Supreme Court of India
State Of Gujarat And Ors. vs Meghji Pethraj Shah Charitable ... on 29 March, 1994
Equivalent citations: (1994) 2 GLR 1247, JT 1994 (3) SC 96, 1994 (2) SCALE 374, (1994) 3 SCC 552, 1994 3 SCR 163, (1994) 2 UPLBEC 1327
Author: B J Reddy
Bench: S Agrawal, B J Reddy
JUDGMENT B.P. Jeevan Reddy, J.

1. Leave granted.

2. Meghji Pethraj Shah Medical College was established by the then Government of Saurashtra at Jamnagar in the year 1955. For establishing the college, Sri M.P. Shah "donated" a sum of Rupees fifteen lakhs subject to certain conditions. The government hospital then known as Irwin Hospital was attached to the said college to meet the requirement of a hospital with necessary bed-strength. In the year 1993, the Government of Gujarat repudiated one of the conditions attached to the donation, which led the M.P, Shah Charitable Trust to approach the Gujarat High Court for issuance of a writ commanding the State of Gujarat to continue to abide by the said condition. The writ petition was allowed by a learned Single Judge and a Letters Patent Appeal preferred by the State of Gujarat has been dismissed by a Division Bench-the correctness whereof is under challenge herein.

3. Having regard to the questions arising herein, it is necessary to notice the facts concerning the establishment of the college. On October 8, 1954, Sri M.P. Shah wrote a letter to the then Chief Minister of Saurashtra confirming the arrangement arrived at by him with Sri Manubhai Shah, who was evidently acting on behalf of the Chief Minister. It is necessary to quote the letter in full:

Respected Shri Debharbhai, Today morning, I returned from Jamnagar and in good health. Hope, you will also be enjoying good health. On Monday the 4th October, I had satisfactory discussions with Shri Manubhai Shah at the residence of Shri Premchand bhai in Jamnagar for Medical College and hospital. He has shown good interest in the matter and let us pray that, by the grace of god this mission may be successful.

Following decisions have been taken in the discussion with him.

(1) Existing Irwin hospital will be properly extended and the number of beds and other amenities will be provided as per the requirement of the medical college. Hospital shall be named after Mahatma Gandhi or any other great Indian leader instead of present name.

(2) The Medical College attached this with hospital shall be known as Shri Meghji Pethraj Shah Medical College. The building for the hostel for the students of this college also shall be constructed.

(3) The Constitution of the Colleges shall also provide that I or my successor or my nominees shall be entitled to recommend admission to the extent of 10% of the total number of students to be admitted and this arrangement shall be continued so long as the college continues. I have explained to Shri Manubhai about the necessity of provision and has accepted the same.

(emphasis added) (4) The steps shall be taken to start the college from next June and till the new building for the college is ready, the college shall be conducted in the new building constructed for Jamnagar court.

After having confirmation to the above effect from the Government, we shall complete the necessary procedure for donation and send our confirmation for the same for government record.

Yours Sd/- For Meghji Pethraj Shah.

4. On 22nd/23rd November, 1954, the Chief Minister wrote to Shri M.P. Shah confirming the arrangement. The letter reads:

Dear Shri Meghjibhai, I was glad to receive your letter dated 28th Oct. All the steps are being taken to start medical college from June, 1955. Arrangements will be made to start the college in the new building of the court till the new building for the college is constructed. Medical college will be known as the name suggested by you and the arrangements have been made for the same. Constitution of the college shall provide for the admission to 10% of the students admitted every year as recommended by you or your successor or nominee and this arrangement shall be permanent.

(Emphasis added)

5. As regards hospital, it is being considered to name as Smt. Kasturba Gandhi Hospital, Final decision shall be taken in few days.

I think that on this basis, till all the points are confirmed and the procedure is completed, stone foundation ceremony of the new building shall be done by the Hon'ble President or other great leader. I am arranging for the same and shall inform the date, when finalised.

