

(2008) 03 MAD CK 0173

In the Madras High Court

Case No : W.A. No's. 1329 and 1330 of 1999 and 417 of 2000, W.P. No's. 570, 4584 to 4591, 4905 to 4912, 4914 to 4921, 5047, 5134, 5649, 5877 to 5884 and 6214 to 6221 of 1983, 12364 of 1984, 1628, 8148 and 8854 of 1985, 503, 1994, 2005, 2008, 2502, 2503, 2504, 250

G. Sahadevan Nair, Manager and Correspondent, Aided
Primary School

APPELLANT

Vs

The Government of Tamil Nadu
The Roman Catholic
Society of the Brothers of the Sacred Heart of Jesus Vs The
Government of Tamil Nadu

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 28, 29(2), 30, 30(1)

Tamil Nadu Education Rules, 1892 — Rule 13, 17, 18, 71

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 1(2), 10, 10(1), 11, 11(1)

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 11, 4, 5, 6, 8

Citation : (2008) 03 MAD CK 0173

Hon'ble Judges : P.K. Misra, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : Vijay Narayan for Auxilia Peter, Issac Mohan Lal, assisted by, Godson Swaminathan and M. Joseph Thatheus Jerome, T.S. Sivaganam, K.N. Chinna Krishnan, G. Thilakavathi, A. Amalraj and K. Ravichandra Babu, for the Appellant; N. Kannadasan, A.A.G., assisted by, V. Viswanathan, AGP, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—W.A. No. 1329 of 1999 is filed against the order of the learned single Judge dated 9.4.1999 in W.P. No. 18570 of 1997. The Appellant filed the aforesaid writ petition for quashing G.O. Ms. No. 340 dated 1.4.1992 and G.O. Ms. No. 410 dated 6.1.1992 and for a direction to the Government of Tamil Nadu and other officials to sanction one Malayalam Pandit and one Additional B.T. Assistant post for the school established by the Appellant, who is the Manager and Correspondent of Aided Primary School, Kallupalam.

2. The learned single Judge rejected such writ petition by observing that G.O. Ms. No. 340 dated 1.4.1992 has been subsequently superceded by G.O. Ms. No. 525 dated 29.12.1997. The learned single Judge has further relied upon his earlier decision dated 23.2.1999 in W.P. No. 6781 of 1993, etc. batch and held that the educational institutions have no fundamental right to receive aid. On the aforesaid basis, the learned single Judge had observed that the Petitioner has no right to insist that a post of Malayalam Pandit and one additional B.T. post should be granted from 1.6.1983.

3. W.A. No. 1330 of 1999 has been filed by the very same Appellant against the order dated 9.4.1999 passed by the learned single Judge rejecting the claim of the very same writ Petitioner in W.P. No. 14894 of 1997 regarding G.O. Ms. No. 340 dated 1.4.1992 and regarding sanction of six additional Secondary Grade posts with effect from 1.6.1981 to the primary school established by the Petitioner.

4. W.A. No. 417 of 2000 is filed by the very same Appellant against the order dated 9.4.1999 passed by the learned single Judge in W.P. No. 13683 of 1996, which was filed inter alia for directing the Respondents to sanction one post of record clerk and one post of watchman with effect from 1.6.1983 in respect of Aided Higher Secondary School established by such Petitioner.

4.1. W.P. No. 5196 of 1996 is filed by two B.T. Assistants, Junior Assistant and an Office Assistant of St. Joseph's High School, Piklankaklai in Kanyakumari District, with a prayer to quash the G.O. Ms. No. 340 dated 1.4.1992 and the consequential G.O. Ms. No. 618 dated 10.7.1992 in so far as restricting the sanction of posts to one Head Master, B.T. Assistant, Junior Assistant, Office Assistant with effect from 1.6.1991 and direct the State Government and the authorities concerned to sanction the respective posts from 2.6.1982 so as to enable them to get salary, increments and other benefits instead of 1.6.1991.

4.2 W.P. Nos. 8904 & 8905 of 1997 have been filed by the Tamil Pandit and B.T. Assistant respectively for quashing the G.O. Ms. No. 340 dated 1.4.1992 and the consequential G.O. Ms. No. 451 dated 8.5.1992 and for sanctioning of Tamil Pandit and B.T. Assistant post to St. Mary's Higher Secondary School, Kalyal, Kanyakumari District with effect from 20.6.1983.

