

Citation: (2002) 8 SCALE 1: AIR2003SC355

T.M.A. Pai Foundation and others v. State of Karnataka and others [11 Judge Bench]

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From the majority judgment, the following Salient points were be culled out:

1. The term 'minority' in Art. 30(1) covers linguistic and religious minorities.
2. For the purpose of determining the 'minority', the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, which have been placed at par in Art. 30, have to be considered State-wise.
3. Art. 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions 'of their choice'. The use of the words 'of their choice' indicates that even professional educational institutions would be covered by art. 30.
4. The right conferred on the minorities by Art. 30(1) is not absolute. It has to be read subject to Art. 29(2) and other fundamental rights. Minority educational institutions thus become divisible into two categories, viz.: aided educational institutions and unaided educational institutions. The unaided institutions enjoy much greater autonomy than aided institutions.
5. Admission of students to unaided minority educational institutions cannot be regulated by the State or the concerned university, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students is an essential facet of the right to administer educational institutions of their choice 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 merit is adequately taken care of.

In case of unaided professional institutions, provision can be made for merit-based selection while giving the management sufficient discretion to admit students.

6. Because of the interplay of Art. 29 (2) with Art. 30(1), an aided minority institution is entitled to admit students belonging to the minority group. At the same time, it is also required to admit non-minority students 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 Art. 29(2) are not subverted.

What would be a 'reasonable' extent, would vary from the type of institution, the courses of education for which admission is being sought and other factors like educational needs.

It is for the concerned State Government to notify the percentage of non-minority students to be admitted in the light of the above indicia.

7. Observance of inter se merit amongst the minority students could also be ensured.

In case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission.

In case of non-minority students eligible to seek admission should normally be on the basis of the common entrance test held for the remaining seats, admission by the State agency followed by counseling wherever it exists.

8. A minority institution may have its own procedure and method of admission as well as selection of students, so long as the procedure is fair and transparent.

The selection of students in professional and education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration.

Even an unaided minority institution ought not to ignore the merit of the students for admission; otherwise it will fail to achieve excellence.

9. While giving aid to professional institutions, the aid giving authority may prescribe the conditions on the basis of which admissions will be granted by the aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students.

The merit may be determined on the basis of an entrance examination conducted by the University or the State concerned. The authority concerned may devise other means also to ensure that admissions are granted on the basis of merit in educational institutions.

10. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof.

Conditions of affiliation or recognition of unaided institutions can comprise conditions pertaining to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses. But these conditions should not be such as to lead to governmental control.

In case of unaided educational institutions, the regulatory measures of control regulating facets of administration should be minimal. An unaided institution must have greater autonomy than an aided institution. It must have autonomy in such matters as appointment of staff, taking disciplinary action against staff, admission of students, charging of fees etc.

A rational method of selecting teachers and for taking disciplinary action against them has to be evolved by the management. There is no need for the management of a private unaided institution to seek prior permission or approval of a government authority to take disciplinary action against a staff member. For redressing grievances of employees of aided as well as unaided institutions who are subjected to punishment or termination of service, a mechanism need to be evolved. Appropriate tribunals presided over by judicial officers of the rank of district judges could be established.

The State or other controlling agencies could prescribe minimum qualifications and experience for the teaching staff.

11. The aid giving authority can, as a condition of granting aid, put restraints on the freedom of administration and management of the institution. Conditions may be imposed as are necessary for the proper maintenance of the high standard of education as the financial burden is shared by the State. Interests of the staff have also to be protected.

An aided institution cannot have the same autonomy in the matter of administration and management as a private unaided institution, but, at the same time, it cannot be treated as a government institution. Regulations may be framed governing service conditions for teaching and other staff for whom aid is provided but without interfering with the over-all administrative control of the management over the staff.

12. Fees chargeable by unaided institutions cannot be regulated but no capitation fee can be charged.
In aided institutions, fees can be so charged that there is no profiteering. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.
13. All citizens have a right to establish and administer educational institutions under Arts. 19(1)(g) and 26(a).

The word 'occupation' in Art. 19(1)(g) covers such an activity. Such institutions are however subject of Arts. 19(b) and 26(1), but this is subject to the right of the minority institutions to admit minority students.

Such religious denominations or sections thereof as do not fall within the special categories carved out in Art. 29(1) and 30(1) can establish and maintain religious and educational institutions under Art. 26(a). The religious and linguistic minorities have an additional right to establish educational institutions under Art. 30(1), in addition to Arts. 19(1) (g) and 26(a).

Thus, the Constitution recognizes the right of an individual or a linguistic minority or a religious denomination or a religious minority to establish educational institutions.