Hope this will find you in good health.

Yours well wisher, sd/- U.N. Dhebar.

6. The medical college was accordingly established and started functioning from June, 1955 with a strength of sixty students. As per the arrangement contained in the aforesaid letters, Sri M.P. Shah was permitted to nominate students for admission to the extent of 10% of the total strength obtaining at a given time. This arrangement continued even after the formation of the State of Gujarat. In course of time, the college and the hospital grew in strength and size. As against sixty seats in 1955, the annual intake of the college rose to 175 - three times the original number. In the year 1964, the Government of Gujarat took a decision that it would not be possible for it to reserve more than twelve seats for the nominees of the donor. Though a copy of the said proceedings is not placed before us, it is found referred to in the letter dated April 19, 1965 written by the Under Secretary to the Government of Gujarat to the trustee of Meghji Pethraj Charitable Trust. (It is stated that meanwhile the original donor, M.P. Shah had designated the respondent-trust as his

nominee.) The letter reads:

I am directed to refer to your letter dated 4th March, 1965 on the subject noted above and to state that for the reasons given in Government letter No. MOG-1062/4257/Q dated 11th August, 1964, it will be not possible for Government to reserve more than 12 seats for the nominees of the donor at M.P. Shah Medical College, Jamnagar.

7. The respondent-trust acquiesced in this decision. It is not brought to our notice that the trust lodged any protest to the said reduction much less take any legal proceedings to compel the government to abide by the arrangement. From the year 1964-65, therefore, only twelve students were being nominated by the trust.

8. In February, 1993 this Court delivered the judgment in J.P. Unnikrishnan v. State of Andhra Pradesh [1993] 3 S.C.C. 645. The decision pertains to private professional colleges. With a view to eliminate the evil of capitation fee and the other undesirable practices prevalent in private medical colleges, this Court framed a scheme which the affiliating university and the concerned government were under an obligation to impose as terms and conditions of affiliation/recognition. The scheme inter alia directed that no seats shall be reserved for any community, group or family which may have established the college. The idea evidently was that while donations are welcome, investments are not - for the reason, expressly affirmed in the judgment, that imparting of education is not and cannot be allowed to become a business. This feature of the scheme naturally set the Government of Gujarat a-thinking - whether in the light of the above pronouncement, it is permissible to reserve seats for the "donor" in the said government college when such a course is not permissible even in a private medical college. Accordingly, it resolved vide the Government of Gujarat resolution dated 12th July, 1993 "to discontinue the twelve donor seats in M.P. Shah Medical College, Jamnagar". The resolution, a copy of which was communicated to the respondent- trust and the college reads as follows:

ANNEXURE : 'E' Rules for Admission to first MBBS/BDS/Physio Therapy in Medical Colleges in Gujarat State 1993-94.

Government of Gujarat, Health & Family Welfare Department, Resolution No. MCG-1093-2323-J, Sachivalaya, Gandhinagar, Dated the 12th July, 1993.

Read :- (1) Govt. Resolution Health and Family Welfare Department No. MCG-1093-1373-J dt. 20.5.1993.

(2) Govt. Resolution Health and Family Welfare Department No. MCG-1093- 1373-J dt. 26.6.1993.

(3) Govt. Resolution Health and Family Welfare Department No. MCG-1093-1373-J dt. 3.7.1993.

RESOLUTION:

Government has in keeping with the judgment of the Supreme Court in Writ Petition No. 607/92 between Unnikrishnan J.P. and Ors. v. State of Andhra Pradesh, decided to discontinue the 12 donor seats in M.P. Shah Medical College, Jamnagar and 10 donor and seats in Pramuch Swami Medical College, Karamsad. The decision of the Govt. has been communicated the concerned trustees vide this department letter of even No. dt. 22.6.93 requesting them not to admit any student against the donor seats.