4.3. W.P. No. 26916 & 26916 of 2005 have been filed by the Sweeper/Sanitary Worker and Watchman of Eka Ratchaka Sabai Higher Secondary School, Tuticorin for quashing G.O. Ms. No. 340 dated 1.4.1992 so far as non-sanction of Sweeper/Sanitary worker and Watchman posts to such school and the consequential order for recovery of salary passed by the District Educational Officer, Tuticorin and also the demand made by the school.

4.4. W.P. No. 11290 of 2007 is filed by the Tamil Nadu Catholic Educational Association, which is a registered Society consisting of all educational agencies established and administered by Catholic Church, with a prayer to release grant-in-aid to the member schools of such Petitioner's Association in accordance with

G.O. Ms. No. 250 dated 29.6.1994, G.O. Ms. No. 581 dated 22.4.1964, G.O. Ms. No. 583 dated 23.4.1966 read with Rules 13, 17, 18 and 71 of the Tamil Nadu Education Rules, the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules 1974 and the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 till the period upto 31.5.1998 and thereafter from 1.6.1998 in accordance with G.O. Ms. No. 525 dated 29.12.1997.

In such writ petition, there is a reference to the earlier writ petitions filed by the schools or the educational agencies, which were numbered as W.P. No. 12364 of 1984 and all connected writ petitions.

5. W.P. No. 12364 of 1984 was filed by Roman Catholic Society of the Brothers of the Sacred Heart of Jesus, for a direction to the Government of Tamil Nadu and the officials to grant aid to St. Joseph High School established by the Petitioner for the upgraded Standard IX from 1983 and Standard X from 1984. Such writ petition, which was taken along with several other writ petitions, was disposed of by a Division Bench on 10.9.1990 (since reported in 1991 Writ L.R. 130 - Roman Catholic Society etc., The v. The Government of Tamil Nadu (D.B. - Nainar Sundaram, J.) by issuing certain directions to the State Government regarding grant-in-aid to the minority institutions.

6. Such decision of the Division Bench was challenged by the State Government before the Supreme Court by filing Civil Appeal No. 5381 of 1990 and batch and all the matters were remanded to the High Court for fresh consideration in the light of the decision of the Constitution Bench of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . While remanding the matter, it was observed:

Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to it by any of the parties. The parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Courts. It is made clear that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the decision of the Constitution Bench of this Court in T.M.A. Pai Foundation's case decided on 31.10.2002. As and when any problem arises the same can be dealt with by an appropriate Forum in an appropriate proceeding.

7. The Petitioners in all the writ petitions and the Appellants in the writ appeals are either Minority Institutions or the staff/Correspondents who had established Minority Institutions. The disputes in all these cases relate to question of sanction of grant for any particular post in the existing aided schools or grant of aid for the first time to the schools already established.

8. Before considering such question, it is necessary to notice as briefly as possible the various statutory provisions or Government Orders having some relevance in the matter.

Tamil Nadu Elementary Education Act (Act 8 of 1920) and Compulsory Education

Act (Act 2 of 1939) make education compulsory for the children upto primary level. The Grant-in-aid Code of Tamil Nadu Educational Department contains the rules relating to grant in aid. However, such rule was not applicable to Anglo-Indian schools or to primary including adult literacy schools which are aided under separate rules. On 1.4.1964, the State Government took a policy decision to provide free education to all children upto Standard VIII in all schools including minority linguistic schools as per G.O. Ms. No. 250 dated 1.4.1964. The said Order purports to be in supersession of the orders issued in the matter, the Government pass the following orders in regard to the teacher pupil ratio in all primary and upper primary schools including basic schools under all managements throughout the State.

It prescribes the ratio for the teacher-students, Clause 5 of the G.O., indicates that the grant shall not be for more teachers than the standards or sections in the school or other than actually employed in the school, whichever is less.

