

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 5th DAY OF FEBRUARY 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION Nos.3468-3472/2018 (T-IT)

BETWEEN:

1. M/s. Navodaya Education Trust
No.6-2-139/5, Mantralaya Road
Raichur
Represented by its Chairman and
Trustee Sri. S.R. Reddy.
2. Sri. Sunki Rajender Reddy
Aged about 54 years
S/o Late Sunki Rajeshwar Reddy
Chairman and Trustee
M/s. Navodaya Education Trust
Yashodha, H.No.4-4-402/117
Anusha Nagar, Mantralayam Road
Raichur-584103.
3. Smt. Swathi Rajender Reddy
Aged about 44 years
W/o Sri. S.R. Reddy
Executive Trustee
M/s. Navodaya Education Trust
Yashodha, H.No.4-4-402/117
Anusha Nagar, Mantralayam Road
Raichur-584103.
4. Smt. Sunki Yashodhara Reddy
Aged about 84 years
W/o Late Sunki Rajeshwar Reddy
Executive Trustee

M/s. Navodaya Education Trust
Yashodha, H.No.4-4-402/117
Anusha Nagar, Mantralayam Road
Raichur-584103.

5. Smt. V. Suma
Aged about 51 years
W/o Shri Shankarnarayan
Trustee – M/s. Navodaya Education Trust
No.22, 14th Cross, 27th Main
Padmanabhanagar
Bengaluru-560070.

....Petitioners

**(By Mr. S.S. Naganand, Sr. Counsel for
Mr. S. Sriranga, Advocate)**

AND:

1. Union of India
Department of Revenue
Ministry of Finance
Government of India
North Block, New Delhi
Through the Secretary.
2. Director General of Income Tax (Inv)
Karnataka & Goa, 3rd Floor
C.R. Building, Queen's Road
Bengaluru-560001.

...Respondents

(By Mr. Jeevan J. Neeralagi, Advocate for R-2)

These Writ Petitions are filed under Article 226 of the
Constitution of India, praying to quash the order bearing
F.No.DGIT(Inv)/B/10(23C)(vi)/2017-18 dated 21-12-2017

(Annexure-A) passed by the 2nd Respondent and award costs of the proceedings, etc.,

These Writ Petitions having been heard and reserved on **30-01-2018**, coming on for Pronouncement of Orders, this day, **Dr Vineet Kothari, J**, made the following:

J U D G M E N T

Mr. S.S. Naganand, Sr. Counsel for
Mr. S. Sriranga, Adv. for Petitioners
Mr. Jeevan J. Neeralagi, Adv. for Respondent - State

1. The first petitioner - **Navodaya Education Trust** and Shri. Sunki Rajender Reddy and three others being the Trustees of the petitioner No.1 - Trust have filed these writ petitions in this Court on **20/01/2018** aggrieved by the order passed by the Respondent – Director General of Income Tax (Inv.), Bengaluru, dated **21/12/2017** under **Section 10(23-C)(vi) of the Income Tax Act, 1961** ('Act' for short), withdrawing the approval granted to the said petitioner - Trust for exemption under **Section 10(23-C)(vi)** of the Act vide

Certificate, **Annexure B** dated **18/04/2007**, as apparently no alternative remedy by way of an appeal was available to the petitioner – Trust against the said order.

2. The facts leading to filing of the present writ petitions in a nutshell are like this:-

3. The petitioner – Trust situate at Mantralayam Road, Raichur, is said to be running 13 Educational Institutions including a Medical College, a Dental College, an Engineering College, a School and other Colleges at its Campus located in the Main Road, Raichur, Karnataka, under the Trust Deed dated **11/12/2009**. It was granted exemption from payment of Income Tax under the Certificate issued by the Commissioner of Income Tax vide **Annexure B** dated **18/04/2007** under **Section 12-AA (1)** of the Act.

4. To avail the exemption under **Section 10(23-C)** of the Act, the Chief Commissioner of Income Tax, Hubli granted such approval in favour of the petitioner - Trust vide **Annexure D** order dated **13/02/2009**. The provisions of **Section 10(23-C)** of the Act requires that any University or other Education Institution existing solely for educational purposes and not for purposes of profit, which may be approved by the prescribed Authority shall be entitled to such exemption and such approval is required to be periodically reviewed and continued.

