higher Education, Government Secretariat, Rajasthan, Jaipur.
2. Commissioner, College Education, Shiksha Shankul, Jaipur, Rajasthan.
3. University Of Rajasthan Through Registrar, JIn Marg, Jaipur.

-----Respondents

(3) S.B. Civil Writ Petition No. 11999/2018

Pratap Vidyapeth Sansthan, Jaipur, Through Its Secretary Ram Prasad Sharma S/o Shri Ram Sahay Sharma, Aged About 46 Years, R/o Dayal Bag, Shyampura, Bhuria, Vatika Road, Jaipur Rajasthan

-----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Department Of Higher Education, Government Secretariat, Rajasthan, Jaipur.
2. Commissioner, College Education, Shiksha Shankul, Jaipur, Rajasthan.
3. University Of Rajasthan Through Registrar, JIn Marg, Jaipur.

-----Respondents

(4) S.B. Civil Writ Petition No. 12000/2018

Gyanjyoti Education Society, Jaipur, Through Its Secretary Dr. Basant Gupta S/o Dr. G.p. Gupta, Aged About 38 Years, R/o R-14, Raghu Vihar, Near Sms Stadium, Lal Kothi, Jaipur Rajasthan

-----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Department Of Higher Education, Government Secretariat, Rajasthan, Jaipur.
2. Commissioner, College Education, Shiksha Shankul, Jaipur, Rajasthan.
3. University Of Rajasthan Through Registrar, JIn Marg, Jaipur.

-----Respondents

(5) S.B. Civil Writ Petition No. 12002/2018



Saraswati Degree College, Anirudh Nagar, Bharatpur Through
Secretary Rajendra Singh S/o Nem Singh, Aged 38 Years
Resident Of Anirudh Nagar, Bharatpur Raj.

----Petitioner

Versus

1. State Of Rajasthan Through Principal Secretary,
Department Of Higher Education Department, Secretariat,
Jaipur.

2. Commissioner, College Education, Jaipur, Rajasthan.

----Respondents

(6) S.B. Civil Writ Petition No. 12099/2018

Tagore College Manage And Run By Institute Of People
Progressive Samiti Through Its Secretary, Mirza masroor Beg S/o
of Shri zafar Ahmed, Aged About 40 Years, R/o Mirza Manzil,
Near Radio Sation Bazar, Sawai Madhopur Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Department Of
Higher Education, Government Secretariat, Rajasthan,
Jaipur.

2. Commissioner, College Education, Shiksa Sankul, Jaipur,
Rajasthan.

3. University Of Kota, Through Registrar, Kota.

----Respondents

(7) S.B. Civil Writ Petition No. 12163/2018

1. Shyam College, Village Dehlal Didwana, Tehsil Lalsot,
District Dausa, Through Secretary Suresh Chand Sharma
S/o Shri J p Sharma, Aged 41 Years, R/o. 319, Barket
Nagar, Jaipur

2. Frame College For Girls, Nangal Barsi Road, Jirota Mode,
Dausa Through Secretary Mridul Shah Sisodia S/o Shri
Ram Kripal Sisodiya, R/o. D-10, Anandvihar, Jagatpura,
Jaipur

3. Shyam Girls College, Tehsil Dehkala Didwana, Tehsil
Lalsot, District Dausa, Through Secretary Suresh Chand
Sharma S/o Shri J. P. Sharma, Aged 41 Years, R/o. 319,
Barket Nagar, Jaipur

4. Prerna Balika Mahavidhalaya, Barsinghpura Road,



Khandela, District Sikar Through Secretary Sunil Kumar Sablania S/o Shri Nattu ram Sablania, Sablania Barsinghpura Road, Khandela, District Sikar