In Clause 6 it is indicated that in every school where there is a surplus of teachers by applying this ratio, no fresh appointments in any vacancy whatsoever, e.g., on leave, resignation, retirement, additional enrolment, etc., should be made until the surplus is absorbed. The teachers now in regular service who are found in excess of the ratio should, however, be continued in service till they are absorbed in future vacancies.

In Clause 8 it is indicated that the Director of Public Instruction is informed that the above orders should be given effect to within the budgetary and plan provision available for elementary education. The total number of additional posts to be created in implementing the present orders should not exceed to number of supernumerary posts already in existence plus the number of posts viz. 8,000 provided for in the budget for the age group 6-14 during 1963-64.

9. In 1973, the State Government enacted Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Act 29 of 1974) (hereinafter referred to as the Act and framed the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as the Rules) in exercise of power conferred u/s 56 of such Act.

As per Section 2(6) minority school means a private school of its choice established and administered, by any such minority whether based on religion or language as has the right to do so under Clause (1) of Article 30 of the Constitution.

Section 5 of the Act contemplates application for permission relating to private schools and Section 6 contemplates how such application is to be dealt with. However, Section 9 specifically provides "Any minority whether based on religion or language may establish and administer any private school without permission u/s 6.

Section 10 before it was amended by Tamil Nadu Act 39 of 1987 was as follows:

10. Minority school to send statement.-

(1) Every minority school in existence immediately before the date of the commencement of this Act shall send to the competent authority a statement containing the particulars specified in Clause (c) [excluding Sub-clause (ii) thereof] of Sub-section (2) of Section 5 within such time as may be prescribed.

(2) Every minority school established and administered after the date of commencement of this Act shall send to the competent authority a statement containing particulars specified in Clause (c) of Sub-section (2) of Section 5 within such time as may be prescribed.

Section 10(1) Was omitted by the Tamil Nadu Act 39 of 1987.

Chapter III relates to recognition of private school, which apparently would include a minority established private school. Section 11 as it originally stood was as follows:

11. Recognition of private School : (1) On receipt of an application by-

(a) any private school in respect of which permission has been or is deemed to have been granted u/s 6; or

(b) any minority school;

the competent authority may, after satisfying itself, that proper arrangements have been made for the maintenance of academic standard in die school, that the provisions of this Act are complied with and that the prescribed conditions have been satisfied, grant a certificate, recognising the private school for the purpose of this Act.

(2) The certificate under Sub-section (1) shall be granted within such period as may be prescribed.

Section 11-A, which was inserted by Tamil Nadu Act 39 of 1987, is as follows:

11-A. Additional factors to be taken into account for recognition of private schools. - The competent authority shall, before passing orders on an application for recognition u/s 11, also take into consideration-

(a) the adequacy of schools already existing in the locality;

(b) the need for the private school in the locality;

(c) the number of pupils studying in such school;

(d) the extent of the playground available to pupils and the adequacy of the playground with reference to the strength of the pupils in the school;

(e) the amenities available to pupils and teachers;

(f) the equipment, laboratory, library and other facilities for instruction; and

(g) such other factors as may be prescribed. Section 12 relates to withdrawal of recognition by competent authority under certain contingencies and Section 13 indicates that any private school, the recognition of which was withdrawn, shall not be entitled to receive any grant or financial assistance from the Government.

Section 14 of such Act is extracted hereunder:

14. Payment of grant: (1) The Government may pay to the private school grant at such rate and for such purposes as may be prescribed.

(2) The Government may withhold permanently or for any specified period the whole or part of any grant referred to in Sub-section (1) in respect of any private school,-

(i) which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder in so far as such provisions, rules or directions are applicable to such private school, or

(ii) in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or

(iii) which contravenes or fails to comply with any such conditions as may be prescribed.

(3) Before withholding the grant under Sub-section (2), the Government shall give the educational agency an opportunity of making its representation.

However, Section 14(1) was substituted by Tamil Nadu Act 11 of 1999, which is to the following effect:

14(1) Subject to such rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991-1992 at such rate and for such purpose as may be prescribed.

Explanation. - For the purposes of this Sub-section, private school receiving grant from the Government shall also include a private school receiving grant from the Government only in respect of any class or course of instruction.

