

ABSTRACT

Higher Education – Judgement of 11 Judges Constitution Bench of Supreme Court of India, dated 31.10.2002 in W.P.(Civil) No.317/1993 in T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and ors. – Implementation with regard to admission of students by unaided minority professional institutions – Orders – Issued.

Higher Education(J1)Department

G.O.(Ms)No.20

Dated.13.2.2003

Read:

1. Judgement of the 11 Judges Constitution Bench of Supreme Court of India in W.P.(Civil) No.317/1993 dated 31.10.2002, in T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors.
2. Government letter No.7096/Law (Advocate General – Opn)/03/1, dated 28.1.2003
3. From the Advocate General of Tamil Nadu D.O. letter Roc. No.of 2003, dated 5.2.2003.

ORDER:

The 11 Judges Constitution Bench of the Supreme Court of India in its judgement dated 31.10.2002 in W.P.(Civil) No.317/1993 in T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors., while dealing with the Private unaided minority educational institutions has held that,

I. “.....All citizens have a right to establish and administer educational institutions under Article 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 2b(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgement”(Answer to Question No.11 in the judgement)

II. While dealing with the private unaided professional colleges, the Supreme Court has held that,

“It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based

selection while at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and post-graduation non-professional colleges or institutes”.(Para 68 of Supreme Court Judgement)

1. III. In para 138 of the judgement it has been held that,

“As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xaviers College case, at page 192, that “the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality.” In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favorable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

IV. In para 146 of the judgement, the Supreme court has held that,

“The other interpretation that is put forth is that Article 29(2) is a protection against discrimination on the ground of religion, race, caste or language, and does not in any way come into play where the minority institution prefers students of its choice.

To put it differently, denying admission, even though seats are available on the ground of the applicant’s religion, race, caste or language, is prohibited, but preferring students of minority groups does not violate Article 29(2)”.

V. In para 148 of the judgement, it was held that,

“Both Articles 29 and 30 form a part of the fundamental rights Chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said Article cannot be availed by any section of citizens. The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture. As was observed in the Father W. Proost case, the right given by Article 29(1) is fortified by Article 30(1), in so far as minorities are concerned. In the St. Xaviers College case, it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given”.

VI. Further, the Supreme Court has ruled that,

“Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply and necessarily, therefore, one of the rights of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the State not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution, by no stretch of imagination can the rights guaranteed under Article 30(1) be annihilated. It is in this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in St. Stephen’s case “the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1)”. The word “only” used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have

to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantees enshrined in both Article 29(2) and Article 30.(Para 149 of the Judgement)

VII. The Supreme Court has further held that,

“Admission of students to unaided minority educational institutions, viz., schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or university, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions”.(Answer to Question No.4 in the judgement)

VIII. Further while answering Question No.5(a) the Supreme Court has held that,

“A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence”.

2. The Government are conscious to the fact that the law declared by the Supreme Court binds everyone and the Government are bound to follow it. Before taking any firm decision with reference to the implementation of the law laid down by the Supreme Court mentioned in para 1 above, it was thought better to ascertain the views of the managements of the unaided professional colleges. Accordingly, the Government held a meeting with the managements of the unaided professional colleges in the State on 3.2.2003. About 200 managements of the colleges, both minority and non-minority have attended the meeting. Among other things, one of the views expressed by them relates to the apportionment of Percentage of seats between the Government and unaided minority professional colleges for admission of students. Government also requested them to furnish their views in writing in the

prescribed format on this point on or before 6.2.2003. Till 10/2/2003, 17 minority colleges have sent their views in writing. Out of the above,

(i) Some managements have said that all the 100% of the seats may be earmarked to the managements for filling up of the seats by themselves.

(ii) Some of the managements have said that 50% of the seats may be filled up by the State through Single Window System and the remaining 50% may be earmarked to the managements for filling up of the seats by themselves.

(iii) Some managements have said that 75 to 80% of the seats may be earmarked to them and the remaining may be filled up by the Government through Single Window System.

(iv) Some managements have said that 60% of the seats may be earmarked to them and the remaining may be filled up by the Government through Single Window System.

1. (i) Some management have said that 60% of seats may be filled up through Single Window System and the remaining earmarked to them,

3. The Government examined the views expressed by the unaided minority institutions within the ambit of the law declared by the Apex Court and they have decided to issue necessary executive orders for the implementation of the law declared by the 11 Judges Constitution Bench of the Supreme Court of India in T.M.A. Pai Foundation case. They accordingly direct that,

(i) Unaided, minority professional institutions / colleges be allowed to admit 70% of the seats by themselves by following a transparent and reasonable method of admission, and

(ii) the remaining 30% of the seats be filled up by the Government through Single Window System of admission, by following the Rule of reservation of the State Government and other rules/procedures laid down by the Government.

4. The Government however direct that, such of the unaided minority institutions who desire to part with more percentage of seats over and above 30% to the Government to be filled up through Single Window System of admission, be permitted to do so. They are requested to communicate their intention in this regard to the agency of the Government who conducts the Single Window System on or

before 20.3.2003. A copy of the letter in this regard should also be marked to the Secretary to Government.

5. The Government further direct that 70% of the seats earmarked to be filled up by the managements in para 3(1) above includes the NRI quota as there would be no more separate percentage of allocation of seats towards this category.

6. The Government further direct that the procedure ordered in paras 3-5 above will be applicable to the admission under Lateral Entry Scheme also. As in the previous years, the Director of Technical Education will conduct the admission under Lateral Entry System.

(By order of the Governor)

**V.K.SUBBURAJ,
SECRETARY TO GOVERNMENT.**

To

The Director of Technical Education , Chennai-25

The Registrar, Anna University, Chennai-25

The Director of Medical Education, Chennai-10

The Director of Agriculture, Chennai-5

The Director of Animal Husbandry, Chennai-35

The Registrars of all Universities of Tamil Nadu

The Chairman/Chairperson of all the unaided professional colleges.

through ((i)The Director of Technical Education, Chennai-25

(ii)The Director of Medical Education, Chennai-10.

(iii)The Director of Legal Studies, Chennai.104

(iv)The Director of Agriculture, Chennai.5

(v)The Director of Animal Husbandry, Chennai.35)

Copy to

The Registrar General, Supreme Court of India, New Delhi

The Registrar General, High Court of Madras, Chennai-104

The Advocate General of Tamil Nadu, High Court of madras, Chennai-104

The Special Government Pleader(Education), High Court of Madras, Chennai.104.

The Chairman, All India Council for Technical Education, New Delhi

The Regional Officer, Southern Region, All India Council for Technical Education, Haddows Road, Chennai.6

The Secretary I to Chief Minister, Chennai-9

The Senior P.A. to Minister(Health and Education), Chennai-9

The Chief Minister's Office, Chennai-9.

The Secretary to Government, Health and Family Welfare Department, Chennai-9.

The Secretary to Government, Law Department, Chennai-9

The Secretary to Government, Animal Husbandry and Fisheries Department, Chennai-9

The Public(Special A)Department, Chennai-9

The Public(SC)Department, Chennai-9

All Departments of Secretariat, Chennai-9

All Sections in Higher Education Department, Chennai-.9

SF/SC.

// forwarded / by order //

(P.P.MOORTHY)
UNDER SECRETARY TO GOVERNMENT.
for SECRETARY TO GOVERNMENT.