

IN THE SUPREME COURT OF INDIA**CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO.****OF 2004.**

(A Public Interest Petition Under Article 32 of the Constitution of India)

IN THE MATTER OF:Articles 14 and 32 of the
Constitution of India.**AND****IN THE MATTER OF:**

1. Sandeep Parekh,
30 School Lane
Bengali Market
New Delhi 110001. ...Petitioner 1
2. Saiket Sengupta
Dorm-8, Room-18
Indian Institute of Management
Vastrapur, Ahmedabad 380015. ...Petitioner 2
3. Anish Mathew
Lancor Westminster, 8th Floor
108 Dr RK Salai
Mylapore, Chennai. ...Petitioner 3

VERSUS

1. Union of India,
Through the Secretary,
Secretary (T) Dept. of Higher and Secondary Education
Ministry of Human Resource Development
Government of India
Shastri Bhawan,
New Delhi 110001. ...Respondent 1
2. Mr. Murli Manohar Joshi
Union Minister for Human Resource Development
Government of India
Shastri Bhawan,
New Delhi-110001. ...Respondent 2
3. Joint Secretary (T) Dept. of Higher and Secondary Education
Ministry of Human Resource Development
Government of India
Shastri Bhawan,
New Delhi 110001. ...Respondent 3

**PUBLIC INTEREST PETITION UNDER ARTICLE 32
OF THE CONSTITUTION OF INDIA**

TO

HON'BLE THE CHIEF JUSTICE AND HIS
HON'BLE COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED –

MOST RESPECTFULLY SHEWETH:

1. The Petitioner 1 is a citizen of India. He has a master's degree in law, is a practicing Advocate since the year 1995 and is admitted to practice law in India and New York. The Petitioner 1 has previously worked both in India and in the US as an advocate. The Petitioner 1 has been visiting faculty at the Indian Institute of Management ("IIM"), Ahmedabad where he has taught a course on Securities Regulations.

2. Petitioner 2 is a citizen of India. He graduated with a degree in Mechanical Engineering from IIT Delhi in 2001. Petitioner 2 is currently a student of IIM, Ahmedabad. He comes from a low income family. He has not availed of any need-based scholarship though he was eligible. He is being wholly financed through a bank loan (which includes the cost of buying a computer).

3. Petitioner 3 is a citizen of India. Petitioner 3 was a student of IIM, Bangalore and graduated in the year 2003. The Petitioner 3 at the point of entering IIM, Bangalore came from a low income family (family earnings less than 1.5 lakhs per annum). Petitioner 3 funded his education by taking a bank loan and in the second year sought a fee waiver worth Rs. 75,000 which was allowed. IIM, Bangalore also made a grant of Rs. 75,000 to Petitioner 3 to allow him to travel to the Stockholm School of Economics on an exchange programme. Petitioner 3 had also received another scholarship worth Rs. 1 lakh for his performance in the entrance examination. Currently the Petitioner is working for a Business

Process Outsourcing company in the field of equity research. Petitioner No. 3's and is currently well placed economically.

4. At the outset, the Petitioners declare that they do not belong to any political party or have any personal interests at stake, apart from the public interest, in the outcome of the present proceedings.

5. The Petitioners are deeply hurt by the manner and means by which the Ministry of Human Resources Development ("the Ministry") has acted in the last few months and are concerned that but for the timely intervention of this Hon'ble Court, the Ministry is likely to steamroll rational opinions and impose its powerful will in the guise of implementing 'public policy'. The risk of destroying institutions known worldwide for their excellence is so great that the Petitioners are filing this Petition on an urgent basis and on the basis of newspaper articles, opinions and interviews and certain other documents. It is submitted that the Respondents are acting with great secrecy and are giving select information to the press so that the public or affected parties are left without any remedy. It is submitted that the secretive process in the field of discussing reforms of higher education is contrary to the rule of law. The Respondents should not be allowed to take advantage of their own wrong and it is later prayed that this Hon'ble Court may be pleased to order that the Respondent disclose all relevant documents, circulars and proposed laws to the citizens of this country and to this Hon'ble court. The Petitioners are left with a very limited amount of official information. Therefore also, the Petitioners crave leave to rely on newspaper reports, opinions and interviews.

6. The Petitioners feel concerned with the recent media reports regarding the leaking of the Common Admission Test ("CAT") admission test papers and the subsequent attempts by the Ministry to subvert the functioning of the Indian Institutes of Management in the country which would potentially damage these pockets of excellence built with enormous resources over nearly 40 years. An article in the Business Standard dated 25.11.03 quotes a

student of the Wharton School of Management (rated the best Business School in the world) that it is far more difficult to get into IIM, Ahmedabad than it is to get into the Wharton School of Business. A copy of the article of Business Standard dated 25.11.03 is annexed hereto as **Annexure "A"**. Another article in the Indian Express on 19.11.2003 states how IIM, Ahmedabad strives to attain a position of 20 best in the world from the current ranking of amongst 50 best. A copy of the article dated 19.11.03 is annexed hereto as **Annexure "B"**. Without taking away the credit of the thousands of faculty, students and administration of these institutes, it must be remembered that these institutions are a result of the vision of our founding fathers and the product of a political will. To omit a reference to such visionaries of the past would be a great omission by the Petitioners.