5. Adarsh Mahavidhalaya, Deu, Tehsil Kheenwsar, District Nagaur Through Secretary Smt. Manisha Singh W/o Shri Onkar Singh Rathore, Aged 40 Years, R/o. Vpo Deu, Tehsil Kheenwsar, District Nagaur
6. Maharshi Gautam College, Maharshi Gautam Marg, Opp. Krishi Upaj Mandi, Bhilwara Through Secretary Om Prakash Vyas S/o Ram Niwas Vyas, R/o. Maharshi Gautam College, R.k. Colony, Bhilwara
7. Yogeshwar Mahavidhalaya, Kunwa, Tehsil Chikli, District Dungarpur Through Secretary Vipin Kumar Labana S/o Kailash Ram Labana, Aged 27 years, R/o. Rachika Phala, Near Gss, Tehsil Simalwada, District Dungarpur
8. Saraswati Mahavidhalaya, Badrajun, Ahora, District Jalore Through Secretary Vijay S/o. Bagirath Jat, R/o. M.p. Badrajun, Tehsil Ahora, District Jalore
9. Ranabai Mahavidhalaya, Hasiyas Road, Merta Road, Tehsil Merta, District Nagaur Through Secretary Bhanwar Lal Khileri S/o Man Swaroop, Aged 38 Years, R/o. Nandra, Tehsil Makrana, District Nagaur
10. Mayur Mahavidhalaya, Jhalara Road, Anekant Colony, Kuchman City, Nagaur Through Secretary Smt. Raju Devi W/o Begharam, R/o. Anekant Colony, Jabra Road, Kuchmancity, Nagaur
11. Ashirwad College, Bithdi, Tehsil Phalodi, District Jodhpur Through Secretary Paras Parihar S/o. Poonaram Parihar, Village Sadawta, Po Bithari, Tehsil Phalodi, District Jodhpur
12. Marudhar Mahavidhalaya, Bansur, Behind Anaj Mandi, Bansur, Alwar Through Secretary Ratti Ram Yadav, S/o Toda ram Yadav, Village Balawas, Tehsil Bansur, District Alwar
13. Prince Mahila Mahavidhalaya, Makrana, Manglana Road, Makrana, Nagaur Through Secretary Kesaram S/o Dholaram, R/o. Vpo Jusri, Tehsil Makrana, District Nagaur

----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary,



Department Of Higher Education Department, Secretariat,
Jaipur.

2. Commissioner, College Education, Jaipur, Rajasthan.

----Respondents

(8) S.B. Civil Writ Petition No. 12286/2018

1. Gurukripa Shikshan Sansthan Mahavidhalaya, Peeth
Dungarpur Through Secretary Vipin Kumar Labana S/o
Kaluram Labana, Aged 37 years, R/o. Rati Ka Fala, Near
Gss Peeth, Tehsil Simlwara District Dungarpur Raj.

2. Smt. Anar Devi Balotiya Shikshan Prashikshan Sansthan,
Aduka, Tehsil Chidawa, Jhunjhunu Through Secretary
Virendra Balotiya S/o Richpal, R/o. Choudhary Colony,
Ward No. 16, Chidawa, District Jhunjhunu Raj.

----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary,
Department Of Higher Education Department, Secretariat,
Jaipur.

2. Commissioner, College Education, Jaipur, Rajasthan.

----Respondents

(9) S.B. Civil Writ Petition No. 12359/2018

Tagore College, Aklera Manage And Run By Tagore Sodh Avam
Vikas Sansthan Through Its Secretary, Girvesh Kumar S/o Sh.
Mohan Lal, Aged about 38 years, R/o Hitkari Bhawan, Shivdass
Ghat Street, Rampura, Kota Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Department Of
Higher Education, Government Secretariat, Rajasthan,
Jaipur.

2. Commissioner, College Education, Shiksha Shankul,
Jaipur, Rajasthan.

3. University Of Kota Through Registrar, Kota.

----Respondents

(10) S.B. Civil Writ Petition No. 18704/2018

Rajasthan Pradesh Niji College Sangh, Jat Complex, Nawalgarh
Road, Shivsinghpura, Sikar, Through Its Vice President Vishal
Mahala, Son Of Shri Bhagirath Singh Mahala, Aged About 41





Years, Resident Of B-4, Jamunapuri, Murlipura Scheme, Jaipur
(Raj.)

----Petitioner

Versus

State Of Rajasthan, Through Commissioner, College Education,
Commissionerate Of College Education, Jaipur.

----Respondent

(11) S.B. Civil Writ Petition No. 19219/2018



Shri Banke Bihari Mahavidyalaya, Near Rajkheda Bus
Stand, Rajkheda, District Dholpur Through Society Shri
Maharana Pratap Shiksha Samiti, Bahtana, Tehsil Deeg,
District Bharatpur Through President Ravindra Pal Singh
Parmar S/o. Shri Nemsingh Parmar, Aged 45 Years R/o.
Village Bahtana, Tehsil Deeg, District Bharatpur (Raj.)

