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**A.F.R.**  
**Reserved**

**Case :-** MISC. SINGLE No. - 24573 of 2019

**Petitioner :-** Aditya Tiwari & Anr.

**Respondent :-** The State Of U.P. Thru. Prin. Secy. Social Welfare & Ors.

**Counsel for Petitioner :-** Aditya Tiwari-In Person, Anurag Tripathi-In Person

**Counsel for Respondent :-** C.S.C., Amit Jaiswal, Savitra Vardhan Singh

**Hon'ble Mrs. Sangeeta Chandra, J.**

**1.** This petition was originally filed, praying for quashing of Rule 6(i)(a) and Rule 5(xv)(Gha) of the Government Order dated 20.9.2014, and Government Order dated 14.4.2016 respectively and for quashing of the order dated 26.8.2019 passed by the District Social Welfare Officer, Lucknow, (opposite party no.3), rejecting the representation of the petitioners for full fee and scholarship reimbursement and for a direction to the opposite party nos.1 to 4 to release the remaining scholarship and fee reimbursement for academic years 2015-16, 2017-18, and 2018-19 and also for issuance of a mandamus commanding the University (Opposite party no.5) and City Academy Law College (opposite party no.6) to allow the petitioners to submit their examination form and take the forthcoming semester examinations of LL.B. Honours Five-years Course.

**2.** This writ petition was filed on 5.9.2019 and an amendment application was moved on 16.9.2019, praying for a mandamus directing the opposite party no.6 to demand and charge the fees correctly and also to direct the State-respondents to take necessary action against the

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opposite party no.6 for charging excess fee from the petitioners. A further mandamus was sought to the opposite party no.5, the University to give the details of course fee for LL.B. Honours Five-years Course as fixed by it for private unaided institutions like the opposite party no.6. Further, an amendment application was later filed on 15.7.2020, praying for addition of certain pleadings and also for a direction to be issued to the opposite parties to immediately release the remaining amount of scholarship and fee reimbursement also for the year 2019-20, and a mandamus to be issued to the opposite party nos.1 to 5 to fix the course fee of LL.B. Honours Five-years Course of opposite party no.6, and a direction to be issued to the University and the College concerned to allow the petitioners to appear in the forthcoming semester examination. This amendment application was allowed on 16.9.20.

**3.** The aforesaid reliefs have been claimed by the petitioners while alleging that they had initially filed Writ Petition No.10763 (MS) of 2019 (Aditya Tiwari and another versus State of U.P. and others), which has been disposed off by this Court with a direction to the petitioners to submit a fresh representation before the District Social Welfare Officer, Lucknow, who would pass a reasoned and speaking order thereon. It has been submitted that the representation of the petitioners has been rejected arbitrarily by the opposite party no.3.

**4.** The petitioners have argued that they were admitted in LL.B. Honours Five-years integrated Course on 25.6.2015 in the City Academy Law College, Lucknow,

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opposite party no.6, which is a private unaided and affiliated College of Lucknow University. The course comprises of 10 semesters with two semesters every year and the course fee is Rs.25,000/- per semester i.e. Rs.50,000/- per academic year. The petitioners belong to General Category and have a very poor background as the annual income of their father is only Rs.48,000/- per year as per the Income Certificate issued by the Tehsildar, Musafirkhana, District Amethi.

**5.** It has been stated by the petitioners that the State of U.P. initiated a Scholarship Scheme, namely, Uttar Pradesh Samanya Varg Dashmottar Chhatravritti Yojna, 2012 (hereinafter referred to as 'the Scheme of 2012'). It provided for reimbursement of fee and also scholarship to be given to economically poor unreserved category students. The Scheme of 2012 was amended by Government Order dated 20.9.2014 (hereinafter referred to as 'the Scheme of 2014') and thereafter further amended by another Government Order issued on 14.4.2016 (hereinafter referred to as 'the Scheme of 2016').

**6.** The petitioners took admission under the Scheme of 2012 as amended by the Scheme of 2014, in the academic year 2015-16 and, therefore, the amended Scheme of 2016 was inapplicable to them. It has been argued that the petitioners being fully eligible for fee reimbursement and scholarship for the academic sessions 2015-16 to 2018-19 submitted online application forms, but except for academic year 2016-17 where they received full amount of Rs.56,360/- as scholarship and fee reimbursement,

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petitioner no.1 has not received full fee reimbursement and scholarship in the remaining years. Similarly, petitioner no.2 has received full fee reimbursement and scholarship for two academic sessions of 2015-16 and 2016-2017, but thereafter no fee reimbursement has been made to the petitioner no.2 also.

**7.** A chart explaining year-wise scholarship and fee reimbursement amount received by the two petitioners has been given in Paragraph-14 of the writ petition, which is being reproduced below:-

Session Year	Petition No.1 (Aditya Tiwari)	Petition No.2 (Anurag Tripathi)
2015-16	Rs.0/-	Rs.54,770/-
2016-17	Rs.56,360/-	Rs.56,360/-
2017-18	Rs.0/-	Rs.0/-
2018-19	Rs.19,440/-	Rs.19,440/-

The petitioners being aggrieved made several representations, but did not receive any response.

**8.** The opposite party no.6, on the other hand, claimed that the Lucknow University, the opposite party no.5 had digitally locked wrong fee of Rs.13,080/- in respect of each academic year for the college concerned instead of Rs.50,000/- fixed earlier.