5. The approval order **Annexure D** dated **13/02/2009** itself provided vide its paragraphs 9, 10 and 11 that the Chief Commissioner, may, at any time after giving a reasonable opportunity of hearing withdraw such approval and such approval shall not apply in relation to anonymous donations in terms of **Proviso-15** to **Section 10(23-C)** of the Act and such

approval shall be void if it is subsequently found that it has been obtained by fraud or misappropriation or misrepresentation of facts.

6. A search and seizure operation was carried out under Section 132 of the Act on **16/12/2015** at the various places including the said Educational Institutions and Residential Houses of the Trustees and *inter alia* it was found during the course of the said search and seizure operations that the petitioner - Trust was collecting cash donations from students (Capitation Fees) for Admission to the Medical Courses run by the Medical College of the Trust and such cash donations were also used for construction of Temple inside the Trust premises, paying speed money for getting approvals, incurring election expenses of one of the Trustees, Shri. Sunki Rajender Reddy, petitioner No.2 for his election, to buy personal Assets for the Trustees and for money laundering for claiming bogus Long Term Capital Gains and Gifts etc.

7. On the basis of the said material against the petitioner - Trust which could disentitle the petitioner - Trust from continuing to enjoy the benefit of exemption from Income Tax under **Section 10(23-C)** of the Act, the Respondent issued a Show Cause Notice to the petitioner - Trust vide **Annexure F** dated **28/11/2017** and called upon the petitioner - Trust to Show Cause as to why approval under **Section 10(23-C)** of the Act may not be withdrawn.

8. The petitioner - Trust accordingly filed its detailed Objections and submissions before the said Authority vide **Annexure G** on **11/12/2017** and thereafter giving an opportunity of hearing to the petitioner - Trust, the impugned order came to be passed on **21/12/2017** against which the present writ petitions have been filed by the petitioners.

9. Mr. S.S. Naganand, learned Senior Counsel urged before the Court that no adequate and reasonable opportunity of hearing was given to the petitioner - Trust before passing of the impugned order and the entire adverse material against the petitioner - Trust was not confronted to it and as against a short Show Cause Notice, **Annexure F** dated **28/11/2017** despite the explanations and objections furnished by the petitioner - Trust, a detailed 68 pages order has been passed by the Respondent - Authority, withdrawing the exemption or the approval under **Section 10(23-C)** of the Act with retrospective effect from **01/04/2009** i.e. **A.Y. 2010-11** onwards.

10. Mr. Naganand relying upon certain Case Laws referred to herein below submitted that the petitioner - Trust continues to run various Educational Institutions and the sole purpose of the petitioner - Trust is to run the said Educational Institutions only and thus the

basic conditions for grant of exemption under **Section 10(23-C)** stand satisfied by the petitioner - Trust and the assessment in pursuance of the search and seizure operations under Section 132 of the Act is an independent exercise and the petitioner – trust has even filed its returns for **A.Y.2016-17**, adding back to the declared income the 'Anonymous Donations' at the rate of 30% amounting to **₹18.24 crores** as against its total receipts of **₹95.00 and odd crores** and paid Advance Tax of **₹19.20 crores** on **15/12/2015** itself.

11. He therefore submitted that the Respondent Authority was not justified in withdrawing the approval/exemption and that too with retrospective effect from **01/04/2009** and therefore, the impugned order deserves to be quashed.

12. On the other hand, learned counsel for the Respondent – Department, Mr. Jeevan J. Neeralagi however, supported the impugned order and urged that

the petitioner - Trust was indulging in illegal activities like collecting of capitation fees contrary to the decisions of the Hon'ble Supreme Court of India and the Trust had indulged in money laundering for private profit purposes of the Trust and various assets were purchased from Trust funds in the name of the Trustees etc, and therefore, it cannot be said that the petitioner - Trust existed solely for Educational purposes, whereas in fact the same was used only as a shield and cover for illegal activities of the other petitioners, who are Trustees of the said Trust and the very purpose of grant of exemption under **Section 10(23-C)** of the Act stood defeated and all these revelations were unearthed during the search and seizure operations under Section 132 of the Act on **16/12/2015** and consequent to which, after giving due and reasonable opportunity of hearing to the petitioners, the impugned detailed order with all reasons assigned therein including the case laws discussed, has been rightly passed against the

petitioner- Trust and no interference in the same is called for and the present writ petitions deserve to be dismissed.