Ravindrapal Singh Parmar Mahavidyalaya, Town Kaman
District Bharatpur Through Society Shri Maharana Pratap
Shiksha Samiti, Bahtana, Tehsil Deeg, District Bharatpur
Through President Ravindra Pal Singh Parmar S/o. Shri
Nemsingh Parmar, Aged 45 Years R/o. Village Bahtana,
Tehsil Deeg, District Bharatpur (Raj.)

----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary,
Department Of Higher Education Department, Secretariat,
Jaipur.
2. Commissioner, College Education, Jaipur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Khurshid Ahmed Khan Mr. M.S. Raghav Mr. Vijay Poonia
For Respondent(s)	:	Mr. Prakhar Gupta for Dr. Vibhuti Bhushan Sharma, AAG Mr. RA Katta Ms. Anita Aggarwal

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment / Order

Reserved on 27/07/2020



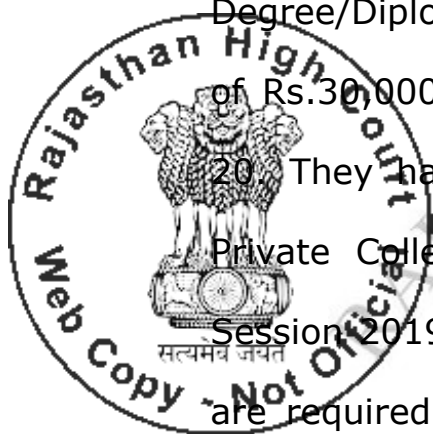
Pronounced on 07 /09/2020

1. By way of filing SB Civil Writ Petition No.18704/2018, the Federation of Private Colleges in Rajasthan has challenged the advertisement dated 31/07/2018 whereby the private Colleges have been asked to obtain No Objection Certificate (NOC) from the State Government for starting various professional Degree/Diploma Courses and annual fees equivalent to the sum of Rs.30,000/- has been demanded for Academic Session 2019-20. They have also challenged the provisions contained in the Private Colleges Policy issued by the Rajasthan State for the Session 2019-20 wherein under Clause 19.2, the private Colleges are required to deposit Rs.30,000/- as annual fees after having permanent NOC of the State Government.

2. In SB Civil Writ Petition No.11734/2018, which has been preferred by individual private Colleges & institutions, prayer has been made to quash and set aside the order dated 08/05/2018 whereby demand was raised for deposit fees for renewal from the institutions which are stated to be having permanent NOC while they have already obtained temporary NOC for the year 2016-17, 2017-18 and 2018-19 and therefore no NOC was required for the year 2018-19.

3. In SB Civil Writ Petition Nos.11998/2018 & 11999/2018, 12000/2018, 12002/2018, 12099/2018, 12163/2018, 12286/2018 and 12359/2018 similar prayer has been made.

4. In SB Civil Writ Petition No.19219/2018 prayer has been made to quash the order dated 09/08/2018 and 14/08/2018 whereby demand has been made by the respondents for applying for NOC for Academic Session 2019-20 and also for depositing



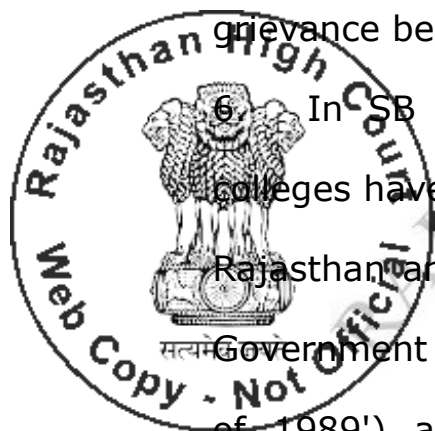


fees thereto although the petitioners-colleges had already possessed permanent NOC vide order dated 26/06/2016.

5. Thus, for the purpose of adjudication of the dispute, the facts from SB Civil Writ Petition Nos. 11734/2017, 18704/2018 and 19219/2018 shall be referred as there are three different prayers which are required to be addressed to as the question and grievance being the same.