**9.** The petitioners have stated that this Court on 8.4.2019 in Writ Petition No.5101 (MS) of 2013 (Shounak Gupta versus Union of India and others) had allowed full fee reimbursement to a similarly situated writ petitioner. The petitioners had, therefore, filed Writ Petition No.10763 (MS) of 2019, which was disposed off, directing the petitioners to approach the District Social Welfare Officer

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through a fresh representation. The petitioners' representation has now been rejected.

**10.** It has been argued that in the earlier writ petition filed by the petitioners, the District Social Welfare Officer had filed a counter affidavit in which, it was submitted that due to Rule 5(xv)(Gha) of the Scheme of 2016, the petitioners were found ineligible for full fee reimbursement and scholarship. It is the petitioners' case that the petitioners had taken admission in June, 2015 and, therefore, the amended Scheme of 2016 was inapplicable to them. They have also challenged the amended scheme.

**11.** It has been argued by the petitioners that since the opposite party no.6 is an affiliated Law College of the Lucknow University, it shall have to follow the fee schedule for five year LL.B. Honours Course as fixed by the Lucknow University. The fee schedule for Lucknow University LL.B. Honours Five-year Course has been fixed through letters dated 25.5.2015, 10.5.2018 and 30.7.2018 collectively filed as Annexure-15 to the writ petition.

**12.** It has been further argued that neither opposite party no.5 nor any other competent authority has fixed course fee for opposite party no.6, therefore, the opposite party no.5 has arbitrarily and wrongly locked reduced fee of Rs.13,080/- instead of real feel of opposite party no.6 of Rs.50,000/- per academic year.

**13.** It has been argued that in the order dated 26.8.2019, the opposite party no.4 has mentioned that only students, who have obtained more than 60% marks in Intermediate Examination are eligible for full fee reimbursement and scholarship. It has been argued that the basic eligibility of

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student for the scheme is financial incapacity of the guardian and not the type of educational institution he gets admitted in, or the possession of high percentage of marks in Intermediate Exam. The Rule as cited in the order dated 26.8.2019 is arbitrary and, therefore, deserves to be quashed. Moreover, in the original Scheme of 2012, there is no compulsory Rule of getting 60% marks in Intermediate for grant of benefit of fee reimbursement and scholarships.

**14.** The petitioners, however, admit that they had obtained 58% and 57% marks respectively in Intermediate examination and the eligibility criteria for taking admission in LL.B. Honours Five-years Course in the college of opposite party no.6 is only possession of 50% marks in Intermediate.

**15.** It has further been argued that as per Rule 11(v) of the Scheme of 2012, weightage marks to students is calculated on the basis of income of the guardian and marks obtained in the previous semester examination and not the Intermediate examination, therefore, the interpretation of the Rules by the opposite party no.4 that the petitioners having less than 60% marks in Intermediate is arbitrary. The opposite parties have wrongly interpreted the Rules to minimize the number of eligible students for grant of fee reimbursement and scholarship.

**16.** Also, it has been argued by the petitioners that if the concerned college has wrongly filled up the course fee in the University database and any recovery notice has been issued to the college concerned, then it would not prejudice the case of the petitioners, who are independently entitled for fee reimbursement and scholarship.

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**17.** It has been argued that the students of other private institutions as well as Lucknow University and some autonomous Institutions having equal status to that of opposite party no.6 for LL.B. and LL.B. Honours Courses have been given full fee reimbursement and scholarship. One famous college in the city affiliated to Lucknow University has its fees determined for LL.B. Honours Course by the State Government by its letter no.573/sadar-1-2018-16(29)/2018 Dated 3.7.2018 at Rs.25,000/- per semester and fees for its students is being reimbursed on the basis of fees of Rs.50,000/- per year.

**18.** The college of the petitioners is a private college like the college whose fee has been determined by letter of Government dated 3.7.2018 and the course fee for LL.B. Honours Course has been fixed as Rs.50,000/- per year, which is equal to the fees of Lucknow University students course fee in identical Self Financed Courses. The Lucknow University has arbitrarily reduced the course fee to Rs.13,080/- per academic year for the petitioners' college.

**19.** Lastly, it has been argued that the petitioners have taken loans from their relatives to pay the fees of the college for the semester examinations held in the past and they are entitled to be given the benefit of judgement rendered by this Court in *Shaunak Gupta* (supra).

**20.** A short counter affidavit has been filed on behalf of opposite party no.5 by the Registrar of the University, wherein it has been stated that the fee for associated and affiliated colleges of Lucknow University has to be determined by the State Government, but the State Government has not yet determined the fee. The Lucknow

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University has no power to determine the fee of private institutions affiliated with it. The Registrar, Lucknow University through letter dated 10.5.2018 made a request to the State Government that fees had already been determined for Self Financed Courses run by the Lucknow University through University Ordinance in May, 2015 and till such determination of fee is made by the State Government with respect to private affiliated colleges, the fee determined for Self Financed Courses run by Lucknow University should also be made applicable to private institutions. In response to the letter sent by the Registrar, State Government had issued a letter on 30.7.2018, which was placed in the meeting of Executive Council of Lucknow University on 10.8.2018 as Agenda Item No.1A. The Executive Council of the Lucknow University has resolved that the fee determined through University Ordinance dated 25.5.2015 for its professional Self Financed Courses run within the campus of Lucknow University, should also be made applicable to private institutions running identical courses. A proposal under Section 52(3)(c) of the State Universities Act, 1973 has been made to the State Government for its approval. The Registrar, Lucknow University also sent reminders on 14.8.2018 and 20.8.2018 to the State Government for fixation of fee for affiliated private colleges running identical courses. A reply was still awaited.