Cause of action under Article 32

7. Despite the vision of their predecessors, the Respondents herein are guilty of violating the rights guaranteed to the citizens under Article 14 against arbitrary actions wholly unconnected with the objects sought to be achieved. In particular, a) Respondent no. 2 has admitted improper purpose; b) is based on a committee report the chairman of who has explicitly disowned himself from the conclusions drawn by the respondents and therefore irrelevant facts are relied on; c) the impugned order and the proposed actions sought to be taken are opposed to even the supposed benefactors of the order and are wholly and objectively unreasonable. Because the questions involved would affect thousands of past, present and future students of management across the breadth of the country, the IIMs themselves which are situated in six different states. Because the questions involved would ultimately reduce the competitiveness of the country and result in the destruction of internationally recognised portals of learning, the Petitioners crave leave of this Hon'ble court directly under Article 32 of the Constitution without resorting to Article 226 of the Constitution. Hence this petition has been filed under Article 32 of the Constitution of India for the enforcement of the rights guaranteed under Article 14 of the Constitution of India.

Locus

8. The Petitioners are filing this Petition because the classes of affected persons are so many and so diverse that they cannot all be adequately represented. In particular, the affected persons include current and future students of management at IIMs. The current students would be unlikely to have access to appropriate resources to challenge the Respondents. Further, future students at the IIMs are an indeterminate class of persons and cannot possibly bring a cause of action till their admission in future years. It is also submitted that the scope of the remedies sought are much larger than those sought by each individual constituent and this Petition would therefore represent the interests of various constituents without multiplicity of proceedings. The Petitioners thus have a locus in public interest as this Hon'ble Court has held in several cases that this court will exercise its powers in a public interest litigation where the class of affected persons is unable to effectively represent itself. In any case, since the competitiveness of the corporate and non-corporate world would suffer in the long term because of the actions and proposed actions of the Respondents, and the competitiveness of India itself is at stake while public functionaries violate the fiduciary trust handed over to them the Petitioners crave leave of this Hon'ble Court to allow this Petition in Public Interest.

Facts.

9. The facts very briefly stated are as follows. The three IIMs of Ahmedabad, Bangalore and Calcutta were established in 1960s for the purpose of providing training in Management. The other three IIMs (Lucknow, Indore and Kozhikode) were established more recently. The avowed purpose of the institutes is to improve management not merely in the business world, but to improve management in the fields of government, non-governmental organizations and charitable fields. IIM, Ahmedabad has an area of faculty which does work in the field of agri-management and the institute awards a degree in Agriculture management. The faculty of various IIMs has advised most state governments and the

Central government (besides public sector institutions) about various aspects of governance.

10. The Charter documents of the Indian Institute of Management, Ahmedabad is the “Memorandum of Association and Rules” a copy of which is attached herewith as **Annexure “C”**. There are five other IIMs which were established later and would have similar Articles of Association. The Admission to these institutes is through a test managed closely by these institutes, and popularly referred to as the CAT.

Prior history

11. In 1992 because of the fiscal problems of the country, the Government set up a committee to look into ways of making the IIMs less dependant on government resources. The relevant part of the Committee Report (“the Kurien Committee Report”) along with its recommendations is annexed hereto as **Annexure “D”**. The focus of the Kurien Committee Report was to reduce the dependence of the IIMs on government support without reducing the standards of education. The Report states:

“During our discussion with the IIM Directors and faculty members, we noticed their awareness of the need for containing the maintenance expenditure of the Institutes, for reducing their dependence on government funds and for greater cost effectiveness of their programmes. There is also an increasing realization that the cost of management education and training should not be so heavily subsidised as at present by the government and that the direct and indirect beneficiaries of the system should bear a sizeable portion of the cost.” ...

“There is an urgent need for the IIMs to evolve and implement a package of measures for augmenting their internal income. The expectation that the Government would or can support without limit the maintenance budget of the Institutes is untenable in the current context of financial

stringency. The reported thinking of government to freeze the non-plan maintenance grant of the institutions at the level of 1991-92 during the period of 8th Plan has brought home the urgency for the IIMs to augment their own resources.”

12. The government adopted all the recommendations of the committee and the terms were thereafter implemented by each of the IIMs. As a result of the implementation of these recommendations the fees of the IIMs were slowly increased from a nominal amount to its current level where it still remains subsidised by at least 60%.

13. By 2003 the present Hon'ble Minister for Human Resources Development (Respondent 2 herein) made a bid to gain control of the respective IIMs and for that purpose started attacking the autonomous fabric with which it has been clothed for over four decades. Sometime in early 2003 the Ministry asked the IIMs to sign an MoU which would increase the control of the Ministry over these institutes. The three IIMs (Ahmedabad, Bangalore and Calcutta) did not sign the MoU because they did not want to dilute their autonomy and since they were capable of funding their requirements. In any case since the three IIMs were running surplus budgets a grant could not be given by the government. The money was handed over despite the three IIMs not signing the MoU.

14. The ministry created (sometime in the middle of 2003) a committee called the UR Rao Committee which was to look into the question of the fee structure of various technical institutes. Significantly, the committee did not have any director or faculty member of the IIMs, nor were any students interviewed. The Rao Committee report apparently suggested that fees for technical education should be no more than 30 per cent of the per capita income of India. This would put the fees at Rs 6,000 per year (at current prices). Subsequently, on 7.2.04 Mr. UR Rao the chairman of the committee appeared on NDTV which was subsequently reported in the headlines of the Economic Times stating that he

made the recommendations without dealing with the IITs or the IIMs. He stated that the terms of reference were only regarding the privately managed AICTE approved institutions. A copy of the article which appeared in the Economic Times on 8.2.04 is attached hereto and marked as “**Annexure E**”

15. Sometime in November 2003, the CAT examination paper was leaked by certain mafia elements to certain prospective applicants for sums of money leading to the cancellation of the test. In the preliminary findings, it was discovered that in fact the IIMs which conduct and monitor the conduct of the test very closely were neither parties nor negligent in the fracas. And there seems a *prima facie* fault of the government controlled printing press which was used to print these papers. Unfortunately, the Government took the event to gain political and bureaucratic mileage out of the event and used the event to convey to the people that the CAT was poorly handled and prone to leaks as a regular course of events. The respondents also took it as a means to make statements about other aspects of governance of these institutes by speaking to the press and not introducing any order, circular or law.