6. In SB Civil Writ Petition No.11734/2018, the petitioners-colleges have submitted that they are affiliated to the University of Rajasthan and are governed by the provisions of Rajasthan Non-Government Educational Institutions Act, 1989 (for short, 'the Act of 1989') and the Rules of 1993 made thereunder and are recognized societies under the Societies Registration Act. It is stated that the State Government is required to issue NOC for starting Colleges in any faculty and the Education Department of the Government of Rajasthan issued a policy effective from 2015-16 inviting applications for registration of colleges for education. The policy provided that for the purpose of establishment of individual college for imparting education, a college must obtain temporary NOC and a procedure was laid down for applying for the same. It is stated that the petitioners-colleges were provided temporary NOC for the year 2016-17, 2017-18 and 2018-19.

6.1 However, the grievance raised is with regard to the order dated 08/05/2018 issued by the Commissioner, College Education, Rajasthan wherein it was addressed to that a last opportunity is being provided for obtaining NOC for the Session 2018-19 alongwith late fees of Rs.85,000/- to be deposited by opening of the On-line Portal for the period from 15/05/2018 to 31/05/2018. It was also mentioned that those Colleges, which have temporary





NOC for last three years, would also be required mandatorily to deposit annual fees and apply for NOC again failing which proceedings for cancellation of the NOC would be initiated.

6.2 This order is under challenge in most of the writ petitions, as noticed above.

6.3 Learned counsel for the petitioners submitted that once the

petitioners have already obtained NOC for the Academic Session 2016-17, 2017-18 and 2018-19, no fresh NOC was required to be applied for. It is stated that the Director of the College Education

with ulterior motive has forced the petitioners institutes to again apply. Learned counsel further submitted that such an action is

arbitrary and unjustified. It is submitted that during continuity of

3rd Academic Session and when they have full approval regarding

continuity of the Session, the demand of fresh NOC is unjustified

and the petitioners cannot be forced to apply again for obtaining

NOC. All the petitioners, as pointed out above, except the

petitioners in SB Civil Writ Petition Nos.18704/2018 and

19219/2018, have made identical prayers and identical documents

have been filed. Hence this Court need not unnecessarily go to the

facts of the other cases for the purpose of adjudication of the

common issue involved in these writ petitions.

7. In SB Civil Writ Petition No.19219/2018 learned counsel for

the petitioners submitted that in terms of the Private College

Policy 2015-16, the petitioners-colleges had obtained permanent

NOC vide order dated 26/06/2016 commencing from the Session

2015-16.

7.1 However, a general order was issued by the Commissioner,

College Education on 09.08.2018/14.08.2018 directing all the

private Colleges, which were interested to continue, for obtaining



of NOC for the Session 2019-20. Copy of the order dated 09/08/2018 and 14/08/2018 placed on record show that all the Colleges which have permanent NOC would be required to submit on-line all the information relating to the College and also deposit annual fees failing which the proceedings under Rule 7 of the Rules of 1993 would be undertaken. Vide another order dated 14/08/2018 procedure has been laid down for applying for the Certificate/NOC for the Session 2019-20.

7.2 Learned counsel for the petitioners submitted that the orders impugned deserve to be quashed being unjustified and go contrary to the provisions of the Act of 1989 and the Rules of 1993. Learned counsel further submitted that once an institute already has permanent NOC and is duly affiliated with the University of Rajasthan, it cannot be forced to obtain a fresh NOC again.

8. In the aforesaid backdrop, it would be appropriate to first deal with the arguments raised by the learned counsel for the respective writ petitioners.

9. Mr. Vijay Poonia, learned counsel appearing for the Rajasthan Private Colleges Federation submitted that the annual fee, which is being charged by the respondent-State from the private Colleges, which are having permanent NOC, is unjustified and illegal. A list of as many as 67 private colleges has been mentioned in the writ petition which possess permanent NOC from the State. It is submitted that the object of formulation of Private Colleges Policy as per its preamble is meant for establishment of new Colleges of quality infrastructure and teaching facilities with adequate staff for teaching standard education. The Policy also relates for old Colleges with respect to introduction of new subjects/faculties.