**21.** A rejoinder affidavit to the short counter affidavit filed by the opposite party no.5 has also been filed by the petitioners where they have reiterated the contents of the writ petition and the rejoinder affidavit filed by them earlier



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saying that now the opposite party no.5 has also admitted in its short counter affidavit that the Lucknow University has no power to fix the course fee for Five years' LL.B. Honours Course run by its affiliated colleges like the opposite party no.6. The power to determine fee is vested in the State Government. Yet the University has wrongly locked fee digitally on its portal for students of private colleges like the petitioners.

**22.** The Opposite Party No.6 has filed a counter affidavit in which it has reiterated that it charges Rs.25,000/- per semester i.e. Rs.50,000 per year from its students for LLB Honours course being run by it. It has referred to the University Ordinance issued on 25<sup>th</sup> May 2015 in relation to course fee for students studying in Constituent and Associated Colleges as Fee Ordinance notified also for self financed courses run in private colleges.

**23.** This Court has carefully perused Page-9 of the counter affidavit which clearly states that it is an Ordinance by Lucknow University relating to fee prescribed for faculty of Arts, Science, Commerce, Law, Education and Finance for the Academic Session 2015-2016 onwards. On perusal of Page-20 of the counter affidavit of Opposite Party No.6, it is apparent that it relates to proposed Ordinance relating to fee prescribed for Lucknow University self financed courses for the year 2015-2016 in its various faculties.

**24.** Opposite Party No.6 has also referred to a letter issued on 26<sup>th</sup> June 2018 by the Registrar Lucknow University saying that for Academic year 2018-2019, the fee was fixed as before. It has been mentioned in the counter affidavit of Opposite Party No.6 that affiliated

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colleges of Lucknow University may charge only the newly prescribed Examination Fee and Enrollment fee from new students for the year 2018–2019, whereas other fees shall remain the same as per the document annexed with the said letter which document mentions the fee for L.L.B. Honours Five-year self Financed Course as Rs.25,580.

**25.** A counter affidavit has been filed by the Opposite Party No.3 in which he has referred to the Government Order dated 14.04.2016 by which Rule 5 (xv) (Gha) has been amended and it has been provided that private degree colleges recognised by the University have to get their fee determined by the Competent Authority. In case of non-determination of fee by the Competent Authority, the students will be reimbursed according to the fee fixed for regular and identical courses run by the University and its constituent Colleges, or the actual fee paid by the student or Rs.50,000/- per Academic year, whichever is less. It has been submitted that excess fee had been mentioned by the Opposite Party No.6 while verifying the Online Forms of its students as a result where of excess money has been paid under the Scheme of 2016 to the Opposite Party No.6. Recovery notices have been issued by the District Magistrate, Lucknow/Chairman of the Scholarship Sanctioning Committee Lucknow. It has further been stated that the Registrar by his letter dated 10.05.2018 had made a request to the Higher Education Department for implementation of the fee determined and approved by the Executive Council of the University for courses run by it and proposed that the same should also be made applicable to private Institutions affiliated to the

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Lucknow University. The Special Secretary Higher Education by letter dated 30.07.2018 has issued directions to enforce the fee determined by the Executive Council for self financed Courses run by it, through issuance of Ordinance by the University.

**26.** In pursuance of the directions of the Higher Education Department, no Ordinance has been issued as yet by the Lucknow University so as to enable the Department of Social Welfare to make fee reimbursement in accordance with the fee determined by the Executive Council for self financed courses run by Lucknow University. Earlier the Higher Education Department through various Government Orders had fixed the fee for B.A., B.Sc., B.Com., M.A. M.Sc., M.Com. Courses which has been revised from time to time as also B.Ed. courses run by private unaided colleges. Similarly, the Higher Education Department alone is entitled to fix the fees for L.L.B. Honours five-year course also for private unaided Institutions but the same has not been fixed till date by the Higher Education Department.

**27.** The Opposite Party No.3 has also stated in Paragraph-7 that the Registrar, Lucknow University by a letter dated 01.09.2017 had informed the District Magistrate, Lucknow/ Chairman Post Matric Scholarship and Fee Reimbursement Sanctioning Committee that Lucknow University only determines the curriculum and the number of seats of a particular course being recognised by it for a private college and except for enrollment fee and examination fee no other fee is fixed by the University for private colleges. The fees determined for private Institutions has to be done by the Government and not the University. Since fee for

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running L.L.B. Honours five years course in private Institutions like Opposite Party No.6 has not been determined by the Government, Fee reimbursement under the Scheme of 2016 is being done by the Opposite Party No.3 under the advice of the Chairman Scholarship Sanctioning Committee as per Rule 5 (xv) (Gha) of the amended scheme for 2016. As and when fee is determined by the Competent Authority or a clarification is made by the Lucknow University of its letter dated 01.09.2017, the appropriate proceedings for fee reimbursement shall be undertaken by the Opposite Party No.3.