16. Given, the prior context, the Ministry attempted to use the event of the leak of the paper to gain control over the IIMs. The Ministry finally issued an order dated 5 February 2004 whereby it directed all Directors to reduce the fees of the IIMs from 1.5 lakh (approximately) to rupees 30,000 per annum. A copy of the impugned order is attached herewith and marked as “**Annexure F**”.

UR Rao Committee and fee reduction

17. Before discussing the seemingly noble substance of the UR Rao committee report it is useful to see the process which was used by the Ministry to come to the final report. If in fact, the problems were the problems of the country, there ought to have been public debate on the Rao committee report. There were none because the report has not been made public. A letter by the

Petitioners written to the Minister on the 30th January 2004 asking for a copy of the report is annexed hereto as **Annexure “G”**. There ought to have been representation from the faculty/directors of IIMs before the report was drafted. There was neither any representation from the faculty/director nor was any faculty/director represented on the committee itself. The non disclosure of the mandate and the final report nullifies the scope of any meaningful public debate.

18. The recommendation of the UR Rao Committee report cannot be made applicable to the IIMA Society (which is a society registered under the Societies Registration Act 1860) (and the respective societies which govern the other IIMs) in view of Article 5 of the Articles of Association. A brief look at the Articles of Association would make the irregularity amply clear. Article 5 of the Articles of IIMA states

5. *The Central Government in consultation with the State Government may at any time appoint one or more persons to review the work and progress of the Society or the Institute and to hold an enquiry into the affairs thereof and to report thereon, in such manner, as the Central Government may stipulate. Upon receipt of any such report, the Central Government in consultation with the State Government may take such action and issue such directions as it may consider necessary in respect of any of the matters dealt with in the report regarding the Society or the Institute, as the case may be, and the Society shall be bound to comply with such directions.*

19. It is obvious from the language that the Central Government does not have the power to act without consulting the state government. Hence the UR Rao Committee, which was set up without the participation of the State Governments (Gujarat in the case of IIM, Ahmedabad, West Bengal in the case of IIM, Calcutta, Karnataka in the case of Bangalore and UP in the case of IIM,

Lucknow), had no powers to recommend anything to the Government under Article 5 (or the equivalent) and consequently the UR Rao Committee recommendations cannot be made applicable to the IIMs. In fact according to the headlines of the Economic Times dated 8.2.04 Mr. UR Rao in an interview to that paper stated that his terms of reference for his study pertained only to institutions coming under the purview of the AICTE and not the IITs and IIMs. A copy of the article is marked hereto as Annexure E. Therefore even the committee has disowned making any such recommendations which are sought to be relied upon by the Respondents.

Fee reduction

20. Coming to the seemingly noble purpose of reduction of fees, it is submitted that the entire basis of reducing fees of IIMs from Rs. 1.5 lakh to Rs. 30,000 is not done with making the IIMs more accessible but with the purpose of making the IIMs dependant on the government, so that it can exercise more control in the future and the Directors of these institutes necessarily must go with a begging bowl before the Ministry to ask for annual grants. With this highly doubtful motive, it is submitted that the rationale for reduction of fees is not for increasing accessibility to poorer students but to increase governmental control. A copy of the several articles which appeared the following days are attached hereto as “**Annexure H (Colly)**”. First amongst these articles is a newsreport which cites the Chairman of the Board of Governors of IIM, Ahmedabad Mr. Naryana Murthy calling the fee reduction a “retrograde step”. The titles of the other articles read “Fee cuts to destroy IIMs, say students”, “Autonomy, not fee, is the issue”, “HRD Minister is trying to solve a non-existent problem: Students”, “Pass outs lash out at Joshi’s Hidden Agenda”, “IIMs baffled at fee cut fiat” and “Campus mood: cynical contempt”. One of the articles calls it Mr. Joshi’s Orwellian campaign. These articles represent a cross section of many of the affected parties.

21. It is submitted that no consideration has been given to understanding the factual financial position of the institutes and

therefore the impugned order is made without studying the financial impact of the order. The Petitioners have in “**ANNEXURE I**” estimated the impact of the order on the balance sheet of the various IIMs. It would appear from the estimate that if the order is implemented a budget deficit of 9.2 to 15.6 crores per annum would result in the case of IIM, Ahmedabad. Given a corpus of 60 crores (100 crores minus 40 crores which is being spent on construction of new building) the institute would be bankrupt in 3.8 to 6.5 years unable to run even its current account expenses. The impact on a less prosperous IIM (the IIMs at Indore, Lucknow and Kozhikode) would be even more dramatic because they have practically no reserves/corpus on which they can draw. The resource crunch if the order were to take effect would be felt not after several years but would be a slow and painful death for these institutions which would see faculty leaving, the brand image left damaged, the guest lectures and research going down, libraries getting outdated and various other non tangible deteriorations forcing the IIMs to struggle to survive instead of fighting to excel as they do currently.