Thus, if a particular College is already having permanent NOC, no further NOC would be required from Government unless it adds new subjects or faculty. The NOC for the new subjects or faculty would not mean seeking NOC for all subjects and the programs which the College is already running. Learned counsel further submitted that there is no sort of power available with the State to provide such Clauses as Clause 19.2 and Clause 7 in the said Policy wherein it is directed that a sum of Rs.30,000/- shall be charged. Learned counsel further submitted that the State Government does not possess the locus for demanding the amount after it has reached to the conclusion that the members of the Private College Federation have already attained the standards due to which the permanent NOC was granted.

10. Learned counsel for the petitioners referred to the provisions of Section 3 of the Act of 1989. He relied on the judgment rendered by the Apex Court in **T.M.A. Pai Foundation and others Vs. State of Karnataka and others: (2002) 8 SCC 481.**

11. Learned counsel for the petitioners further submitted that while such a provision was already there in the previous policy, it is his submission that such provisions will only have effect in future but it will not affect those colleges which have already possessed NOC. If the petitioners have been depositing the additional amount after having obtained permanent NOC under the scheme of 2016-17, 2017-18 and so on, the petitioners cannot be bound down to challenge legality of such demand and the theory of approbate and reprobate would not apply. Learned counsel also submitted that once permanent NOC is being granted, a legitimate expectation has arisen that henceforth, after

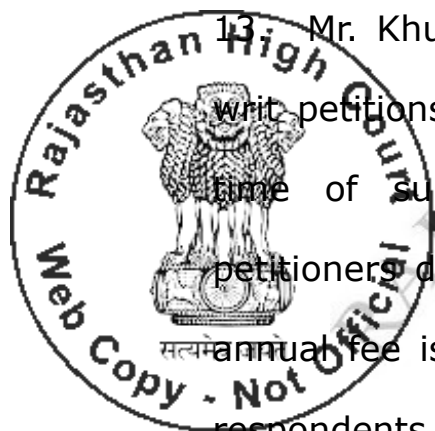


having obtained permanent NOC, the petitioners need not further seek NOC from the State Government.

12. Learned counsel further submitted that there is no locus of the State Government after the permanent NOC has been given to demand for additional amount or for forcing the petitioners to apply again for NOC.

13. Mr. Khurshid Ahmed Khan, who appeared in other batch of writ petitions on behalf of the petitioners, submitted that at the time of submitting of application for temporary NOC, the petitioner deposited fees for the purpose of inspection etc. This annual fee is taken year wise. However, from 2015 onward, the respondents have started demanding for amount even after permanent NOC has been granted. Learned counsel thus assailed the orders dated 09/08/2018 and 14/08/2018. Learned counsel adopts the arguments which have already been raised with respect to the writ petitions challenging the order dated 08/05/2018. Learned counsel Mr. Khan submitted that the circular issued dated 08/05/2018 directing for the institutions to deposit fees and obtain NOC for the Session 2018-19 with last opportunity for applying on-line, is unjustified and illegal. The petitioners-Colleges have already obtained temporary NOC for the Session 2016-17, 1017-18 and 2018-19. It is further submitted that the action amounts to unjust enrichment on the part of the State Government which cannot be allowed. Learned counsel has also relied upon the provisions of the Act of 1989 and the Rules of 1993 to submit that the provisions go contrary to the scheme of the Act of 1989 and the Rules of 1993.

14. Per-contra, learned counsel for the respondents submitted that the procedure for demanding the fee from the petitioners





which have already received permanent NOC does not go contrary to the Act of 1989 or the Rules of 1993 nor it goes contrary to the law laid down by the Apex Court. With respect to writ petition preferred by the Federation, learned counsel has challenged the locus on the ground that there is no trade dispute and as the federation is registered under the Trade Union Act, as per definition as provided under Section 2(4) read with Section 2(g), the petitioners cannot be allowed to raise the dispute in the aforesaid manner as it is not a trade dispute.

15. Learned counsel for the respondents asserted that once the petitioners have been depositing the amount each year after introducing the policy from 2015, they cannot turn around and challenge the said policy. Merely because a new policy is introduced each year, the contents of the policy and conditions for payment of fees and application of renewal for permanent NOC, cannot be challenged now and the writ petitions deserve to be dismissed on the ground of estoppel. He relied on the judgment of the Apex Court in the case of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others: (2011) 5 SCC 435.**

16. Learned counsel for the respondents submitted that as it is a policy decision, this Court would not have the scope to interfere with such conditions in the policy decision. He relied on the judgments of the Apex Court in **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi: (2006) 10 SCC 337** and **Union of India and others Vs. Tejram Parashramji Bombhate and others: (1991)3 SCC 11.**



17. Learned counsel for the respondents has taken this Court to the preamble of the Act of 1989 to submit that the petitioners would be governed under the same. He also relied on Section 37, 43-D & E and also the definition Clause 2(q) to submit that the State has role to play at all times.