Therefore in modification of Rules for admission to first MBBS/BDS/Physiotheraphy course at Govt. Medical College and P.S. Medical College, Karamsad/Govt. Dental College/School of Physiotherapy in Gujarat State for the year 1993-94 approved vide Govt. Resolution No. MCG-1093-1373-J dated 20.5.93 Govt. is pleased to delete the words "and 3" appearing in 7th line of Rule and (ii) to delete the words '"Provided that...total available seats" appearing in 6th and 7th lines of the Rule 2 and (iii) to delete Rule 3.1, 3.2, 3.3, 3.4, and note thereunder.

By order and in the name of the Government of Gujarat.

(M.L. JADAV) Section Officer, Health and Family Welfare Department.

9. Accordingly the Rules for admission to M.B.B.S. course in government medical college, for the year 1993-94, published by the Government of Gujarat contained no provision for nomination of students by the respondent-trust for the said academic year. It is then that the respondent-trust approached the Gujarat High Court challenging the aforesaid Government resolution.

10. Before we refer to the contentions of the parties, it is necessary to notice an earlier judgment of the Gujarat High Court dated 20th September, 1994 in Special Civil Application No. 1232 of 1974 (Miss Asha Nanavati v. State of Gujarat and Ors.). The writ petition was filed by a student seeking admission to the said college. Her case was that but for the said provision for nomination, she would have obtained a seat in the college. She questioned the validity of the rules for admission issued by the Government of Gujarat insofar as they provided for nomination of twelve students by the respondent-trust. She submitted that when the college was started in the year 1955, its strength was sixty and according to the original arrangement only six seats were available for nomination by the trust; that the strength of the college has been increased from time to time by the government by investing its own funds with the result that by the year 1974, the strength of the college had risen to 175; in such a situation, the provision permitting the donor to nominate as many as twelve students was arbitrary, unreasonable and violative of Article 14 of the Constitution of India. She submitted that there was no formal contract or agreement between the Government of Saurashtra and the donor and that the arrangement, if any, between the then Government of Saurashtra and Sri M.P. Shah was not binding upon the Government of Gujarat. She characterised the said arrangement as contrary to public policy and prejudicial to public interest. Both the Trust and the Government of Gujarat, who were impleaded as respondents, opposed the writ petition and justified the arrangement. The High Court dismissed the writ petition holding that the said arrangement was not violative of Article 14 of the Constitution. The court observed that in 1954-55, there was no medical college in Saurashtra and that a college could be established only with the help of the said donation from Sri M.P. Shah. The provision for nomination by the said donor in consideration of the said

donation, the court held, is reasonable. No appeal was preferred by any one against the said decision.

11. Sri Altaf Ahmed, Additional Solicitor General appearing for the appellant (State of Gujarat) assailed the judgment of the Gujarat High Court on the following grounds:

(1) The government was justified in discontinuing the provision reserving twelve seats for being nominated by the respondent- trust inasmuch as the reservation of the kind is opposed to Articles 14 and 15 of the Constitution. According to the judgment in Unnikrishnan, no seats can be reserved for the family, group or community which may have established a private professional college; it is inconceivable that such a reservation can be provided in a government college.

(2) Even if it is assumed for the sake of argument that such a provision was valid when it was made in 1954, it is not valid or reasonable after lapse of about forty years.

(3) There was no contract between M.P. Shah and the Government of Saurashtra as provided by Article 299 of the Constitution. The arrangement between the Government of Saurashtra and Sri M.P. Shah is not legally enforceable in a court of law.

(4) The High Court has not correctly understood the ratio of the judgment in Unnikrishnan the judgment made it clear that any such reservation even in a private college is impermissible. The Government of Gujarat was bound by the said judgment. It, therefore, acted to put an end to the said provision for reservation in a government college.

(5) The High Court was in error in holding that the judgment of the Gujarat High Court in Nanavati v. State of Gujarat operated as res judicata between the government and the respondent-trust. Since the government and the Trust were co-respondents and there was no conflict of interest between them in that writ petition, the decision rendered cannot operate as res judicata between them.