22. Substantively, the following legal and rational arguments resist the urge for reduction of fees.

- (a) The fee reduction could be mandated only under an order passed under Article 5 of the Articles of Association (with respect to IIM, Ahmedabad). However, for an order to be passed on the basis of Article 5, consultation with the state government is mandatory. Since there was no such consultation, the order suffers fatally since the division of power was made so that the Central Government (which was one of the three contributors to the founding of the institutes – the other two being the state government and the industry) does not have monopoly rights over the institutes. Further, the order is made on the basis of the UR Rao Committee which was formed for the purpose of considering the fee charged in private technical institutions governed by the AICTE. As is submitted above, the Chairman of the

Committee himself has admitted that the Committee never went into the issue or applied its mind to the facts.

- (b) The Minister derives powers from Articles 74 and 75 of the Constitution, and the Constitution does not give powers to individual Ministers but to the Cabinet. Thus a Minister must take cabinet approval before any major decision is taken. This is accentuated by the need to take permission of other ministries which are impacted by the order. The impugned order contradicts the order of the finance minister reducing the budgetary allocation to the IIMs in the interim budget. The allocation for IIMs, in fact, saw a sharp 25 per cent drop in government support from Rs 59.73 crore in the revised estimates for the current fiscal to Rs 45 crore for 2004-05. Therefore the order should have been cleared by the Finance and Law Ministries (which are the other ministries affected by the order) and then by the cabinet. No such approval seems to have been taken because of the contradiction of the HRD Ministry promising orally of increased support and the finance ministry which has reduced the annual grant. The order thus violates the checks and balances mandated by the constitution. To pass an order which reduces fees *and* governmental grants amounts to bankrupting these institutes more immediately the three more recently formed IIMs which are entirely dependant on the Central Government.
- (c) The conflict is also clear from the speech of the venerated President of our country who stated in his Republic day speech. “Protecting the Brand image of higher education: The nation’s vision of developed India requires greater thrust to scientific and technological advancements. All our IITs, IIMs have graduated as world class brand institutions in addition to the century old premier institution – Indian Institute of Science, Bangalore. These characteristics must be preserved and nurtured.”

- (d) Since the parliament was dissolved before the announcement of the impugned order was made, the order is being made by a caretaker government which cannot take major policy decisions. A policy decision which is contrary to nearly all rational opinions and other parts of the executive branch and which will impact not just a few educational institutions but the entire landscape of management cannot be taken by the Ministry after the parliament is dissolved. Respondent 2 has admittedly acted with the purpose of garnering votes in an interview given to the Economic Times on 7.2.04. A copy of the interview of Respondent 2 is annexed hereto and marked as **Annexure J**. Thus the admitted motive of the Minister is to garner votes for himself in the election and not for any good of the country. The same motive of the same Minister led to the fall of the Allahbad Bill 2004 on the 4th of February – the first time in the history of free India that a motion to move a Bill in the Rajya Sabha by the ruling party has fallen. A copy of the newsreport published in the Indian Express on 5.2.2004 is attached hereto as **Annexure “K”**
- (e) The students are already subsidised by the Institute and the fees charged are at a nearly 60% discount to the actual cost incurred by the institute. There are several scholarships available for needy students. Petitioner 2 and 3 were both from lower income society at the time they joined. It may be mentioned that Petitioner No. 2 is filing this Petition even though he would lose economically if a favourable order is passed viz. despite his economic difficulties and the fact that he would economically lose, he has nonetheless elected to challenge the actions of the Respondents.
- (f) Because the fees were never a deterrent to entry into these institutes. It is reliably learnt that banks line up outside these institutes on admission day and fall over each other to offer loans to these students. To put a further perspective,

the salaries of the Post Graduate students is in the area of 6 to 25 lakhs a year.

- (g) Fourthly, the order erroneously relies on the Supreme Court order in TMA Pai to say that “Recently, the Hon’ble Supreme Court has observed while delivering a judgment in the TMA Pai case, that an educational institution cannot charge such a fee as is not required for the purpose of furthering the object.” In fact the judgment in TMA Pai 2002 (8) SCC 481 lays down exactly the contrary position at law. The Court there had held that fees charged should be reasonable and so long as there is no illegal profiteering an educational institution could charge reasonable fees.
- (h) The Rao committee report which apparently states that fees should be a percentage of per capita income has no rational nexus to the object sought to be achieved of providing world class education irrespective of the economic status of prospective students. Mr. UR Rao himself has stated that he was not discussing the IIMs or the IITs in his report. Fees should be connected to the cost of providing these services and with the greater object of facilitating higher education in management to all who are capable of entering these institutes. There has not been a single example where a capable student had to forgo studying at these institutions for want of funds. An article in the Economic Times dated 9.1.2004 cites Mr. Kiran Karnik, President of Nasscom as follows “Instead of a percentage of per capita income (the reported basis for arriving at the fee of Rs. 6,000 at IIMs), the more appropriate index would be percentage of the expected salary. US business school fees are over 25% of expected salaries. Alternatively, we should use cost as the basis of fees.” A copy of the Article dated 9.1.2004 is annexed hereto as **ANNEXURE “L”**. To give a further context, a recently founded business management school Indian School of Business charges market rates to students for its MBA programme upwards of Rs. 13 lakhs per year per student.

Studying at Harvard University's Business School per student per year exceeds Rs. 20 lakh rupees.

