

TMA Pai Foundation case, 2002

February 15, 2021

In News

- Supreme Court delivers judgment 4.0
- A two-judge bench has held that the provisions of the West Bengal Madrasah Service Commission Act, 2008, are not violative of the rights of minority educational institutions on any count.

About TMA Pai Foundation case (2002)

- The famous TMA Pai Foundation case (2002) seems to have been the sheet anchor of this judgement and discussed in three distinct headings—decisions pre-, decisions in and decision post-TMA Pai Foundation case.
- The pre-TMA Pai discussions were dominated by a seven-judge bench Presidential reference in respect of the Kerala Education Act, 1958, and the nine-judge bench order in the St Xavier's College Society case (1974).
- The TMA Pai Foundation was a landmark 11-judge order which laid down the contours of governmental regulations on private institutions and still occupies the education field in so far as the constitutionality of statutes and regulations is concerned.
- The post-TMA Pai was characterised by the seven-judge verdict in PA Inamdar case (2005) and the five-judge order in the Islamic Academy of Education case (2003). The current judgement reinforces the legal supremacy of the 11-judge TMA Pai case over the arithmetic 12-judge combination of Inamdar and Islamic.

The SC in its recent order records:

- “The decision in TMA Pai Foundation case, rendered by the 11 Judges of this Court, thus put the matter beyond any doubt and clarified that the right under Article

30(1) is not absolute or above the law” and highlighted the test laid down by Justice Khanna in the St Xavier’s College case as the correct approach.

- The essence of Article 30(1) was also stated by Justice Khanna—“to ensure equal treatment between the majority and the minority institutions” and that rules and regulations would apply equally to majority and minority institutions.

The SC in Para 47 of the order

- Observes that the test accepted by the TMA Pai Foundation case and the balance between institutional excellence and preserving rights of minorities needs to be considered in the context of two categories of institutions.

Article 30 of the Indian Constitution

- Right of minorities to establish and administer educational institutions.
 - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
 - (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
 - (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based

on religion or language.