**28.** It has been stated in Paragraph-8 of the counter affidavit that the Director, Social Welfare Department through a letter dated 18.09.2019 has sought a comprehensive report in respect of fees from the Registrar, Lucknow University which is still awaited. The Opposite Party No.3 has reiterated that after considering all relevant records and the Rules of 2014 and 2016 as well as the judgement rendered by this Court on 08.04.2019 in ***Shaunak Gupta Vs. Union of India*** (supra), a reasoned and speaking order has been passed by him rejecting the representations of the petitioners. It has been stated that the amended Rules of 2016 shall be applicable to all students studying in any year including second year, third year, fourth year and fifth year students L.L.B. Honours five years course. It has further been stated in Paragraph-17 of the counter affidavit that the Petitioner No.1 did not qualify for fee reimbursement and Scholarship because he had not obtained more than 60% marks in Intermediate which is the required criteria for fee reimbursement. Petitioner No.2

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was found eligible by the State-Level Committee and payment of Rs.54,770 was made to him for the Academic year 2015–2016. The students are expected to fill up Online Forms for fee reimbursement and scholarship. The Educational Institution in which they are studying is required to fill up the fee charged from such students in Master database which is thereafter verified and forwarded by the University concerned. Opposite Party No.6 did not digitally lock the correct fee therefore, wrong payments and excess payment was made. The District Scholarship Committee has issued notices to 165 similarly situated Institutions affiliated with the Lucknow University for recovery of excess amount reimbursed to the students in Academic session 2016–2017.

**29.** It has been stated in Paragraph-17 of the counter affidavit that an order of preference has been given under Rule 11 (iv) of the Scheme of 2014 and fee reimbursement and scholarship has to be done only in accordance with the order of preference given therein. Since the petitioners did not possess 60% marks in Intermediate, the qualifying examination for admission in private unaided Institution like the Opposite Party No.6, the application of the petitioners was rejected for the year 2017–2018 by the Sanctioning Committee. Notices have been issued for recovery of excess payment made to the petitioners because of the fault of the Opposite Party No.6 The District Social Welfare Officer has also stated that as per the decision of the Scholarship Sanctioning Committee and the amended Rules of 2016, payment has been made to the petitioners of Rs.13,080 towards L.L.B. Honours fourth year

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fee and Rs.6,360/- towards scholarship that is a total amount of Rs.19,440 only. The Opposite Party No.3 has also distinguished the judgement rendered by this Court on 8<sup>th</sup> April 2019 in Writ Petition No.5104 (M/S) of 2013 (***Shaunak Gupta Vs. Union of India***) on the ground that it relates to Other Backward Classes Candidate.

**30.** In Paragraph-32 of the counter affidavit of Opposite Party No.3 the distinction has been made between students like the petitioners and the students of Central and State Universities and Private Universities created through enactment by State Legislature. The Opposite Party No.6 however, is a private Educational Institution to which only affiliation has been granted by the Lucknow University. The Institution is not having the status equal to that of an autonomous Institution or a constituent or associated college of Lucknow University.

**31.** In their rejoinder affidavit to counter affidavit of Opposite Party No.3 the petitioners have very cleverly quoted Rule 5 (xv) (Gha) of the Rules of 2016 leaving out the portion relating to exception carved out for self financed courses run by the Lucknow University. The petitioners have stated that City Academy Law College is recognised private Institution affiliated to a State University i.e. the Lucknow University and the course fee for similarly placed L.L.B. Honours students in Lucknow University is Rs.25,000/- per Semester or Rs.50,000 per year, and the Opposite Party No.6 is charging the same fee. The petitioners have also paid the full course fee i.e. Rs.25,000/- per Semester from Semester 1 to 7 to the Institution and have submitted Online applications for Fee

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reimbursement and scholarship within time but the opposite parties are discriminating amongst similarly situated students of private Institutions and those studying in Lucknow University in reimbursement of fee and scholarship amount. The respondents are reducing every year the amount of scholarship and fee reimbursement from Rs.50,000/- to Rs.13,080/- in the Academic year 2018–2019 and further reduced the amount to Rs.4500/- for Academic year 2019–2020 whereas only Examinations Fee for L.L.B. Honours student this year is Rs.8,065/-. The University itself has stated in Paragraph-7 of its affidavit that it has no power determine or to reduce the amount of fee for L.L.B. Honours five years course in the master Database of the Scholarship Portal as against the original fee charged by the Institution. Without fixation of course fee for private Institutions by Competent Authority, the reduction of fees of students on the Scholarship Portal and reduction in the amount of reimbursement by the University unilaterally, has adversely affected the students.

**32.** It has further been stated by the petitioners that by putting onerous conditions successively through various amendments to the Original Scholarship Scheme, State-respondents intend to maliciously eliminate deserving General Category students defeating the very object of the Scheme. The only eligibility required for grant of fee reimbursement and scholarship under the Scheme of 2012 is the financial incapacity of the applicant student, not the type of educational Institution in which he was studying, or the high percentage of marks in Intermediate. It has further been submitted that it is not open for the State-

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respondents to now refer to limited funds available with them as the State cannot shirk from its already committed liability. The petitioners took admission in June, 2015 and therefore shall be governed by the unamended scheme.