- (i) The students of IIM, Calcutta recently conducted a poll of 400 students on whether fees should be reduced and the poll indicates that the students are opposed to the idea of the proposed fee reduction. An article in the Business Standard on 16.1.2004 annexed hereto as **Annexure "M"** while discussing the poll states that "Students reasoned if fees were reduced with the selection procedure left untouched it would lead to selection of the same candidates. Essentially, the ministry is trying to solve a fictitious problem, a student said." The unique protest seemed to indicate that the students, who are the proposed beneficiaries of the fee reduction, realize that the fee reduction would result in fewer and poorer services being offered and thus damage the education they receive. Another article in the Economic Times dated 7.1.2004 marked as **Annexure "N"** states "As an IIMB faculty member puts it "It would be disastrous for the IIM brand if they agree to the HRD ministry's demands in funding and fees. We would lose our best teachers, and infrastructure and research would be severely compromised." Another article in the Business Standard dated 8.1.2004 takes the viewpoint of current students, who are vehemently opposed to the fee cut. A copy of the article is marked hereto as **ANNEXURE "O"**.
- (j) The reduction of fees would thus result in lowering of overall standards of the institutes, because to be world class the institutes need to spend money on infrastructure facilities, classrooms, research and development. The pay scales of faculty are dictated by the government and the cap on faculty pay has been a major deterrent in attracting outstanding faculty. The government already exercises great control over the spending ability of the institutes, for instance a director cannot travel abroad without the express

permission of the Ministry, even if the ticket is being funded by the host institute.

(k) An editorial in the Business Standard dated 13.1.04 states about the fee reduction “measures that will make these centres of excellence dependent entirely on the ministry’s hand-outs, which is what Dr. Joshi wants. Already babus in the ministry sit in judgement on whether IIM directors should travel to a seminar or conference, and one of them famously questioned the decision on a few thousand rupees taken by an IIM board chaired by the Infosys chairman, N R Narayan Murthy.” A copy of the editorial article dated 13.1.04 is annexed herewith as **Annexure “P”**.

(l) Some excerpts from an article titled “Will government interference serve any purpose?” published in Fortune India on January 15, 2004 throws further light on the issues.

“The suave and soft spoken Mr. N R Narayan Murthy the architect and mentor of Infosys Technologies and chairman of the board of governors of IIM Ahmedabad, put it mildly when he said that IIMs should be free to raise money and must not drain the resources of the country, especially when 150 million children of the country cannot go to school”. However director of a business school congratulated the board of governors of IIM-A in general and Mr. Narayana Murthy and Prof. Bakul Dholakia in particular for giving a fitting reply to the Union HRD ministry which is keen to have a say in the management of the IIMs so that the government can saffronise and indianise the curriculum of the management schools and at the same time manage to get admissions for their relatives and friends...Says an education expert, “The government’s philosophy is simple. They found that the business schools were going out of their hands. So, they want them to run at a deficit, which will be met by the government. This is

the best way to make directors and vice-chancellors of universities stand in queue and beg for funds. This is what is happening at our universities today. Finally, autonomy with financial independence is a myth". Says Mr. Narayanmurthy, who feels that IIMs should raise their own funds, "I have always maintained that government funds must go for more basic issues like healthcare and primary education rather than professional education."

23. Therefore the entire assumption of making a decision on relevant consideration falls and the Respondents have not applied their minds to relevant consideration and have very heavily relied on irrelevant consideration. Combined with the admittedly tainted motive of Respondent 2, such executive action deserves to be struck down as violative of the protection against arbitrary and capricious action of the executive.

Elitist nature of the IIMs

24. The Ministry seems to have indicated that the institutes have become elitist and accessible only to the 'elites' of the society. Nothing could be farther from the truth. The institutes have become centres of excellence known along with IITs worldwide to produce world class leaders and managers. Being outstanding academically can by no stretch of imagination be considered elitist. The attempts of the Ministry to inject mediocrity into the institute should be stoutly resisted and this Petition is being made to resist the forces of bureaucracy and political mediocrity from entering the world of academic and intellectual excellence.

Accountability

25. It is stated by the Ministry that the IIMs should be accountable for the large grant made to these institutes every year since the money comes from taxpayer's moneys. It cannot be disputed that the IIMs were set up by a vision of the government to create institutes of academic excellence. There is no doubt in anyone's mind that there would be no IIM or IIT without the

benevolence of not merely the money but the sweat of past governments. All the more reason that these institutes built by the vision of our founding fathers should not be held torn apart by the political or bureaucratic needs of the current political lineup.

26. However, the argument that there must be increased accountability raises the question, are there allegations that the Directors or faculty are wasting moneys allotted by the government? No such allegation is made by anyone. The large annual grants by the government go towards subsidizing the students. Is there a doubt that these institutes provide excellent education? If not where does the question of accountability arise? The institutes are accountable to the Board of Governors for their actions and the Board which includes majority representation of the central and state governments have not raised any issues about any problems with either funds or academic excellence. It is submitted that accountability and control are different and that the Ministry is not seeking greater accountability but greater control. An article in the Economic times dated 9.1.2004 citing Mr. Kiran Karnik and marked as Annexure L states “Research and education thrives when institutions are autonomous. The intrusive hand of the politician and the dead hand of the bureaucracy are anathema to knowledge institutions. Accountability and affordability can be achieved through non-intrusive methods.”

27. In an article “The Josh Machine” published in India Today on 29.12.2003 referring to the dismissal of the chairman of the Indian Council for Historical Research demonstrates the impact of increased control in institutes controlled more intricately with the Ministry.

18. An article by the President of ING Vysya Bank in the Economic Times dated 10.1.2004 clearly demonstrates how accountability is not at issue and our Ministry is attempting to destroy institutions. It says “Competent academic administrators will shy away from directorships as their jobs are reduced to queuing up before the Section officers in Delhi every month for

their paychecks and permission for foreign travel.” A copy of the article dated 10.1.04 is marked hereto as **ANNEXURE “Q”**.