13. Before coming to the rival contentions and the case laws cited at the bar, it is considered appropriate to have a little more detailed look into the facts and reasons assigned by the Respondent – Authority in passing the impugned order and it would be best to quote the relevant portion of the said order **Annexure A** dated **21/12/2017** which discusses in detail the reasons for such withdrawal of exemption.

“12.4. On verification of an another digital file by name “2010 _TOTAL _CONSOLIDATED” found and seized from Mr. Venkatesh Manvikar, which is the consolidated Income & Expenditure Account for the F.Y.2009-10, as per the books of account of M/s Navodaya Education Trust, it is noticed that total income shown in the said Income and Expenditure Account is

Rs.31,44,82,492.89, which is same as total of receipts found in page-82 of seized folder marked NETO/01/15-16. Hence, the statement prepared as shown in page no.82 cannot be estimate. It is a real statement showing the real state of affairs of NET. However, in the consolidated Income & Expenditure account, as per regular books of account, the **cash collections of Rs.27,99,60,550/- which is appearing in the seized page no.-82 does not find any place.** This is due to the fact that this cash receipt of **Rs.27,99,60,500/- is nothing but the cash Donation amount which has been collected from students** and which has not been **accounted for in the regular books of account.** However, the entry of cash collection amount of "Rs.27,99,60,550" on page no.82, clearly establishes the fact that this figure indicates the cash Donation amount.

12.5. **Therefore, there is cross reference of cash Donations in various documentary evidences found and seized.**

The evidences not only show how the Donations are received but also how they are applied. Therefore, the contention of Shri Sunki Rajender Reddy that no Donations are received by NET is untrue and deserved to be rejected summarily.

*13.1 From the above details, it is clear that despite stringent regulations and **strongly worded judgments against taking any capitation fees for admission to the professional colleges, the search action u/s.132 has revealed that Navodaya Education Trust, through its Chairman collects huge amounts as “capitation fees” for the undergraduate and post graduate courses in medicine.** As already discussed elaborately, sufficient evidence has been found that the Management of NET collects “Donations” (capitation fee) from the candidates in cash and without any acknowledgement or issue of receipt. Other vital facts found are:*

(i) That the amount of "Donation" is fixed for various courses. The amount is fixed based on existing demand and amount of "Donation" collected by other institutions conducting similar courses;

(ii) Further, as already explained in paragraphs supra, evidences shows that a **substantial part of the Donation amount collected is taken and utilized by the Trustees for their personal use.** In short, the trustees are systematically engaged in personal (unjust) enrichment through this means of **commercialization of the professional courses run through the NET.**

(iii) Since collection of any amount exceeding the prescribed fee is prohibited by law, the NET obviously cannot maintain regular records like receipt book or cash book to account for the Donations collected. The evidence of the "Donation" collected is found written in computer printed statements. **Evidences thereof were found in the possession of Shri Venkatesh Manvikar**

and in the office premises of NET and the residential premises of Rajender Reddy.

Mr. Venkatesh Manvikar has quite systematically and punctiliously noted the amount of "Donation" received from each student, in the digital files. He has also maintained account of amounts utilized for incurring expenses of NET in cash, cash payments for illegal expenditure and the cash taken by the Trustees for their personal purpose. **Evidences of investments,**

expenditure and entries of cash paid for money laundering were found from the residence of Shri Rajender Reddy and

Smt. Swathi Reddy, way beyond their known sources of income and this can be attributable only to the money taken from the Trust. Clearly the moneys collected

unlawfully as "Donation"/capitation fee has not been used solely for the purpose of education, but has been substantially diverted for personal enrichment and for payoffs and payment of speed money.

13.2 As it cannot legally collect the amount of Donation, NET invariably collects the Donation in cash without issuing any receipts. **No seat is allotted unless the amount of Donation specified is paid. The allotment of a seat is at an astronomical price.** Therefore the conduct of NET while giving **admissions is opposed to public policy which is against capitation fees.** The evidences found in the course of search reaffirm this conclusion.