**33.** In Paragraph-27 of the rejoinder affidavit, it has been stated that fixation of fee for private Institution is the subject matter of State Government or the University but the students cannot be allowed to suffer for no fault of theirs. The Opposite Party No.6 is charging the same fee in L.L.B. Honours five years course as is being charged by the Lucknow University self financed L.L.B. Honours five years course. Additionally, in Paragraph-28 of the rejoinder affidavit, a reference has been made to Online application having been made by the petitioners for the Academic year 2019-2020 which has been rejected by the respondent.

**34.** A supplementary counter affidavit has been filed by the opposite party no.3, wherein it has been stated that the Competent Authority under the Amended scheme of 2016 shall determine the fee to be charged by the private recognized institutions and in case such fee has not been fixed by the competent authority, Rule 5 (XV)(d) provides that fee that is being charged for the same course by State Universities (except self-financed course) or the fee being charged by the institution concerned or Rs.50,000/-, whichever is less, would be reimbursed. The Lucknow University has locked Rs.50,000/- as fee charged by the institution without verifying/examining the data uploaded by the college concerned and without looking into the eligibility criteria for fee reimbursement and scholarship.



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**35.** It has further been stated that by Government order dated 30.07.2018, the University had been informed that the fee determined by it for running self-financed courses may be implemented also for affiliated institutions running similar courses. It is therefore for the affiliating University to have issued necessary ordinance. Despite such clear instructions from the Government, the University has not fixed fee for courses running by private affiliated colleges by issuing any orders in this regard, however, it has verified Rs.50,000/- as charged by the opposite party no.6. The mistake of the affiliating University in the year 2016-17 has now been rectified by the affiliating University when correct facts were brought to its notice and now the Scholarship Sanctioning Committee has issued notices for recovery of excess payment made to the students.

**36.** Having heard the petitioner no.1, who appeared through video link, Sri Savitra Vardhan Singh, learned counsel for the respondent and Sri Amit Jaiswal, learned counsel for the respondent, this Court has carefully perused the order dated 26.08.2019 passed by the District Social Welfare Officer, Lucknow, on the representation of the petitioners. It is apparent therefrom that the opposite party no.3 has firstly referred to the facts as mentioned in the representation of the petitioners for reimbursement to be made to them for the Academic Years i.e. 2015-16, 2016-17, 2017-18 and 2018-19. He has referred to the provision given under Rule 5(xv) (Gha) and the letter No.573/sattar-1-2018-16(29)/2018 dated 30.07.2018, by which fee for L.L.B. Honours five-years course has been determined for self-financed courses being run by the

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Lucknow University. The petitioners had submitted that since the Government had approved the proposal of the Executive Council of the Lucknow University dated 25.05.2015, the same fee can be charged by the City Academy Law College- respondent no.6. The opposite party no.3 has refuted the claim of the petitioners on the ground that the University, in pursuance of the letter of Higher Education Department dated 30.07.2018 has not issued any order fixing any fee for its affiliated colleges therefore the contention of the petitioners that the fee determined by the University Executive Council for self-financed courses being run by it shall be applicable to City Academy Law College also. The opposite party no.3 has also referred to the Amended scheme notified by the Government Order dated 14.04.2016 and Rule 6(i)(a) which clearly indicates that in all professional courses where admission is taken on the basis of marks obtained in qualifying Intermediate examination/ Class XII examination, fee reimbursement and scholarship shall be given to only those students who had obtained 60% marks in such Class XII/Intermediate examination. The L.L.B. Honours course is a professional course and fee reimbursement and scholarship can be given to only those students who obtained 60% marks in the Intermediate examination which is the qualifying examination. The opposite party no.3 has rejected the claim of the petitioners that the amended Rule of 2016 shall not be applicable to them they having already studied for two years and being in the third year, and that they cannot be divested of their right to claim reimbursement. The opposite party no.3 in his order dated 26.08.2019

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states that the eligibility criteria of obtaining at least 60% marks in Interimmediate examination has been applicable with effect from 20.09.2014, and the petitioners took admission in L.L.B. Honours five-years course in June, 2015 in the Academic Session 2015-16.

**37.** The contention of the petitioners that Rule 11(v) shall be applicable to them and not Rule 6(i)(a) has also been rejected by opposite party no.3 as misconceived, as he found Rule 11(v) as only referring to the order of preference to be followed for giving renewal of fee reimbursement and scholarship to initially eligible candidates. The petitioners according to the opposite party no.3 were not eligible initially to get the fee reimbursement and scholarship, therefore, there was no question of renewal on the basis of the order of preference given under Rule 11(v).

**38.** The opposite party no.3 has also rejected the contention raised by the petitioners in their representation that wrong fee has been digitally locked in the master database by the College concerned and recovery notices have been wrongly issued. The order dated 26.08.2019 clearly states that the amended scholarship scheme notified on 20.09.2014 provided the eligibility criteria and the amount of fee to be reimbursed and if any wrong or excess payment has been made on the basis of wrong uploading of data on the master database by the City Academy Law College, the petitioners being beneficiaries thereof would also be liable for recovery.

**39.** The arguments regarding discrimination between similarly situated students raised by the petitioners in their

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representation has also been dealt with by the opposite party no.3 by referring the conditions of admission of students in State or Central Universities/ Colleges and aided private colleges associated with them and the difference in admission procedure of private un-aided but recognized and affiliated colleges.