Reduction of corpus of the IIMs.

28. The three IIMs at Ahmedabad, Bangalore and Kolkota have large corpuses which they have built over the past decade on instruction of the past governments asking them (on the basis of the Kurien Committee Report) to reduce their dependence on the government. This corpus has not been raised by the fees they have charged students but by executive education for senior managers and by giving consulting advice to businesses. In an article in the Hindu dated 1.1.04 the Dean of IIM, Ahmedabad is quoted as saying “She claimed that it was no recent development but the Union HRD Ministry had told the IIMA about six years ago that it should try to become self sufficient so that it could stop the grant and divert the fund to some other institutions needing governmental assistance. It was not a sudden decision but because of the direction from the Centre some six years ago the IIMA started generating corpus fund and has now not only become self sufficient but also has surplus funds” she said. A copy of the Article dated 1.1.04 is annexed hereto as **ANNEXURE “R”** MBA students continue to receive large subsidies. It is argued by the Ministry that the surpluses should be handed over to the Central Government. IIM, Ahmedabad for instance has a corpus of around 100 crores. It is also not true that the IIMs are just sitting on this money. To give an example IIM, Ahmedabad is building a new campus which will increase student intake by nearly 100% at a cost of over 40 crores. Several other relevant articles on why the corpus should not be reduced are marked hereto as **ANNEXURE “S (Colly)”**.

29. The argument is again made with the tainted purpose of draining these institutes of any funds and therefore autonomy which they have enjoyed in the past. Without a corpus, these institutes will have to beg the government for every small development project that they plan. Thus the faculty will be reduced to standing in a queue outside a bureaucrat in Delhi

instead of teaching much like the Managing Directors of public sector companies who must act according to the wishes and whims of some ministry official. To give an international context, the corpus of Harvard university is to the tune of Rs. 81,000 crores. Please see **Annexure “T”** showing the size of the corpus for the Harvard University. Despite having more limited resources the IIMs have competed internationally with other more prosperous educational institutions. IIM, Ahmedabad has been ranked in the past by international journals as the number 1 management institute in Asia (Asiaweek). It has also been ranked in the top 50 worldwide by the respected magazine “The Economist”, the highly regarded newspapers “Financial Times” and the “Wall Street Journal”. Other IIMs too have similarly high standings.

Higher workload for Professors, interference with the appointment of faculty, faculty-student ratio

30. It seems that the Ministry is of the opinion that the faculty at the IIMs have it too easy and should be asked to teach 18 hours a week. It is also felt that the faculty-student ratio is too low and there should be fewer faculty and more students. Lastly, the Ministry wants a say in the appointment of faculty.

31. The idea of teaching 18 hours a week is wholly erroneous as being conceived without having any real knowledge of the effort and the hours a professor has to put in to prepare his lectures. preposterous to say the least. The institute does not teach primary school children and before each class the professor has to do weeks of research and be up to date. The faculty at the IIMs not only have to teach students and guide Ph.d. students but they have to a) publish cutting edge papers by doing substantive research which in turn is often borrowed by the industry and the government and is also usefully used in the classrooms b) provide consulting services to the industry and the government c) teach middle and senior executives in executive training programs and d) develop teaching cases and training material and constantly update it. The demand is completely innocent of the realities of academia in management. Similarly, it seems to be argued by the

Ministry that the faculty student ratio of 5 : 1 is too low. In fact the faculty-student ratio is over 9:1 as per the calculation of the Petitioners based on all full time students which include PGP (equivalent of MBA), ABM (Agri-Management), FPM (Doctorate), FDP (Faculty development Program).

32. Even the ratio of 9:1 has necessarily been arrived at ignoring the other demands on the faculty as enumerated above. It is submitted that the faculty at the IIMs is already highly overworked because of their difficulty in finding qualified people willing to teach management. The remuneration offered by academia is very low compared to management jobs and therefore even the premier IIMs have been on a difficult drive to recruit qualified faculty. Faculty create the core around which these institutions are formed. To reduce the faculty further would destroy the foundation of these institutions. Some articles on the topic which have appeared in the media are marked hereto as **ANNEXURE “U (Colly)”**.

No consulting assignments for faculty

33. It seems to be the argument of the Ministry that faculty should not be allowed to do consulting assignments for the industry/government etc. Typically, a consulting assignment follows from a faculty's expertise in a particular area. When a faculty member does consulting assignments, the Institute gets to keep approximately half the amount charged as consulting fees. Thus consulting by faculty is one of the prime sources of revenue for the institutes. The other benefit of consulting assignments is that it allows faculty to interact with the industry and therefore enriches the industry with academic and analytical rigour and in turn the academic world is enriched by staying in touch with the practical world of business and governance, the benefit of which is returned to the student body and research. Another benefit of consulting is that it allows the institutes to attract better quality faculty because of the economic and intellectual benefits of consulting.

Common entrance test for all management schools.

34. The Ministry would like to combine all the entrance exams into one entrance exam and administer it, so that students will not have to go through the costs and efforts of several tests. It is submitted that the government can easily broaden the scope of the CAT by requiring all institutes to accept the scores of CAT and should not attempt to introduce a test which is administered by some group of retired bureaucrats and/or persons from private institutes. Such an action would only reduce the standards set by the CAT process and at the same time increase the chance of leaks and breaks. Admission in management schools must remain in the hands of top academia which is best trained to ask the right questions for admissions. The ministry must help in making sure that the government controlled printing press does not leak the CAT paper in the future. The government should have assumed moral responsibility for the government controlled press which was guilty of negligence in letting the papers leak. Instead the Ministry has sought to blame the entire CAT administration for the failure and seeks to instead to take advantage of its own wrong.