(6) Having regard to the nature of function, it was not necessary for the government to observe the principles of natural justice while terminating the arrangement.

12. Sri G. Ramaswamy, learned Counsel appearing for the respondent-trust urged the following reasons in support of the judgment of the High Court:

(1) There is a binding contract between the government and the Trust entered into in 1954. In any event, the Finding of the Gujarat High Court in Nanavati's case that there was a binding contract between the parties operates res judicata.

(2) The contract entered into between the parties is not violative of Article 14, It is also not open to the State to raise the question of violation of Article 14 since this question was concluded by the judgment of the High Court in Nanavati as far as back in 1974.

(3) The judgment in Unnikrishnan is applicable only to private colleges. It did not pertain to or deal with the government colleges. The said judgment was, therefore, not relevant and did not warrant the impugned termination of arrangement by the Government of Gujarat. Once that judgment is held to be irrelevant in the case of government colleges, the only ground of termination gets knocked off.

(4) In the facts and the circumstances of the case, the contract between the parties could not have been terminated unilaterally without observing the principles of natural justice.

(5) If the government is of the opinion that the contract entered into in 1954 was void and unconstitutional, even then it cannot unilaterally terminate the contract without refunding the amount donated by Sri M.P. Shah. The amount of Rupees fifteen lakhs in 1954 is equivalent to Rupees seven and a half crores today.

(6) The government's order pertains to M.P. Shah Medical College as well as pharmacy college. By a common judgment, the learned Single Judge of the Gujarat High Court struck down the government resolution with respect to both colleges. The government, however, chose to file appeal only in the case of M.P. Shah Medical College but not with respect to the pharmacy college. This is not only discriminatory and arbitrary but must also induce this Court not to interfere in this appeal since upsetting the judgment of the Gujarat High Court would result in two inconsistent orders.

13. Before we deal with the contentions urged by the learned Counsel before us, it would be appropriate to notice a few facts.

14. M.P. Shah Medical College was established by the Government of Saurashtra. At all times, it has been maintained and run by the Government of Saurashtra/Gujarat - from out of their own funds. Every medical college must necessarily have a hospital attached to it with requisite bed-strength and facilities; there cannot be a medical college without such an attached hospital. For this reason, an existing government hospital was re-named as "Kasturba Gandhi Hospital" and attached to the college. Apart from the sum of Rupees fifteen lakhs "donated" in the year 1954, no further sum has been donated nor any other expenditure incurred by Sri M.P. Shah or the respondent-trust over the last forty years. There is also no evidence to show that the college was established exclusively with the amount "donated" by Sri M.P. Shah and that no funds or property of the Government was utilised for the purpose. The material placed before us does not also show that the Government of Saurashtra was in no position to spare a sum of Rupees fifteen lakhs in 1954 for establishing the college or that for that reason it approached or requested Sri M.P. Shah to donate the said amount. It is not clear from whom did the proposal emanate. The judgment of Gujarat High Court in Nanavati refers to and accepts the statement of a trustee of the respondent-Trust that "the State of Saurashtra was a newly formed State at that time and was a very small State and the State had many other public duties like development of other educational institutions of higher education in what was known as educationally backward region of the country", and the further averment that "this object (setting up a medical college) could be achieved only if a sizeable donation like Rupees fifteen lakhs (considering the value of rupee in those days) was received by the Government of Saurashtra, when he government itself was unable without some initial donation to embark upon setting up a

medical college from its own funds". The observations, in the judgment in Nanavati show that while the said "donation" was essential for starting the college, it did not meet the entire expense. Nor do we know what the entire expense. The significant words are "the government by itself was unable without some initial donation to embark upon setting up a medical college from its own funds". Not that we are suggesting that had the college been set up exclusively out of the said "donation", it would make any difference. We are only setting out the precise factual position.