**40.** From a perusal of the order dated 26.08.2019, this Court finds that each and every contention raised by the petitioners in their representation dated 13.08.2019 has been considered and a reasoned and speaking order has been passed by the opposite party no.3. Now this Court has to consider the validity of the reasons given by the opposite party no.3 in rejecting the claim of the petitioner.

**41.** This Court has carefully gone through the original scheme as notified by the Government Order dated 07.01.2013. The Government Order clearly states that the scheme was floated for helping "meritorious" students of un-reserved category whose guardian's financial status was such as would prevent them from pursuing their professional courses smoothly. The original scholarship scheme as notified on 07.01.2013 was made applicable with effect from July, 2012 for Academic Session 2012-2013. It refers to "free" seats and "paid" seats and admission in professional courses by poor un-reserved category students and the amount of fee reimbursement and scholarship etc. available to them. Certain professional courses however have been excluded from the applicability of the scheme which are not being referred here as they are irrelevant for decision of this case. A master database was to be created of all recognized educational institutions

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running such professional courses by the Social Welfare Department. Fee had to be given initially by the student concerned and reimbursement alone was to be made admissible after verifying online applications submitted.

**42.** The scheme of 2012 was amended by the Government Order dated 20.09.2014 and the said Government Order was made applicable with effect from Academic Session 2014-15.

**43.** As the petitioners having challenged Rule 5(xv)(Gha), it is necessary to quote Rule 5(xv)(Gha) of the amended Scheme of 2016.

*"5(xv)(Gha). Pradesh ke Vishvidhyalayaon se sambadh jin niji kshetron ke manyata prapt sansthanon mein sanchalit pathyakramon ke shulk saksham pradhakari star se nirdharit nahi hain un sanchalit pathyakramon hetu pradesh ke kisi bhi rajya Vishvidhyalayaon mein sanchalit usi pathyakramon (swatah vitt poshit pathyakramon ko chhodte hue) mein nirdharit nyuntam shulk athwa sanstha dwara chatron se jama karayi gayi vastavik fees athwa Rs.50,000/- mein se jo bhi kam ho, ki pratipurti ki jayigi."*

**44.** It is apparent from a perusal of the said Rule challenged in this petition that it refers to those Private and unaided colleges whose fees has not been determined by the competent authority. Students of such colleges would be entitled to either the fees being charged for identical course (except Self Financed Course) by any State University, or the fees actually deposited by the student in the college concerned or Rs.50,000/-, whichever is lower.

**45.** The petitioners have also challenged Rule 6(i)(a) of the Scheme of 2014, which is being quoted here in below:

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*"6(i)(a). Chhatravritti hetu samanya varg ke abhiyarthi nimnlikhit sharton/pratibantho ke adhin patra honge:-*

*(i) kewal ve hi abhiyarthi iske patra honge, jo Uttar Pradesh rajya se sambandhit ho arthat Uttar Pradesh rajya ke sthai niwasi ho evam jo Uttar Pradesh rajya kshetra ke sambandh mein vinirdisht samanya varg se sambandhit ho aur jinhone kisi manyata prapt vishwavidhyalya ya madhyamik shiksha board ki matriculation ya higher secondary ya isse koi uchhattar pariksha utrin kar li ho thatapi:-*

*(a) Private sansthano mein parishisth-jha mein ankit professional pathyakramo mein jahan kaksha-12 ke praptanko ke adhar per pravesch diya jata hai, wahan chhatravritti evam shulk pratipurti prapt karne hetu benchmark kaksha-12 ki pariksha mein 60 pratishat nyuntam praptank hoga. Yah pravidhan gair professional pathyakramo per lagu nahi honge."*

**46.** It is apparent from a perusal of Rule 6(i)(a) that Benchmark for eligibility for full fee reimbursement and scholarship is securing 60% marks in Class 12<sup>th</sup> examination for those students who take admission in unaided private institutions, which run professional courses and in which, the criteria to give admission is on the basis of marks secured in Class 12<sup>th</sup> examination. This amendment was introduced by Government Order dated 20.9.2014 and was applicable to the petitioners who took admission in LL.B. Honours Course in the college concerned in academic session 2015-16.

**47.** Rule 11(i) of the Government Order dated 20.9.2014 is also important for determining the eligibility of the petitioners to obtain full fee reimbursement and scholarship under the amended Scheme of 2014. It is being quoted here in below:

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"11. *Chatra ko anurakshan bhatta va shulk pratipurti ke bhugtaan hetu shikshan sanstao ki variyata kram ka nirdharan.*

*(i) chhatrivritti evam shulk pratipurti hetu ahar chatra/chatraon ko anurakshan bhatta evam shulk pratipurti dhanrashi ka ekmusht bhugtaan kiya jayega.*

*(ii) \*\*\*\**

*(iii) \*\*\*\**

*(iv) simit vittaya sansadhno ko drishtigat rakhte hue, shikshan sansthanon mein adhyanrat chhatro ko anurakshan bhatta evam shulk pratipurti ki dhanrashi ka navinikaran evam taduprant naye chhatro ko anurakshan bhatta evam shulk pratipurti ki dhanrashi nimnankit variyata kram mein budget ki uplabdhta ki seema tak nirdharit avadhi mein online bhare gaye aavedan patro mein se parta paye gaye chhatra-chhatraon ko unke dwara bank mein khole gaye bachat khate mein sidhe antarit karke bhugtaan ki jayegi-*