13.3. Though NET is aware, and in fact it maintains a complete record for its own purpose the amounts collected/to be collected from students as Donations/capitation fee, it does not bring on record the names of such persons who in all are **contributing a staggering sum of about Rs.50-100 crore of unaccounted money every year.** This is also opposed to the public policy of curbing circulation of black money.

14. It is also noticed that the assessee trust has violated the provisions of Section 10(23C)

of the I.T. Act. The search has revealed that all the **money so collected as Donation is not being used for the sole purpose for which the NET has been established, i.e., education.** Evidence has been found in the form of Receipts and Payment Statements for the F.Ys. 2010-11 to 2014-15 wherein amount aggregating to **Rs.86,10,00,000/- is shown as "TRF" which means amount transferred to the Trustees for building up their personal assets.** There is evidence that a considerable part of the amount has been used by the trustees for their personal purposes, **like personal investments/ expenditure or moneys used for contesting elections, cash paid for obtaining accommodation entries etc.** There is also evidence that the NET through its Chairman and office-bearers have made payoffs of paid speed money.

14.1 Further, it is also seen from the regular books of account of NET that funds of NET are being used by the trustees for purchase of their personal assets. For example

*e, during the **F.Y.2012-13** an amount of **Rs. 3 crore** has been given by **NET** to **Shri Sunki Rajender Reddy**, which has been utilized by him by giving loan to **Mr. Aditya Mundada** of **Rs.1 crore**. Thus, the funds of **NET** are being misused by the trustees for their personal purpose.*

*14.2 Secondly, huge amounts are paid as less rent to **Shri Sunki Rajender Reddy**, **Smt. Swathi Reddy**, **Mr. Amrut Reddy** and **Ms. Nandika Reddy** by **NET**. Further, **huge honorarium** is also paid to **Shri. Sunki Rajender Reddy** and **Smt. Swathi Reddy** by **NET**. In the preliminary statement recorded on 16-12-2015, **Smt. Swathi Reddy** in her reply to **Q.No.01** has stated that she is into voluntarily activity of taking care of temple maintenance and that she does not get any remuneration from any trust or company. As **Smt. Swathi Reddy** is not involved in day today activities of **NET**, payment of honorarium to her is not justified.*

The details of honorarium paid to Smt. Swathi Reddy is as under:-

Sl.No.	F.Y.	Amount of honorarium paid
1	2009-10	6,00,000
2	2010-11	12,00,000
3	2011-12	12,00,000
4	2012-13	12,00,000
5	2013-14	12,00,000
6	2014-15	20,69,680
7	2015-16	18,00,000
	Total	92,69,680

This clearly shows that the funds of NET are being misused by the trustees for their personal purpose.

15. The information available on record were analyzed. **It is found that the assessee has contravened the provisions of 13th proviso to section 10(23C)(vi).**

16. Hence proceedings were initiated to withdraw the recognition granted u/s.

10(23C) of the Act. An opportunity of being heard was provided to the assessee by issuing a notice on 28-1-2017 to show cause why the approval u/s 10(23C)(vi) of the Income-tax Act should not be withdrawn for violating the provisions of Section 10(23C)(vi) of IT Act and the case was posted for hearing on 06-12-2017 at 12 PM. The Authorised representative of the trust requested for adjournment via email and the same was granted. Shri Rajendra Reddy, Chairman of Navodaya Education Trust and Shri Anand Partani, CA appeared on 11-12-2017 before the undersigned and filed written submissions. The said written submissions are taken on record and duly considered. The assessee has relied upon the following judicial pronouncements which are discussed, as under:-

a) Chief Commissioner of Income tax Vs Geetanjali University: In this case, the Issue involved is the irregularities in admission procedure for particular year i.e. for A.Y.2008-09 and

the same is pending before the Hon'ble Apex Court, hence not relevant to the present case.