35. A learned article by the President of ING Vysya bank in the Economic times on 26.11.03 states "Is the country's government so free from other concerns of nation building that it has to go about fixing what is not only not broke, but functioning fairly well?" A copy of the article is annexed hereto and marked as **ANNEXURE "V"**. Another two articles in the Times of India and Business Standard both dated 17.1.2004 quote the Minister implying that the Indian Institutes of Technology as delivering substandard output. The statement contradicts the statement made by the President of India on the eve of Republic day and all accepted wisdom.

36. The Petitioner 1 had made a representation to the Respondents on the 4th of February detailing the rationale why no steps should be taken by them with regard to the fee structure or autonomy of the IIMs. A copy of the letter is attached hereto and marked as "**ANNEXURE W**". Subsequently, on being informed that

the finance ministry had in fact reduced the funds available to the IIMs, the Petitioner 1 wrote to the Hon'ble President of India, Prime Minister of India, Finance Minister and the Law Ministers pointing out the contradiction in policy. A copy of the letter is marked hereto as "**ANNEXURE X**". The Petitioner 1 has written an article on why the impugned order is unenforceable at law, published in the Economic Times on 8th February 2004 and the same is attached hereto as "**ANNEXURE Y**"

37. This Public Interest Petition primarily challenges both the power as well as the colourable exercise of powers of the Ministry both of which suffer from fatal flaws as is borne out in greater detail. The Petitioners does not seek to challenge issues of public policy in this petition. Instead, this petition seeks to ensure that the power entrusted to the Ministry is not misused for political mileage and in the process destroy institutions which have become increasingly fragile. In fact the Respondent 2 has admitted in an interview that his motive in taking such action was with a view to electoral gains. A copy of the interview is attached hereto and marked as Annexure J. In short this Petition not only challenges the powers of the Ministry to act as it has done, it also seeks to ensure that the powers are not abused or used for petty gains of certain constituents but rather that the powers are used for the purpose sought to be achieved. Since none of the objects sought to be achieved have a rational nexus to the actions being taken, as is explained in greater detail hereinbelow, this Petition is being filed.

38. That the Petitioners have not filed any other similar petition in this Hon'ble Court or in any other Court.

GROUND

Being aggrieved by the actions of the Respondents and in particular in the absence of any official documents the Petitioners hereby seeks an appropriate Writ be issued on the following among other grounds, which are taken without prejudice to one another:

- A. The decision to reduce the fees was taken by the 2nd respondent *mala fide* in as much as the same was taken:
- a) with a view to gain control over the IIMs
 - b) ignoring the recommendations of the Kurien committee report pursuant to which the fees had gradually been increased to reduce the financial dependency of the IIMs on the Government
 - c) ignoring the rationale why the government has over the years since 1992 reduced the subsidy provided to the IIMs
 - d) admittedly with an eye to the votebank.
 - e) relying on the recommendations of the UR Rao Committee which had been as per its chairman been constituted only to consider institutions governed by the AICTE and not IIMs which fall outside the purview of AICTE norms.
 - f) without any appreciation of the facts, particularly the cash inflow and outflow positions of the institutions.
 - g) Without hearing any stakeholder.
- B. Because the impugned order is not based on either data or rational reasons. Mr. Naryana Murthy, Chairman of the Board of Governors, IIM, Ahmedabad who had consulted with Respondent 2 stated after the impugned order was passed that “It’s not based on data and facts. It’s not based on reason or logic” the newsreport also goes on to state “He [Mr. Murthy] said the Government had taken the steps without detailed consultation with stakeholders such as Chairmen of IIMs and its Directors. Murthy said he did meet Joshi and gave him data. “But I don’t think they have looked at it”. According to him, he met Joshi on January 14 and gave him all information. On January 29, he sent him a detailed letter explaining why there should not be reduction in fees and why there should be no subsidy for higher education. “For some reason, these things have been ignored””. When a person of the stature and competence of Mr. Murthy who is usually quite understated had to go to

such length to speak of the patent unreasonableness of the order along with non application of mind to relevant facts and reasons, there is sufficient ground for this court to find gross abuse of executive discretion meriting judicial intervention.

- C. Because the impugned order dated 5th February 2004 is passed by virtue of the powers given to the Central Government by the Articles of Association of the IIM Society. That the order is defective because the other stakeholder supposed to be consulted i.e. the state government was never consulted and therefore the Respondents have no power to issue such orders. Orders could not be issued except by following the mandate of Article 5 (of IIM, Ahmedabad and other comparable Articles of the other institutes)
- D. Because the UR Rao committee was set up contrary to the Articles of Association of the IIMs. The Articles allow a committee to be set up only with the consultation of the State Government. No such consultation was made and therefore the Committee and its recommendations are *non est*. The fact that conclusions of the UR Rao Committee were drawn before hand can be surmised from the fact that the Committee neither had an IIM faculty as part of the committee nor did the Committee hear any representation from the IIMs. Thus not only did the Committee have no *de jure* powers, but they violated the basic principle of fairness and transparency which any government appointed committee ought to follow. Mr. UR Rao has himself stated that he did not give his report in the context of IITs or IIMs. In any case there is no nexus between cost of education and per capita income of the country.
- E. Because the order of the Respondents have no nexus with the object sought to be achieved for the Respondents to interfere in the workings of these autonomous institutes.