*(ka)- kendra athwa rajya sarkaar ke vibhago/nikayo dwara sanchalit rajkiya shikshan sansthanon va rajkiya swayatshashi shikshan sansthanon mein adhyanrat chhatra/chhatraye.*

*(kha)- kendra athwa rajya sarkaar se shashkiya sahayata prapt niji kshetra ke shikshan sansthanon mein adhyanrat chhatra/chhatraye.*

*(ga)- niji kshetra ke manyata prapt shikshan sansthanon ke manyata prapt pathyakramon mein adhyanrat chhatra/chhatraye tatha rajya vishwavidhyalayon ke swavittposhit pathyakramon mein adhyanrat chhatra/chhatraye."*

**48.** It is apparent that an order of preference has been created under Rule 11, which has to be followed while providing fee reimbursement and scholarships to meritorious students of General Category under the Scheme of 2014. It has been mentioned that due to limited financial resources being available with the Government to continue the Scheme, it has been decided that now availability of budget shall be one of the criteria for all

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those students who are already admitted in professional courses, and renewal of fee reimbursement and scholarships for the current year onwards, as well as for new students who take admission in professional courses would be for (a) course run by State Universities, private Universities, (b) aided autonomous Institutions, (c) private unaided Colleges in descending order i.e. the order of preference would be firstly for students studying in professional courses run by either Central or State Government departments or Institutions, thereafter for recognised and aided privately run institutions, and lastly for students of recognised but unaided privately run institutions.

**49.** This Court has perused the Government Order dated 14.4.2016 notifying the fourth amendment to the Scheme of 2016 and of Rule 5(xv)(Gha) shows that there is not much of a difference in the meaning, although the language of the Rule has changed a little. It also refers to fee reimbursement for students of institutions run privately, where the course fee has not been determined by competent authority and it refers to course fee being charged by State Universities for identical professional courses (except for State Self Financed Courses) and to the fees actually charged from the students by the institution, or Rs.50,000/- whichever is less as the earlier unamended Rule of Scheme of 2014.

**50.** Rule 6(i)(a) has also remained unchanged as also the order of preference given under Rule 11. Except for the addition of a note under Rule 11(iv), stating that the preference order given in the said Rules shall be followed



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for all students of a particular category of college concerned and if funds were available, the next category of students shall be given reimbursement. The Note as added by Government Order dated 16.4.2016 is being quoted below:

*"Note- Uprokt varyyata kram mein hi budget ki uplabdhata ke anusaar chhatravritti evam shulk pratipurti dhanrashi vitrit ki jayegi. Ek varyyata kram ke samast chhatra-chhatrao ko vitran ke pashtaata hi budget ki uplabdhata ki seema tak agle varyyata kram ke chhatra-chhatraon ko dhanrashi vitrit ki jayegi. Yah kram ukt varyyata sheni-'ka' se 'ga' tak jari rahega."*

**51.** Rule 11(v) has also been added which states that in a particular category students shall be given reimbursement on the availability of funds by ascertaining the annual income of their guardians, maximum marks obtained by them in the last semester examination and in order of preference to course/curriculum being undertaken by them. The weightage given for percentage of marks obtained have been mentioned in a tabular form thereunder.

**52.** The Lucknow University by a letter dated 26.3.2015 has proposed fee for regular courses run by it as also for Self Financed Courses. In response to a letter sent by the Secretary, Higher Education Department, the Lucknow University by its letter dated 10.5.2018 had informed that under Under Section 51(2) of the U.P. State Universities Act, 1973, a University is entitled to fix fee for courses run by its associated and affiliated colleges also. The University Ordinance had fixed the fees for regular and Self Financed Courses by Ordinance dated 26.3.2015, and the fees so fixed for academic session 2015-16 continues to be

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applicable in later years. It proposed that in the Ordinance dated 26.3.2015, the fee fixed for Self Financed Courses can be made applicable to private unaided recognised associated and affiliated colleges till their fee is determined separately by competent authority.

The University's letter sent on 10.5.2018 has been filed at Page-295 of the writ petition.

**53.** In Response to such letter, the Government sent its approval on 30.7.2018 saying that the fee structure given in the University Ordinance, which became effective from 25.5.2015, for Self Financed Courses run in the University campus be also made applicable to identical courses being run by private unaided associated and affiliated colleges of the Lucknow University.

A copy of the letter dated 30.7.2018 has been filed at Page 298 of the writ petition.

**54.** The petitioner no.1 has also argued that since no fee has been determined by the competent authority for the opposite party no.6 and the opposite party no.6 has admittedly charged Rs.50,000/- from the petitioners per academic year, they shall be entitled for reimbursement of the amount under the scholarship scheme under paragraph-5 (xv).

**55.** This Court finds from the arguments made by Sri Savitra Vardhan Singh, learned counsel appearing on behalf of the opposite party no.5, that the University does not determine the fee being charged for professional courses by private affiliated colleges. It only determines the fee charged by its constituent and associated colleges for regular and self financed courses being run by them.

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The Executive Council of the Lucknow University had determined the fees in its meeting held in May, 2015 and consequently after approval of the State Government, Ordinance was issued in this regard for regular courses and self-financed courses run by the faculty of arts, science, law, commerce etc. For determination of fee of private institutions running similar courses, the State Government had issued the letter on 30.07.2018 that the same fee as is being charged for self-financed courses be charged by the private institutions as well till their determination otherwise by the Competent Authority.