Thereafter, there was further amendment, whereunder Section 14-A was inserted vide Section 6 read with Section 1(2)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1998. Section 14-A is extracted hereunder:

14-A. Grant not payable to new private schools and new class and course of instruction. - Notwithstanding anything contained in this Act or in any other law for the time being in force in any judgment, decree or order of any Court or other authority, no grant shall be paid to,-

(a) any private school established and any class or course of instruction opened

in such private school, on or after the date of commencement of the academic year 1991-1992.

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation.- For the purpose of this section, private school includes a minority school.

10. The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 contains several provisions relating to grant of permission, etc. Rules 4, 5 and 6 relate to grant of permission. Rule 8 envisages:

8. Minority school to send statement.- (1) Every minority school to be established and administered after the date of commencement of the Act shall send a statement in Form V within three months from the date of the opening of the school to the Chief Educational Officer, in the case of Pre-primary, Primary and Middle Schools and to the Joint Director of School Education (Secondary) in the case of High Schools and Teachers Training Institutes.

(2). ...(omitted as not necessary)

Rule 9 relates to recognition of minority school for which an application is required to be made in Form VI. Rule 9(2)(d) provides:

9(2)(d) If the educational agency pays more than the scales and rates ordered by Government, such excess shall be met by the educational agency from its own funds and shall not be debited to the school funds and for purposes of grants such higher scale or rate shall not be taken into consideration.

Rule 11 provides payment of grant, which is as follows:

11. Payment of grant.- (1) Recognised Private Schools may be paid grants from State funds directly or through Panchayat Unions such payment of grants shall be subject to Government orders and instructions issued from time to time:

Provided that, schools whose recognition have been withdrawn shall not be entitled to any grant for the period of such withdrawal or recognition.

(2) The authority competent to sanction grant shall be the District Educational Officer.

(3) The rate at which and the purpose for which the grant may be paid shall be as specified in Annexure I.

(4) The Joint Director of School Education (Elementary Education) in respect of Pre-primary, Primary and Middle Schools and the Joint Director of School Education (Secondary Education) in respect of High Schools and Deputy Director (Teacher Education) in respect of Teachers' Training Institutes and the Joint Director of School Education (Higher Secondary) in respect of Higher Secondary Schools shall withhold, permanently or for any specified period, the payment of grant, if any of the conditions specified in Rule 9 are contravened or not complied with.

(5) Notwithstanding anything contained in the Act or in any other law for the time being in force or in any decree, order or direction of any court or other authority:

(i) no private school shall, only on the ground of having been granted recognition under the Act, be entitled to any grant or other financial assistance from the Government;

(ii) the Government may, subject to

(a) the availability of funds;

(b) the norms and conditions specified in the Grant-in-Aid Code of Tamil Nadu Education Department;

(c) the condition that every private school receiving any grant or financial assistance from the Government levies and collects from the pupils only such fee, charges or other payment as may be specified by the competent authority, which shall not be in excess of the fee, charge or other payment levied and collected from the pupils studying in the schools or institutions established and administered or maintained by the State Government, or any local authority in the locality:

(d) the rules, orders and notifications issued by the Government from time to time; and

(e) such other conditions as may be prescribed by Government to the private school grant or other financial assistance at such rate and for such purposes as may be prescribed.

11. The validity of Section 14-A of the Act, inserted by Amending Act 11/1999, was under challenge and ultimately the Division Bench in the decision reported in Maria Grace Rural Middle School Vs. The Government of Tamil Nadu, upheld such provision. The ratio of the said Division Bench decision is to the effect that no private school, whether minority or non-minority, established after 1991-92, or those in existence during the academic year 1991-92, but not receiving aid before 1991-92, would be entitled to claim any aid from the State Government. So far as the schools which were established before the said date and were in

receipt of the aid (in our opinion, this should also include those schools which were entitled to receive aid and were illegally denied by the Government), shall, however, continue to receive aid in accordance with the Government Orders/ Instructions issued from time to time laying down the norms relating to teacher - pupil ratio. The last such G.O is G.O. Ms. No. 525 dated 29.12.1997. The controversy relating to the Teacher Pupil ratio, which was persisting for considerable length of time, has ultimately been resolved in the Full bench decision reported in (2007) 1 MLJ 199 : 2007 1 WLW. 402 (Director of Elementary Education, Chennai and Ors. v. Tmt. S. Vigila, Thopthukudi District and Anr.).

