

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, non-minority professional institutions – Orders – Issued.

Higher Education(J1)Department

G.O.(Ms)No.19
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 W.P.(Civil) No.317/1993 in T.M.A. Pai Foundation and Others Vs State of Karnataka and Others, while dealing with the Private, Unaided non-minority educational institutions has held that,

1. I. “With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions, The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event a private institution will have the right to

constitute its own governing body, for which qualifications may be prescribed by the State or the concerned university. It will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the Department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution".(Para 53 of the Judgement)

1. II. "For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgement in the context of admissions to unaided institutions".(Para 58 of Judgement)

1. III. "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 the judgement)

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2. The Government are conscious of 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 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 non-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, 90 colleges have sent their views in writing. Out of the above,

1. (i) Majority 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.

1. (ii) Some managements have said that 20 to 25% of the seats may be earmarked to them and the remaining may be filled up by the Government through Single Window System.

1. (iii) 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. (iv) Some managements have said that 100% of seats may be filled up through Single Window System, and

(v) Some managements have said that they abide with the scheme to be formulated by the Government

3. The Government examined the views, expressed by the unaided non-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,

1. (i) Unaided, non-minority professional institutions / colleges be allowed to admit 50% of the seats by themselves by following a transparent and reasonable method of admission, and

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3. (ii) the remaining 50% 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 non-minority institutions who desire to part with more percentage of seats over and above 50% 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 Government.

5. The Government further direct that 50% 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 to 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-6

The Director of Agriculture, Chennai-6

The Director of Animal Husbandry, Chennai-9

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 Educationn. Chennai-6.

(iii)The Director of Legal Studies, Chennai

(iv)The Director of Agriculture, Chennai

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

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-101

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

The Ministry of Human Resource Development, New Delhi.

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

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

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 Dept, 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.