**56.** It has been admitted by the counsel appearing on behalf of the Lucknow University that the Lucknow University does not run L.L.B. Honours five-years course as a regular course. It runs only a three-years L.L.B. course as a regular course. However, the Lucknow University does conduct L.L.B. Honours five-years course as self-financed course, for which it charges Rs.25,580/- per semester. However, the college concerned i.e. opposite party no.6 being a private institution only affiliated to the University, it cannot fix its fee in accordance with the fee determined by the Lucknow University for its five-years L.L.B. Honours self-financed course.

**57.** This Court had considered the arguments raised by the counsel for the opposite party no.6 and the counsel for the opposite party no.5 in a detailed order passed by it on 06.02.2020 where it had come to a conclusion that the University was competent in view of the Government Order dated 30.07.2018, for fixing the fee of five-years L.L.B. Honours course being run by private colleges affiliated to it

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on the same terms as the earlier Government Order dated 25.05.2015. Under some misconception, the Registrar referred the matter once again to the State Government for approval which was not required, and therefore the matter remained pending. The opposite party no.6 being a private affiliated college, in view of the Government's order dated 30.07.2018, the University is competent to fix the colleges' fee on the same terms as the earlier Government Order dated 25.05.2015, and opposite party no.6 was entitled to charge the fee it was charging from its students.

**58.** However, this is not a issue that can be raised by the students of the opposite party no.6 like the petitioners herein because the petitioners have been found to have been initially ineligible for the fee reimbursement and scholarship.

**59.** In paragraph-5 (XV)(d) of the said scheme, it was clearly stated that the Fee being charged by the State run colleges for professional courses (except self-financed courses) or the actual fees, or Rs.50,000/-, whichever was less, was to be reimbursed. Under Rule 6(i)(a) the eligibility criteria for fee reimbursement and scholarship was given. It was provided that in those private institutions running professional courses where students are admitted on the basis of their marks obtained in Intermediate Examination, at least 60% marks should have been obtained by the student claiming fee reimbursement and scholarship. This Government Order was applicable to the petitioners who took admission in the college of opposite party no.6 in June, 2015. It is not open for the petitioners to now turn around and challenge the said

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condition as being onerous or discriminatory. The benefit under the Government Order was to be accepted or rejected as a whole. There could not be any part acceptance and part rejection of the Government Order under which the benefit of fee reimbursement and scholarship is being claimed by the petitioners.

**60.** The Rule 11(i) referred to by the petitioner no.1 in his argument relates to order of preference while renewing fee reimbursement and scholarship amount. It cannot be said that a student who is originally ineligible to claim fee reimbursement shall become eligible for the same if his college falls under one of the categories mentioned therein.

**61.** During the course of arguments, the petitioner no.1 repeatedly emphasized that petitioners having been given scholarship by respondent nos.3 and 4 initially they cannot now be refused only on the ground that they did not obtain 60% marks in their Intermediate Examination. The case of the petitioners being that of renewal, the initial eligibility criteria fixed by the Government Order dated 20.09.2014 will not be applicable to them.

**62.** The argument raised by the petitioner no.1 is misconceived to say the least. There cannot be any Estoppel against the law. If the petitioners had been wrongly given fee reimbursement and scholarship earlier, due to wrong verification of their claims by the college authorities, it cannot be said that the petitioners have now a vested or accrued right to get such reimbursement as their case would be considered only for renewal and condition of initial eligibility cannot be seen. No mandamus

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can be issued by this Court to the State respondents to act against the provisions of law.

**63.** It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "**sublato fundamento cadit opus**" meaning thereby that if foundation is removed, the super structure or the whole work falls come into play, and applies on all fours to the present case.

**64.** The petitioners' challenge to the Amended scheme of 2014-2016 also on the ground of discrimination between similarly situated students is without any basis. The petitioners are not similarly situated students as the candidates who qualify the Combined Law Aptitude Test (CLAT) Examinations or go through admission process determined by the University and who are allotted colleges on the basis of their marks obtained in the said Aptitude Test or Selection Test held by the State University to various colleges. The students who are admitted through statewide counselling are first allotted to Government Colleges and to Autonomous Institutions/ Deemed Universities and then to recognized Aided Institutions. The students with lesser marks in the Aptitude Test or Selection Test or even students who have not appeared in the Aptitude Test at all, then take admission in private unaided colleges like opposite party no.6.

**65.** It was admitted during the course of arguments of the petitioners that they did not appear in CLAT. They did not take any Selection Test held by the Lucknow University

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either. They were admitted on the basis of marks obtained by them in their Intermediate Examination by the respondent no.6. The petitioner no.1 had secured 58% marks and the petitioner no.2 had secured 57% marks in their Intermediate Examination. They cannot be said to be similarly or identically placed to those students who had appeared in CLAT or any other Selection Test held by the Lucknow University. There cannot be equality amongst unequals. Therefore, there cannot be any grievance of discrimination also.

**66.** The opposite parties are entitled to issue recovery notice to the opposite party no.6 as wrong fee reimbursement and scholarship was given to the petitioners only because of wrong data being verified and locked digitally on the master database by the college.

**67.** The writ petition is ***dismissed***. No order as to costs.

**Order Date:-** 18/09/2020  
PAL/Sachin/Rahul

**[Justice Sangeeta Chandra]**