b) Commissioner of Income tax Vs Balaji Educational & Charitable Public Trust: In this case, the Hon'ble High Court of Madras had observed that the assessee trust had approval u/s 10(23C) for 2002-03 & 2003-04 and assumed that it will continue to be exempted unless proved otherwise. In the present case, the approval is being withdrawn for violating the conditions of approval and the provisions of the Act.

c) Arvind Bhartiya Vidhyalya Samiti Vs ACIT (2008) while completing assessment for AY 2003-04, the assessee's application for approval u/s 10(23C) was pending before the competent authority and later granted approval for AY 1999-00 to 2001-02. (later got the approval for subsequent years also i.e. after the date of assessment). The facts of the case are

different from the facts of the present case.

d) CIT Vs Fr. Mullers Charitable Institutions: The issue involved is violation of provisions u/s 13(1)(d) and hence the same is not relevant for the present case.

16.1 The facts of the case laws/judgements on which the assessee trust relied upon in their submission other than what have been mentioned above are not applicable to the present case as the issue involved in those cases are regarding registration u/s 12A of the IT Act.

*16.2 The relevant provisions of Section 10(23C) reads as under
Government or the prescribed authority is satisfied that –*

(i) such fund or institution of trust or any university or other educational institution or any hospital or other medical institution has not -

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution -

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or a any university or other educational

institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:

16.3 Thus, the Prescribed Authority is allowed to withdraw the exemption granted u/s 10(23C), if the prescribed authority is satisfied that educational institution has not applied its income exclusively and wholly for educational purposes, or invested or deposited funds in violation of clause (b) of third proviso, or the activities of the educational institutions are not genuine or are not being carried out in accordance with all or any of the conditions subject to which it was approved, the prescribed authority may withdraw the approval, after giving a

*reasonable opportunity of being heard. A copy of the order will be served on the educational institution and to the Assessing Officer. **The charging of “capitation fee” would amount to breach of the provisions of the laws and invite withdrawal of exemption.***

*16.4 The Hon’ble Apex Court in the case of **Ms. Mohini Jain v. State of Karnataka & Ors. (1992) 3 SCC 666**, held that **capitation fee was nothing but price of selling education and such “teaching shops”** were contrary to the Constitutional scheme and abhorrent to our Indian culture.*

*16.5 Hon’ble Supreme Court’s decisions in case of **TMA Pai Foundation Vs. State of Karnataka (2002) (8 SCC 481)**, **Islamic Academy of Education Vs. State of Karnataka (2003) (6 SCC 697)** and **P.A. Inamdar Vs. State of Maharashtra (2005) (6 SCC 537)** also supports the fact that the education is not a commercial activity and hence the evidences found during the course*

of search supports that the assessee has violated the provisions of law and the conditions prescribed while granting the recognition.

16.6. Education would remain as a charity only in a case where education is imparted systematically for a fee prescribed by Government. A private aided or unaided professional institution or any other educational institution of a State is required to collect fees with regard to infrastructure and benefit of students of that educational institution. Collection of money over the above fee prescribed by Committee would amount to collection of capitation fee and such an institution would face legal consequences for same (Vodithala Education Society Vs. ADIT, [2008] 20 SOT 353 (HYD.))

*16.7. In the case of SCIENTIFIC EDUCATIONAL ADVANCEMENT SOCIETY v. UNION OF INDIA AND ANOTHER [2010], 323 ITR 84(P&H), the Hon'ble High Court held that Educational **institution should exist solely for purposes of education and if it***

is not, the society is not eligible for exemption u/s 10(23C)(vi) of the Act.

16.8 The Hon'ble ITAT, Hyderabad vide their order on 22-3-2012 in the case of M/s Islamic Educational Society had observed, as under:

“Further, we find that the Constitutional Bench of Apex Court in the case of T.M.A. Pai foundations and others Vs State of Karnataka & Others (2002) 8 SCC 481 examined the issue of collection of capitation fees for the admission students over and above fees prescribed by the private institution and held that the institution which are collecting capitation fees for admission of students over and above the fees prescribed cannot be construed as charitable/educational institution..... Same view was taken by Apex Court in the case of Islamic Academy of Educations and another Vs State of Karnataka & another (2003) 6 SCC 697. If the admissions were received

*compulsorily for admission of students,
the assessee is not entitled for
exemption either u/s 10(23C) or u/s 11
of the IT Act.....”*