12. As already indicated earlier, in the batch of writ petitions decided in 1991 WLR 130 (cited supra), the Division Bench had directed the State Government to sanction aid to the minority schools, but the said matter is required to be considered afresh in view of the order of remand passed by the Honourable Supreme Court, which has already been extracted earlier. Such order clearly indicates that the question has to be examined primarily in the light of the observations made by the Supreme Court in T.M.A. Pai Foundation's case. It is therefore advisable to refer to the relevant observations of the Supreme Court in the aforesaid case touching upon the question of Grant-in-Aid. While considering the question of the fundamental right to establish an educational institution, it was observed:

24. ...The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways.

After referring to the decision of the Supreme Court in Re Kerala Education Bill case AIR 1958 SC 956, it was further observed:

107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in Sidhajibhai Sabhai case it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in Sidhajibhai Sabhai case no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority

for the proposition canvassed before us.

Ultimately it was observed:

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. 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-a-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 SCR p. 192 that : (SCC p.743, para 9)

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 favourable 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.

The Supreme Court then proceeded to examine the question whether Article 30 gives the right to ask grant-in-aid from the Government and proceeded to answer in the following words:

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a

demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then," is the meaning, scope and effect of Article 30(2)-- Article 30(2) only means what it states viz. that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational

institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein....

(Emphasis added)

13. In *P.A. Inamdar and Ors. v. State of Maharashtra and Ors.* reported in (2005) 3 MLJ 158 : (2005) 6 SCC 537, the Supreme Court observed:

100. Aid and affiliation or recognition, both by State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulation, as spelt out by 6-Judge Bench decision in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, and 9-Judge Bench case in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; (c) it is directed towards maintaining excellence of the education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of *Pai Foundation*. However, *Very Rev. Mother Provincial's* case and *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , go on to say that no regulation can be cast in "the interest of the nation" if it does not serve , the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J.) stands overruled in *Pai Foundation* where Kirpal, C.J., speaking for majority has ruled (vide para 107) - "any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf". (Also see, paras. 117 to 123 and para. 138 of *Pai Foundation* where Kirpal, C.J. has dealt with *St. Xavier's* in details). No right can be absolute. Whether a minority or a non-minority, no community can claim its interest to be above the national interest.

It was further observed:

107. ...In Kerala Education Bill, "minority educational institutions" came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30(1) can "exercise that right to their hearts" content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist an efficiently function without some State aid. So

is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition. this Court clarified in Kerala Educational Bill that "the right to establish and administer educational institutions" conferred by Article 30(1) does not include the right to mal-administer, and that is very obvious. Merely because an educational institution belongs to minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30(1) on the minority to establish and administer educational institutions....

14. In the above background, the question to be examined is whether the minority institutions are entitled to claim aid for the institution for the first time as such or for some of the additional teachers employed on account of increase in the students' strength in the aided institutions, as the case may be.

15. In view of several decisions of the Supreme Court, there can be no longer any doubt that even though there is a fundamental right to establish a minority institution by a religious or linguistic minority, such minority institution cannot claim grant in aid either as a fundamental right or even as a statutory right, in the absence of any specific provision to that extent. However, under Article 30(2) of the Constitution, it has the protection of not being discriminated against. If there is no provision for grant in aid to any institution, obviously there cannot be any discrimination because the minority institutions and the non-minority institutions are treated alike. It is in the above context, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 incorporated by way of amending Act 11 of 1999 has been upheld by the Division Bench (2006) 5 CTC 193. However, in the present case, we are not called upon to determine the rights of the parties on that footing. In the present case, the questions are confined to the institutions which had been in existence before the cut-off date. Some of the institutions were receiving aid and the question relating to those institutions is regarding their right to claim aid in respect of additional

posts. In respect of other institutions, the question is whether they were entitled to claim grant-in-aid. If any minority institution was entitled to receive such aid, but was denied such aid on account of any erroneous order, such order is obviously to be corrected and such institution established before the cut-off date can have the continued right of receiving such aid and the amended provision contained in Section 14-A cannot be put against such right merely on account of the fact that such institution had not received aid before the cut-off date.