Because the impugned order is a colourable exercise of power meant only to garner votes, which alone cannot be the motive for executive action. Craig on Administrative Law (3rd Ed) at page 404 divides challenges under reasonableness under two categories. At the first level an order would be invalid if a) there is improper purpose b) relevancy (where the relevant is excluded or the irrelevant is included c) bad faith. Even if it passes the first test an order can still be challenged at the second level of judicial review which is enunciated in the *Wednesbury* principle (1948 1 KB 223) of unreasonableness which allows intervention of the court if the order is so unreasonable that no reasonable body could reach such a decision. The impugned order fails on each count on each level. Mr. Narayana Murthy's comments amply show the patent unreasonableness of the order.

- F. Because even if the powers were exercised rightfully, though it is submitted that they are not, it could not be exercised with a colourable motive or based on irrelevant facts.
- G. Because the impugned order is contrary to the longstanding policy of the government towards fiscal prudence as espoused by the Kurien Committee report and as espoused by the Finance Minister in his interim budget as recently as the 4th of February 2004. There is no reason shown to reverse the reforms initiated and implemented over the past decade.
- H. The Minister derives powers from Articles 74 and 75 of the Constitution, and the Constitution does not give powers to individual Ministers but to the Cabinet. The impugned order contradicts the order of the finance minister reducing the budgetary allocation to the IIMs in the interim budget. The Minister is duty bound to follow the power distribution mandated by the Constitution and cannot be a law unto himself. Because the order should have been cleared by the Finance and Law Ministries (which are the other ministries

affected by the order) and then by the cabinet. No such approval seems to have been taken. The order thus violates the checks and balances mandated by the constitution.

- I. Because, the order erroneously relies on the Supreme Court order in TMA Pai to say that “Recently, the Hon’ble Supreme Court has observed while delivering a judgment in the TMA Pai case, that an educational institution cannot charge such a fee as is not required for the purpose of furthering the object.” In fact the judgment in TMA Pai 2002 (8) SCC 481 lays down exactly the contrary position at law. The Court there had held that fees charged should be reasonable and so long as there is no illegal profiteering an educational institution could charge reasonable fees. It cannot be argued that fees after offering a 60% subsidy to students results in profiteering.
- J. Because the Respondent No. 2 is duty bound to follow the power distribution mandated by the Constitution as asserted by the constitutional oath which was taken by the Minister at the time of assuming office.
- K. Because the IIMs have never been elitist in nature as is sought to be portrayed. By contrast they have been excellence oriented and they have always been grounded to the earth of Indian realities and problems.
- L. Because the Respondents are attempting to subvert the autonomy of institutes of worldwide repute without any rational basis and admittedly for political motives.
- M. Because in any case such major policy decisions could not be undertaken by the Minister because the entire cabinet is a caretaker government and such major policy decisions cannot be taken by such a caretaker government.

- N. Because the class sought to be protected at the cost of the Institutes will command some of the highest salaries in the world and that such a class needs no subsidy, especially at the cost of funding 150 million primary school children upto the age of 14 years who have a fundamental right to education under Article 21-A of the Constitution. Under this Article the State is enjoined to provide free and compulsory education to children of the age of 14 and below.
- O. Because the fees were never a deterrent to entry into these institutes. Obtaining loan by prospective students is extremely easy given that the Post Graduate students command salaries in the area of 6 to 25 lakhs a year and therefore, any further subsidy to the students will indirectly subsidise large companies like Hindustan Levers in India or Goldman Sachs in New York.
- P. Because the current student body is stoutly opposed to reduction of fees. A recent opinion poll of IIM, Ahmedabad showed that 90% of current students did not want a fee cut and 5% wanted a fee hike.
- Q. Because the reduction of fees would thus result in lowering of overall standards of the institutes, because to be world class the institutes need to spend money on infrastructure facilities, classrooms, research and development.
- R. Because there is in any case overweening financial control of the Respondents with respect to the spendings of the IIMs and it is no one's case that the funds are being misdirected. The pay scales of faculty are dictated by the government and the cap on faculty pay has been a major deterrent in attracting outstanding faculty.
- S. At a time when the national deficit is swelling beyond control and primary education has been neglected beyond

pardonable limits, it is wrong to divert scarce resources towards subsidising higher education.

This Hon'ble Court in Sheela Barse v. UoI 1988 SC 2211 has held that relief can be forward looking and need not merely be corrective of past actions. This court has moulded relief so that the Court is not merely a passive disinterested umpire or on looker, but has a more dynamic and positive role with the responsibility.

PRAYER:

It is therefore prayed that this Hon'ble court be pleased to issue a writ of mandamus or any other writ order or direction as may be appropriate:

- a) quashing the impugned order dated 5.2.2004
- b) restrain any action which would compromise the autonomy of these institutions.
- c) To restrain the Respondents from interfering in the setting up of the fee structure, reduction of corpus of the institutes, increase workload of professors, interfere in faculty appointment or mandate a faculty-student ratio.
- d) To restrain the Respondents from interfering with the faculty undertaking consulting assignments.
- e) To restrain the respondents from abolishing the CAT exam and instead to require the respondent to ensure that future exams are not leaked as a result of its negligence.
- f) file a report by way of an affidavit of the steps taken by each of the Respondents in this regard and intimate this court before any such actions are attempted to be done unilaterally; and

(B) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

DRAWN BY
(Sandeep Parekh)

SETTLED BY:
Mr. P.H. Parekh
Mr. E.R. Kumar

FILED BY:

P.H. PAREKH & CO.

Drawn on : 7.2.2004
New Delhi
Dated: 9.2.2003