*17. After carefully considering the facts of
the case and the decisions of various judicial
authorities, **I find that this is not a fit
case for continuing the exemption
granted u/s. 10(23C)(vi) of the Income-tax
Act, 1961.** For the above reasons, I hold
that the assessee society is not eligible for
exemption u/s 10(23C)(vi) of the Income Tax
Act. Therefore, the approval granted u/s
10(23C)(vi) of the IT Act by the Chief
Commissioner of Income-tax, Hubli is hereby
withdrawn w.e.f. 01-04-2009 i.e. A.Y. 2010-
11 onwards.*

*Sd/-
(B.R. BALAKRISHNAN)
Director General of Income-tax(Inv.),
Bangalore.”*

14. It would be also appropriate to quote the relevant portion of **Section 10(23-C)** of the Act, clause (vi) and also third Proviso of the said provision.

**“INCOMES WHICH DO NOT FORM PART OF
TOTAL INCOME**

Incomes not included in total income.

Section 10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -*

(1) agricultural income;

(Section 23-C) *any income received by any person on behalf of –*

(i) *the Prime Minister’s National Relief Fund; or*

(ii).....

(iii).....

(iv).....

(v).....

(vi) *any university or other **educational institution existing solely for educational purposes and not for purposes of profit,***

other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority.

Provided also that *where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [or is approved by the prescribed authority, as the case may be], or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that –*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not -

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution –

are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved.

*it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, **rescind the notification or by order, withdraw the approval,** as the case may be, and forward a copy of the order rescinding the notification or*

withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:]"

15. After considering the rival submissions made at the bar and the relevant case laws and upon a closer scrutiny of the reasons given by the Respondent Authority, this Court is of the considered opinion that the present writ petitions have no force and deserve to be dismissed. The reasons are as under.

16. The petitioner - Trust in question having the cloak of an Educational Trust, to enjoy the exemption from Income Tax obtained the approval under **Section 10(23-C)** of the Act, was thoroughly misused and abused by the Trustees who appear to be Members of the same family or closely related and appear to have used the entity of an exempted juristic person of the

petitioner - Trust for purposes other than the pure Educational purposes.

17. The facts unearthed during the course of search and seizure under Section 132 of the Act which have been succinctly narrated, analyzed and discussed by the Respondent - Authority reveal that the petitioner - Trust not only acted against public policy and the directions of the Hon'ble Supreme Court by collection of Capitation Fees from various students for Admission to its Medical College and a staggering sum of **₹52.00 crores** was collected by them under the innocuous name given to part of it as 'Anonymous Donations' and which the learned Counsel for the petitioner - Trust also tried to explain that they were voluntary anonymous donations by the alumni students or parents of the students is nothing but a sham excuse. The huge Capitation Fees collected by such Medical Colleges and other Institutions to provide seats to the intending

students can be anything but voluntary contribution for charitable and pious purposes by the parents or students and such lame excuses could hardly be convincing for any Tax Authority, much less this Court. The violation of the clear directions of the Hon'ble Supreme Court in a large number of judgments which specifically and clearly prohibited the collection of any Capitation Fees, including in the case of **Ms. Mohini Jain Vs. State of Karnataka and others (1992) 3 SCC 666**, and others as quoted in the impugned order itself above clearly shows that the petitioner - Educational Trust in question was acting for profits, contrary to law. This itself would disentitle the Educational Trust from the benefit of exemption under **Section 10(23-C)** of the Act.

18. The other facts against the petitioner - Trust like payment of huge honorarium to the Trustees, huge amounts paid as Lease Rent to Shri. Sunki Rajender

Reddy, Smt. Swathi Rajender Reddy, Mr. Amrut Reddy and Ms. Nandika are also glaring and very damaging for the very foundation of exemption to the Educational Institutions. The Authority concerned has also found that **₹86.10 crores** was shown for the Financial Years **2010-11** to **2014-15** under the Heading **“TRF”**, (Transfer to Trustees) for building up their personal assets and other pay offs or payment of speed money etc. for seeking approvals etc. This clearly shows that the petitioner - Educational Trust was running like a business establishment, rather than for educational purpose.