16. Before, however, delving further into this aspect, it is necessary to notice some of the general objections raised by the State authorities for denial of the claim of the Petitioners.

One of the basic objection raised is to the effect that since the minority institutions are not required to obtain prior permission for establishing a school (a fortiori, they may not require permission to create and fill up additional posts), no budgetary provision had been made and, therefore, grant cannot be extended. The other objection, which is more or less allied in nature, is to the effect that the State can grant aid only within the limited financial resources available.

17. Coming first to the last objection, we do not think the lack of financial resources can at all be considered as a valid ground or even excuse to deny grant of aid to a minority institution, while granting such aid to non-minority institution.

18. In *The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others*, , it was observed:

6. ...imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution.

10. Coming to the contention of the Appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the claim of Respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the Appellants in this regard

is rejected.

19. Similar views were expressed to a considerable extent earlier in (1995) 4 SCC 570 (State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.) and State of Maharashtra Vs. Manubhai Pragaji Vashi and others, .

20. Even before the aforesaid views were expressed by the Supreme Court, a Division Bench of this Court had observed in 1988 WLR 130 (Church of South India v. State of Tamil Nadu and Ors.) that want of resources cannot be a ground to deny grant, where otherwise such grant is permissible.

More recently, a similar view has been expressed in C. Manonmony Vs. State of Tamil Nadu and Others, by placing reliance upon the aforesaid decisions of the Supreme Court as well as various decisions of the Madras High Court.

21. After referring to some of the decisions of the Supreme Court, while considering the question of teacher-students ratio, it was observed by the Full Bench in Director of Elementary Education, District Elementary Educational Officer and Assistant Elementary Educational Officer Vs. Smt. S. Vigila and Manager, Meerania Middle School, as follows:

16. The submission that want of finance is the reason for revising the teacher-pupil ratio cannot be countenanced in view of the settled position of law....

22. The allied defence raised in the counter affidavit, which was filed almost a decade and halfback, is to the effect that no budgetary provision has been made. This contention can be merely described as an eye-wash. If a budgetary provision is not made, raising a supplementary budget is a concept quite well known to the Government. Moreover, the question as to whether such institutions had right to receive aid is being determined after a long lapse of time and obviously adequate budgetary provisions can be made hereafter to cover the cases where aid was required to be given, but denied on erroneous assumption.

23. The submission to the effect that in the absence of any prior permission, it is not possible for the State to know number of schools to be established is also not tenable on account of the fact that the question of payment of grant is not one time affair and is an on going process and even if the authorities are not aware of any proposal to establish a school during a particular year, obviously the authorities would be aware of the existence of such school as and when recognition is sought for and, therefore, the necessary arrangement regarding budgetary support is available to be made.

24. The next contention is that many of the institutions had, at the time of seeking recognition, voluntarily waived their right to seek for aid from the Government.

It is true that such letters had been obtained from many of the institutions. It is also true that, as already adverted to, no minority institution has a fundamental

right under Article 30(1) of the Constitution to claim aid as a matter of right. But as repeatedly observed by the Supreme Court, even though there is no such fundamental right to demand grant in aid as such, the inherent right of not being discriminated against is very much recognized in the shape of Article 30(2) as well as Article 14 of the Constitution. Where there is no provision relating to grant-in-aid, obviously there is no question of discrimination, but where there are provisions relating to grant in aid, the right to treat the minority institution at par with other educational institutions as envisaged under Article 14 and Article 30(2) come to the fore. If there is provision for grant of aid to other educational institutions, minority institutions cannot be denied of such right by obtaining a letter that no such aid will be claimed in future. Law is well settled that there cannot be any waiver of a fundamental right. Judged in the above angle, the very fact that most of the institutions had written letter indicating that they would not claim aid cannot be held against such institutions.