18. Mr. Vijay Poonia, learned counsel for the petitioners in ~~petitioner~~ submitted that the fees cannot be imposed on recognized institutions. The policy introduced is basically a procedure and method by which the institutions have been informed as to how application for grant of NOC shall be made and under the garb of policy, demand cannot be raised as against the institutions which have already possessed permanent NOC. Learned counsel further submitted that they have challenged the order and the advertisements which have been issued.

19. Having noticed the aforesaid arguments, this Court finds that the moot question involved in the present writ petitions is with regard to two aspects; (a) whether the fees for granting NOC can be charged each year ? and (b) after the institute has been granted permanent NOC, whether the State can demand annual fees from such institutions for grant of NOC ?

20. The State Government issues Private Colleges Policy for establishment of the Private Colleges each year. A No Objection Certificate (NOC) is required to be obtained for the purpose of establishment of the College. For the said purpose, a fixed fees has been laid down under the Policy and if a new Private College is required to be established, it has to deposit the said fees whereafter the State Government and its authorities conduct inspection and grant temporary NOC. The objective for inspection is to ascertain that the quota of higher education is ensured by the



newly established Private Colleges and the minimum required infrastructure and instructional facilities have been provided as per the norms and standards for establishment of Private College.

21. As per the Policy, for Academic Session 2018-19, A College, which has completed five Academic Sessions after being granted temporary NOC each year, would be eligible for grant of permanent NOC. The parameters for laying down the instructional and infrastructural facilities have also been provided under Clause 5.2 of the said Policy.

22. From perusal thereto, this Court is satisfied that the State Government would be entitled to demand annual fees each year for grant of temporary NOC as it has to conduct inspections and also may have to conduct surprise inspections during the year to ascertain that the institute is providing the minimum required standard of educational facilities and continuing to provide so each year.

23. Therefore, the first aspect of demanding fees for each year during five years for temporary NOC, cannot be faulted.

24. The question, however, arises whether such a demand can be also raised relating to an institution which has already been granted permanent NOC ?

25. In the opinion of this Court, once an institution has been granted permanent NOC by the State Government having been satisfied that the institution has required infrastructure and instructional facilities, the State Government would have no role to play thereafter and thus, demanding for depositing of annual fees of Rs.30,000/- after issuance of permanent NOC, is not warranted. Once permanent NOC has been granted by the State Government, it would not have any *locus-ponitentie* to demand



further fees. It is moreso as the Private Colleges are to be affiliated by the respective Universities which extend the affiliation annually and conduct inspections separately.

26. The Section 3 of the Act of 1989 lays down procedure for recognition of an institute as under:-

"3. Recognition of institutions :- (1) Except in the case of institution affiliated to a University or recognised or to be recognised by the Board, the Competent Authority may, on a application made to it in the prescribed form and manner, recognise a non-Government educational institution on fulfillment of such terms and conditions as may be prescribed :

[Provided that no institution shall be recognised unless it has been registered under the Rajasthan Societies Registration Act, 1958 (Act No. 28 of 1958) or it is being run by a public trust registered under the Rajasthan Public Trusts Act, 1959 (Act No. 42 of 1959) or by trust created in accordance with the provisions of the Indian Trusts Act, 1882 (Central Act No. 2 of 1882).]

(2) Every application for recognition of an institution shall be entertained and considered by the Competent Authority and the decision thereon shall be communicated to the applicant within a period of six months from the date of the receipt of the application and, where recognition is refused, the reasons therefor shall also be communicated to the applicant within the said period."

27. From perusal thereto, it is apparent that those institutes, which are affiliated to University, are not required to follow the procedure for recognition under Section 3. The role of the State Government, therefore, ends once it grants permanent NOC to a College which is affiliated to a University.