15. The arrangement between the Government of Saurashtra and Sri M.P. Shah does not prescribe the manner or method according to which the original donor or the Trust should select the students to be nominated against the quota reserved for them. It was and is open to the donor/Trust to nominate such candidates as they chose. The Government had no right to question the nominations made. While the Trust says that they have been nominating students on a fair basis with a view to help genuine students and physically handicapped students, the government says that the nomination did not follow any particular method or criteria and that the nominated students came from all over the country. The fact remains that the power of nomination was unregulated and absolute and lay within the sole discretion of the "donor" and his nominee.

16. Secondly, and more significantly, it is misleading to call the amount of Rupees fifteen lakhs paid by Sri M.P. Shah to the government in the year 1954 as a "donation".

The said amount was not given by Sri M.P. Shah without any strings attached, but subject to certain conditions, one of which was of an enduring benefit to him. Not only the college (to be established and maintained by the government) was to be named after Sri M.P, Shah, he bargained for and obtained a quota of ten percent seats to which he could nominate anyone. At the time the college was established the strength of the college was sixty. It has expanded enormously and its present strength is practically three times its original strength. As against sixty seats in 1955, the number of seats today is 175. Sri M.P. Shah or the respondent-trust have not been spending a single pic on the education of students nominated by them over the last about forty years. For the first twenty years, they enjoyed the right of nominating one-tenth of the students and for the last about twenty years, twelve students. The cost of medical education has been steadily rising over the years. In 1974, - as it appears from the judgment in Nanavati - the cost of educating one student was Rupees one lakh. Today it is anywhere in the region of five to seven lakhs. We can take judicial notice of the fact that over the last several decades, a seat in M.B.B.S. course is a highly prized achievement. The private medical colleges have been charging several lakhs of rupees for granting admission in their colleges. We are not suggesting that the respondent-trust was collecting money for nominating students. It may not have been necessary for it but the very power of nomination in respect of twelve medical seats every year did mean an exceptional power and clout -and patronage - which even the government, which has established and has been maintaining and running the college at a huge expense, did not and does not possess. Indisputably, admission to government medical colleges is being done exclusively on the basis of the merit and even the government does not possess the power to nominate a student for admission in its discretion. Only the respondent-trust possessed such a power - and all because forty years back a sum of Rupees fifteen lakhs was "donated" by its predecessor-in-interest. It is true that the sum of Rupees fifteen lakhs in 1954 was a substantial amount, as has been repeatedly emphasised by Sri Ramaswamy. But it is equally evident that the

said payment has yielded substantial benefit over the last forty years.

17. Having noticed the relevant factual aspects, we may now turn to the position in law. Sri G. Ramaswamy, learned Counsel for the respondent-trust is not right in saying that the decision in Unnikrishnan was not relevant to the decision of the Government of Gujarat to terminate the aforesaid arrangement. In our opinion, it was perfectly relevant and the Government of Gujarat was right in terminating the arrangement following the said decision. It has been held in Unnikrishnan that while a person may have a right to establish an educational institution, it can certainly not be treated or operated as a trade or business. The following extract from the judgment brings out the essence of the holding on this aspect:

While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g), - perhaps, it is - we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business. We agree with Gajendragadkar, J. that "education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words.... (See University of Delhi.) The Parliament too has manifested its intention repeatedly (by enacting the U.G.C. Act__, I.M.C. Act and A.I.C.T.E. Act) that commercialization of education is not permissible and that no person shall be allowed to steal a march over a more meritorious candidate because of his economic power. The very same intention is expression by the legislatures of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu in the Preamble to their respective enactments prohibiting charging of capitation fee.

We are, therefore, of the opinion, adopting the line of reasoning in State of Bombay v. R.M.D. Chamarbaugwala [1957) S.C.R. 874 that imparting education cannot be treated as a trade or business.