25. The question can be viewed from another angle. As there is no dispute that the right under Article 30(1) to establish an institution is very much available as has been repeatedly recognised, an institution, unless it is recognised or affiliated practically, serves no purpose, particularly for the students concerned. In TMA Pai Foundation's case, it is well recognised that the State cannot deny recognition on arbitrary or irrelevant consideration, but it can regulate the question of grant of recognition or affiliation in order to ensure quality of the institution such as availability of infrastructure, employment of duly qualified teachers and the like. For minority institutions, Section 9 of the Act itself contemplates that no prior permission is required, though for other institutions such prior permission is required.

26. The right of the minority to establish such an institution being one of the fundamental rights, obviously statutory provisions have been made dispensing with the normal procedure of obtaining prior permission. Having thus statutorily recognised the fundamental right of such an institution to establish and administer educational institution, to deny aid on the ground that no prior permission has been obtained sounds like a catch-22 situation. The main purpose under Article 30(1) is the privilege given to the minority to establish their own institutions. Such institutions would obviously have a right to seek recognition in respect of their degrees or diplomas or as in the cases of schools, their right to present students for examinations held for other similarly situated students of other schools. The State is bound to give recognition for such qualification and such institutions cannot be discriminated against except on the ground of want of infrastructure or excellence or absence of qualified staff, etc.

27. Some what inter-related question was raised by the learned Additional Advocate General appearing for the State that since no permission is sought for by the minority school to be established, the necessity of establishing such a school is not proved and, therefore, the authorities have right to deny grant-in-aid, if it is found that there is no necessity to establish such school.

For other institutions, the provisions for obtaining prior permission has been incorporated to ensure that a institution is established only if there is need for such an institution. In the case of minority institutions, such need is presumed to exist in view of the right conferred under Article 30(1). Having provided that there is no requirement for obtaining prior permission to establish such an institution to cater to the need of the religious or linguistic minority, it would be paradoxical to deny any such institution the benefit of the grant-in-aid merely on the footing that no prior permission has been obtained.

28. It was also submitted that in view of the provisions contained in Section 14(1) of the Act, no school, whether minority or non-minority is entitled to claim grant-in-aid merely on account of the fact that such institution has been subsequently recognised or affiliated.

This provision merely emphasise the well accepted concept that the institutions whether minority or otherwise can seek grant-in-aid only if there is specific provision to that effect. The question in the present case is not that there is no provision relating to grant aid, but the question is inspite of the existence of provision relating to grant-in-aid, whether the denial of such grant-in-aid to the minority institutions is justified. It is not the claim of the institution that merely because it has been recognised it is entitled to receive aid. The claim of the institution is to the effect that since there is provision for grant-in-aid, the concerned institution should not be discriminated against in the matter of sanction of such grant-in-aid.

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal.

30. So far as the writ appeals are concerned, which are directed against the decision of the learned single Judge, denial of the State Government regarding payment of grant-in-aid has been upheld mainly on account of the fact that the institutions had given letter indicating that they will not make any claim regarding payment of grant-in-aid and also on account of the fact that no institution has got any fundamental right to claim grant.

In view of the discussion made, those reasonings of the learned single Judge cannot be sustained.

31. Apart from the above, the learned single Judge seems to have held that the writ Petitioners (present Appellants) being an individual, did not have any right to establish any minority institution.

32. We do not think such a view expressed by the learned single Judge can be countenanced in view of the decision in T.M.A. Pai Foundation's case as well as many other decisions, wherein it has been recognised that even an individual has a right to establish a minority institution and it is not necessary that it should be done only by a Society. It may be that the learned single Judge has placed reliance upon the observations made in Unnikrishnan's case 1993 (1) SCC 645, wherein the Supreme Court laying down the scheme for establishment of such educational institutions had emphasised the necessity of having a society. In T.M.A. Pai Foundation's case, the Supreme Court has over-ruled that part of the judgment in Unnikrishnan's case. We do not find that there is any requirement anywhere, either under the Constitution or under any statute, that a minority institution can be established only by a group of persons or a registered society. Therefore, such conclusion of the learned single Judge is liable to be over-turned.

33. For the aforesaid reasons, the writ appeals are to be allowed. The applications of the concerned writ Petitioners regarding grant-in-aid shall be considered by the State of Tamil Nadu and other authorities concerned by keeping in view the directions rendered in the foregoing paragraph No. 29 of the present judgment.

34. Subject to the above observations and directions, the writ appeals and the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.