19. It cannot be expected of the Respondent - Authority to ask on each single entry in the Accounts of the Trust, the explanation of the petitioner - Trust or other Trustees and if a reasonable opinion could be formed on the basis of the material gathered during the course of search and seizure operations under Section 132 of the Act that the petitioner - Trust does not exist

solely for the purpose of education, the petitioner - Trust cannot be allowed to cry wolf on the anvil of breach of principles of natural justice.

20. The search warrants under Section 132 of the Act appear to have been issued against the petitioner - Trust as well as other Trustees who were Members of the same family and it can be reasonably ascertained that they would know of the case against them. The burden clearly lied upon them to establish their *bona fides* in the matter to prove that the Educational Trust in question was not being used for other purposes other than within the four corners of **Section 10(23-C)** of the Act.

21. The compliance with the principles of natural justice was fully made in the present case in as much as the Show Cause Notice was duly given to the petitioner - Trust on **28/11/2017** in which even reference to search action under Section 132 of the Act

was made and it was also stated that the amounts collected by way of donations were used by the Trustees for their personal purposes and for purchase of personal assets and for obtaining accommodation entries etc. and thus it was a comprehensive Show Cause Notice to which even a detailed Reply was filed by the petitioner - Trust but which was not found to be satisfactory by the Respondent Authority and in the opinion of this Court rightly so. Thus the breach of principles of natural justice is not at all found in the present case for allowing the petitioner - Trust to assail the said order on the said ground.

22. The Medical Education in our country in the past few decades has earned more a bad reputation and the vicious cycle of the Medical Education or Engineering Education in our country thriving on illegal Donations, Capitation Fees, arbitrary allocation of Private Management seats etc. and illegal manner in

which the approvals from Government Authorities were obtained, has faced the wrath of the Courts on several occasions up to the Hon'ble Apex Court of the country and a series of judgments in this regard have been given by the various High Courts and Supreme Court. The beginning of this viciousness at the entry level of Medical and Engineering Colleges permeates the professional practices of these fields throughout and the ill-effects of the same on the poor and middle class sections of the society is indeed a traumatic experience.

23. The purpose of exempting such Institutions from Income Tax was obviously to restrict such exemption upon a very strict compliance with the parameters for the same and only *bona fide*, chaste and pure Educational Institutions could expect such exemptions from the Income Tax which as per the said norms and the rules of interpretation of such provisions of exemption have to be strictly construed by the

Courts of law. Any liberal or flexible interpretation 'looking over' the strict compliance of the conditions is likely to defeat the very purpose of grant of such exemption and the business houses which additionally want to run Educational Institutions also as business enterprises cannot be allowed to take the benefit of exemption from Income Tax under the cover of a registered Educational Trust through the Books of Accounts of the Trust, in which all kinds of other business activities may keep on happening.

24. It is only after the search operations under Section 132 of the Act, which in the present case revealed the ugly part of the Trust activities and the reasons based on such material gathered by the Income Tax Authorities cannot be brushed aside and such reasons as stated in the impugned order are found to be sufficient for upholding the correctness of the impugned order.

25. The case laws relied upon by the learned counsel for the petitioner are of little help to the petitioners in the present case. Most of them turned upon the fact situation at the time of initial grant of exemption under **Section 10(23-C)** of the Act and the Courts were not dealing with a fact situation which after the grant of exemption could result in the withdrawal of the same upon misuse of approval under **Section 10(23-C)** of the Act. Therefore, those cases are clearly distinguishable on facts, while there being no quarrel on the propositions of the law laid down in the same.

26. In the leading case of ***Queen's Educational Society Vs. Commissioner of Income Tax***, reported in **(2015) 8 SCC 47** relied upon by the learned counsel for the petitioners, the Apex Court held that if the activity is primarily for educating persons, the fact that Institution makes a surplus/profit which arises incidentally from

the Educational activities or public utility activities does not render the Institution a profit making Institution. In the very same judgment, the Hon'ble Supreme Court warned that if they are not found to be genuine or such activities are not being carried out in accordance with all or any of the conditions subject to which approval has been given under **Section 10(23-C)** of the Act, such approval and exemption must be withdrawn forthwith.