Education cannot be allowed to be converted into commerce nor can the petitioners seek to obtain the said result by relying upon the wider meaning of "occupation". The content of the expression "occupation" has to be ascertained keeping in mind the fact that Clause (g) employs all the four expressions viz., profession, occupation, trade and business. Their fields may overlap, but each of them does certainly have a content of its own, distinct from the others. Be that as it may, one thing is clear - imparting of education is not and cannot be allowed to become commerce. A law, existing or future, ensuring against it would be a valid measure within the meaning of Clause (6) of Article 19. We cannot, therefore, agree with the contrary proposition enunciated in Sakharkherda Education Society v. State of Maharashtra, Andhra Kesari Education Society v. Govt. of A.P. and Bapuji Educational Assn. v. State.

18. In the scheme evolved in the said judgment, it is expressly directed that all students admitted to a private professional college shall be selected exclusively on the basis of merit, both in the category of merit (free) seats as well as payment seats. In the case of such private professional colleges, an exception was made to the extent of 5% of the seats for accommodating the N.R.Is/foreign students in view of the orders and policy of the Government of India to encourage such students. It has also been directed expressly that "there shall be no quota reserved for the management or for any family, caste or community, which may have established such college". If this is the position in the case of professional colleges established and administered by private bodies, it is inconceivable that in the case of a college established and run by the government, any admissions can be made otherwise than on merit or any quota can be reserved for any person, family or Trust, which may have assisted monetarily in establishing the college. The government is not precluded from accepting donations from charitable-minded individuals or organisations but it cannot certainly enter into an arrangement or a venture of the kind concerned herein. In this case, the payment was more in the nature of a deal whereunder Sri M.P. Shah obtained in return an enduring benefit till the college lasts. It was not even a case, where the government unilaterally offered something out of gratitude for such "donation" - not that we are saying that such a thing would be legal. Now, where an individual or an organisation which establishes and runs a medical college (recognised by State or affiliated to a university) is not entitled, according to Unnikrishnan, to admit students on its own, or in its discretion, it is inconceivable that a person or a body which has assisted in setting up of a government medical college would be permitted to have a quota of its own to which it can nominate students of its own choice. There is no room for such an arrangement in law. We are, therefore, tit the opinion that the reason given by the Government of Gujarat in its communication dated June 22, 1993 for terminating the said arrangement is a perfectly relevant, legitimate and valid reason. It was bound to do so in law and it has done so. No exception, can be taken to the said action.

19. In this view of the matter, it is not necessary to deal with the other contentions urged by the learned Additional Solicitor General. We must, however, deal with other contentions urged by Sri Ramaswamy. He contended that the decision of the Gujarat High Court in Nanavati operates as res judicata between the respondent-trust and the Government of Gujarat and, therefore, it is not open to the government to say that the said arrangement is not valid and/or binding upon it. It is not possible to agree. The judgment in Nanavati is not a judgment in rem. It is a judgment in personam. It was in a writ petition filed by a student, in her individual capacity, seeking a direction to the college to admit her in M.B.B.S. Ist year course. She arrayed both the respondent-trust and the Government of Gujarat as respondents to the writ petition. Both the Trust and the government supported the arrangement and contended that it was valid and binding. There was no conflict of interest between the Trust and the government. There was no issue in controversy between the Trust and the government nor was there any adjudication by the court on such an issue. For attracting the rule of res judicata between co-defendants - according to the terms in Section 11 of the Civil Procedure Code which provision of course is not, in terms, applicable to proceedings in a writ petition - it is necessary that there should have been some issue directly and substantially in controversy between them which has been heard and finally decided by the court. Same would be the position, where a plea of res judicata is sought to be raised between co-respondents in a writ petition, on the general principles of res judicata. Since the said basic requirement is not satisfied, the said judgment cannot be treated as res judicata between the Trust and the government. At the

most, it can be used as an instance where the government had affirmed the binding nature of the said arrangement but no more. That does not even give rise to an estoppel in the facts of this case. Merely because the government had contended in 1974 that the said arrangement is a valid one and binding upon it, it cannot be said that it is precluded from resiling from the said position even when it has realised that such an arrangement is contrary to Article 14. There can be no acquiescence or waiver in such matters. If an individual cannot waive the fundamental rights conferred upon him by Part-1ll, the State cannot equally be prevented from discharging its obligations placed upon it by Part-Ill by rules of evidence like estoppel, acquiescence or waiver.