28. In **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors.** (supra), the 11 Judges Bench of the Supreme Court observed as under:-



"66. In the case of private unaided educational institution, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers - but how the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those institutions.

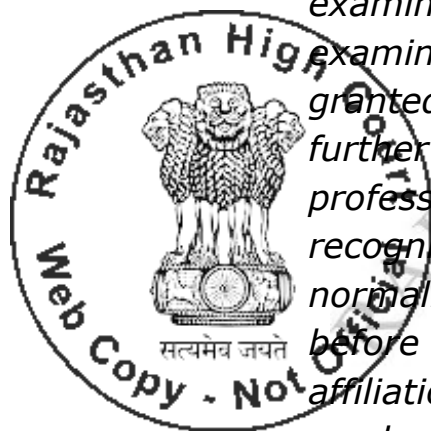
68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard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

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled





by institutions that are established in different places with the aid of donations and the active part taken by public-minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational institution has to get recognition from the university concerned, which normally requires certain conditions to be fulfilled before recognition. It has been held that conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions."



29. Thus, while conditions for grant of affiliation or recognition can be laid down by the concerned University, however, they cannot be of such a nature which may lead to Government control. Thus, the condition of payment of Rs.30,000/- each year after the institute has been granted permanent NOC, is a term does not flow from any source of power available with the State Government. However, if a particular College wants to start a new faculty or add new subjects of studies, the NOC for such new subjects can be given by the State Government after depositing the requisite fees.

30. The contention of learned counsel for the State that the petitioners cannot challenge the renewal of permanent NOC, is



wholly misconceived. The demand of the State Government for depositing Rs.30,000/- annually from the institutes which have already received permanent NOC, is purposeless and has no nexus to the Policy laid down. The principle of estoppel would, therefore, not apply. The law laid down in **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs.**

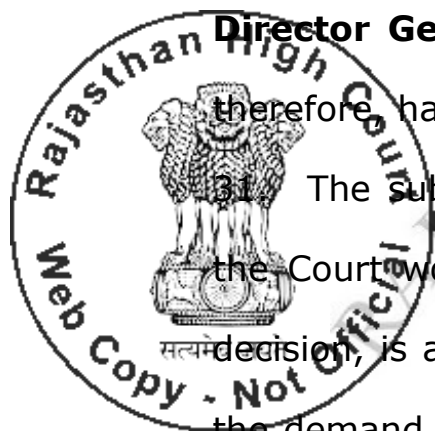
Director General of Civil Aviation and others (supra) would, therefore, have no application to the facts of the present case.

31. The submission of learned counsel for the respondents that the Court would not have the scope to interfere with the policy decision, is also found to be without basis as in the present case, the demand of Rs.30,000/- cannot be said to be a policy decision but is a fees for being demanded for issuing a permanent NOC.

32. Looking from another angle if the institute does not deposit Rs.30,000/- in-spite of the fact that it has the required infrastructure and instructional facilities, the permanent NOC would be cancelled. Such can neither be the intention with regard to NOC nor such a condition can be said to be in consonance with the public policy.

33. However, it would not mean that the respondent-State cannot demand fees for conducting inspections. In-fact, the State Government must devise a method of at least conducting inspection annually relating to the Colleges which have already been granted permanent NOC so as to maintain the standard of education for the purpose of conducting inspection and for that purpose, the minimum fees can be charged.

34. In view thereof, demanding fees only from an institute which has already been granted permanent NOC, is held bad in law and the said condition is accordingly quashed and set aside.





35. In view of above, this Court orders as under:-

(a) SB Civil Writ Petition No.18704/2018 is allowed. The impugned Clause 19.2 of the Private Colleges Policy is quashed & set aside.

(b) SB Civil Writ Petitions No.11734/2018, 11998/2018 & 11999/2018, 12000/2018, 12002/2018, 12099/2018, 12163/2018, 12286/2018 and 12359/2018 are also accordingly allowed. The order impugned dated 08/05/2018 is quashed & set aside.

(c) SB Civil Writ Petition No.19219/2018 is also accordingly allowed. The orders impugned dated 09/08/2018 & 14/08/2018 are quashed & set aside.

(d) All pending applications are accordingly disposed of. Costs made easy.

(SANJEEV PRAKASH SHARMA),J

Raghu

सत्यमेव जयते