The relevant paragraph 11 is quoted below for ready reference:

“11. Thus, the law common to Sections 10(23-C)(iii-ad) and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purpose and becomes an

institution for the purpose of making profit.

(2) The predominant object test must be applied – the purpose of education should not be submerged by a profit-making motive.

*(3) A distinction must be drawn between the **making of a surplus** and an institution being **carried on “for profit”**. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.*

*(4) If after meeting expenditure, a **surplus arises incidentally** from the activity carried on by the educational institution, **it will not cease** to be one existing solely for educational purposes.*

(5) The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is

to make profit as opposed to educating persons”.

27. In ***American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and others*** reported in **(2008) 10 SCC 509**, the Hon'ble Supreme Court dealt with a case of a non-profit Educational organization set up in USA having its branch Office in India mainly to comply with its obligations under various Agreements with the Government of India (Ministry of Tourism) and the Branch collected amounts of fees from Educational Institutions/persons wishing to take the courses offered in the field of Hospitality and fees for the required course material was remitted back to USA after deducting the incidental costs by Indian Branch, but the **CBDT** rejected the Application under **Section 10(22)** of the Act that there was a surplus repatriated outside India. Under these circumstances, the Supreme

Court held that the scope of inquiry for grant of approval under **Section 10(23-C)** of the Act was limited to the consideration of the nature, existence for non-profit purposes and genuineness of the Applicant. That the remaining monitoring mechanism as postulated in the Third Proviso was not required to be considered at the stage of approval. This case is clearly distinguishable from the facts of the present case and is of no help to the petitioners.

28. In **Chief Commissioner of Income Tax Vs. Geetanjali University Trust (2013) 352 ITR 433 (Raj)**, a Division Bench of the Rajasthan High Court held that the approval for exemption under **Section 10(23-C)** of the Act could not be denied to the Trust and while upholding the remand of the case to the Chief Commissioner of Income Tax for reconsideration the Court observed that merely because a defect in the Admission procedure was found in the case of the

petitioner – Trust, by the High Court which order was ultimately modified by the Hon'ble Supreme Court, it cannot be said that the petitioner - Trust did not exist solely for educational purposes.

The Division Bench of the Rajasthan High Court though observed in paragraph 12 that 'Of course the requirement of an Educational Institution to provide Admissions strictly in accordance with the prescribed Rules, Regulations and the Statute cannot be less emphasized, rather the same need to be adhered to in true letter and spirit but then the said violation cannot lead to its losing the character as an entity existing solely for the purpose of Education' and there upon the Court upheld the order of the learned Single Judge by which the matter was sent back to Chief Commissioner of Income Tax to decide the proceedings under **Section 10(23-C)** of the Act afresh. This judgment is also not on all fours with the case of the present petitioner - Trust.

29. Thus on an over all analysis of the facts and legal position, this Court is of the opinion that there was ample material on record to establish that the petitioner Trust had indulged in illegal activities and could not be said to be existing purely for Educational purposes, and rather various other business activities of the said family of Trustees and their money was passing through the cover and shields of the Books of Accounts of the petitioner - Trust rendering it as merely a skeleton for the purpose of exemption to Educational Trust and rather than a real Educational Trust, solely existing for the purpose of Education. Such sham or bogus Trusts cannot be held to be entitled to exemption under the provisions of **Section 10(23-C)** of the Act and therefore the Respondent Authority has rightly withdrawn the approval of the petitioner - Trust under the said provision.

30. As far as the withdrawal of the approval with effect from **01/04/2009** is concerned, even that cannot be assailed, because the evidence and material discussed in detail in the impugned order reflect such entries in the Books of Accounts which reflect illegality having existing on record right from the **Financial Year 2010-11** onwards and therefore the illegalities and transactions offending the said provisions cannot be split or bifurcated for the period in question only after the search and seizure operations were carried out on **16/12/2015** and the illegality cannot be allowed to be perpetuated for the preceding periods for which such evidence pointing out the illegalities exist on record.

31. Therefore, the writ petitions being devoid of merit are liable to be dismissed and are accordingly dismissed. No order as to costs.

**Sd/-
JUDGE**

BMV*