20. Sri Ramaswamy relied upon certain decisions in support of the said contention which we may deal with briefly. The first decision relied upon is in Federation of Directly Appointed Officers of Indian Railways and Ors. v. Union of India and Ors. . In that case, there was an earlier decision by this Court on an issue identical to the one raised in the writ petition. Though the earlier decision was not rendered in a writ petition filed in a representative capacity, the issue had arisen between the very same categories of persons and the contentions were also the same. The petitioners sought to argue that the earlier decision is not binding upon them in view of the "developing concept of Article 14". On the other hand, it was argued by the other side that the earlier decision operated as res judicata. On an examination of the contentions which arose in the previous case and which arose in the case before them, the learned Judges comprising the Division Bench held that they are unable to see "any compelling reasons to deviate from the principles enunciated in (earlier) judgment". It was also held that "a dispute now sought to be raised under Article 32 of the Constitution between the officers in a representative capacity and engineers across also in a representative capacity must be held to be barred by principles of res judicata as also by the rule of constructive res judicata". We are unable to see how the principle of the said decision helps the respondent-trust herein. There it was a direct conflict between two categories of employees on both the occasions and on identical grounds. It was for that reason that the earlier decision was treated as res judicata.

21. The next decision relied upon is in Ambika Prasad Mishra v. State of Uttar Pradesh . The principle emphasised by the Constitution Bench in this case is that judicial decision should not be reviewed from time to time since such a course has the effect of making the law uncertain besides keeping the legislative and administrative decisions on vital issues in perennial suspense. There can be no quarrel with the said principle but its relevance herein is very little.

22. Sri Ramaswamy then cited State of Uttar Pradesh v. Nawab Hussain . In that case, the respondent who was dismissed from service filed a writ petition in the High Court raising a particular contention. The writ petition was dismissed. Thereafter, he filed a suit raising another ground of challenge which was met by the State by raising the plea of res judicata. This court held that the respondent was precluded by the rule of constructive res judicata from raising the said new ground in the suit which he did not raise in the writ petition, though it was within his knowledge and could have been taken in the writ petition.

23. The last decision cited by Sri Ramaswamy on this score is in Somwati v. State of Punjab . In this case, it was observed at pages 793-794 that the mere fact that one of the contentions now raised was not raised or considered in an earlier decision which affirmed the validity of the enactment, does not

furnish sufficient ground for reopening the issue. None of these cases are cases relating to res judicata between co-defendants/co-respondents.

24. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alterant partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was - as has been repeatedly urged by Sri Ramaswamy - a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further.

25. Regarding the contention that the Government of Gujarat did not choose to file an appeal (against the judgment of the learned Single Judge) in the case of the pharmacy college but filed an appeal only in the case of the M.P. Shah Medical College and that it is guilty of discrimination on that account, we must say, we see no substance in it. It is explained by the learned Additional Solicitor General that in the case of pharmacy college, only one seat was involved whereas it was twelve seats here and that too in a medical college. In any event, since both the colleges are different and they had filed two different writ petitions, non- filing of appeal in one case does not disable the government from filing the appeal in the other case, merely because the judgment is a common one. It must be deemed in such a case that it is a judgment in each case separately.

26. For the above reasons, the civil appeals are allowed and the judgments of the Gujarat High Court, both of the learned Single Judge and the Division Bench under appeal, are set aside. No older as to costs.

27. No orders on Interlocutory Applications.