

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.26138 OF 2005

ORDER: *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

Heard learned counsel for the petitioner and learned Advocate General for the respondents.

The petitioner-institution, in the instant writ petition, seeks the following relief:

“.....this Hon'ble Court may be pleased to declare the action of the 2nd Respondent University herein insisting upon the compliance of condition No. 7 of Rule 10 of G.O.Ms.No.29 dt. 5-2-1987 in the proceedings dt. 9-11-2005 as contrary to the Judgment of the Hon'ble Supreme Court in TMA Pai Foundation and others V State of Karnataka in 2002 (8) SCC 481 by declaring clause No.7 of the Rule of G.O.Ms.No.29 dt.5.2.1987 as ultra vires, unconstitutional, arbitrary and unjust and direct the 2nd respondent to consider the case of the petitioner college for grant of permanent affiliation by issuing writ of Mandamus, order or direction and pass such other order or orders as this Hon'ble Court deems fit and proper.”

Challenge to Sub-rule (7) of Rule 10 of G.O.Ms.No.29, Education (Rules), dated 05.02.1987 is based on the observations made by the Supreme Court in **T.M.A PAI FOUNDATION V. STATE OF KARNATAKA**^[1].

Mr.M.V.S.Suresh Kumar, learned counsel for the petitioner, at the outset, invited our attention to paragraphs 53 and 55 of the judgment in T.M.A Pai Foundation and submitted that the petitioner, being an unaided private institution, cannot be asked to seek approval of the teaching staff appointed by them as required under sub-rule (7) of Rule 10 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules,1987 (for short “the Rules”). In short, he submitted

such a requirement is contrary to the observations made by the Supreme Court in T.M.A Pai Foundation case.

Sub-rule (7) of Rule 10 of the Rules provides that the institution should appoint staff following the procedure prescribed by the Government, from time to time, and get the appointments approved by the competent authority. The petitioner has challenged validity of this provision. Despite the challenge, the institution has no objection for following the due procedure contemplated under G.O.Ms.No.12 dated 10.01.1992 for appointment of teaching staff. He submits that if the existing teaching staff was appointed without following the due procedure as contemplated in the said G.O.Ms., they are ready to undertake a fresh exercise of appointment of the staff, allowing the existing staff to participate in the selection process. His statement is recorded and accepted.

Insofar as seeking approval is concerned, he submitted that the petitioner would be satisfied if it is made clear that approval of the selection of staff would be subject to the observations made by the Supreme Court in paragraphs 53 and 55 and in that event, the petitioner-institution has no objection for approaching the University for approval. The relevant observations in paragraphs 53 and 55 of the T.M.A Pai Foundation case (supra) read thus:

“.....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 university concerned. 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 aided educational institution”.

xxxxxxx

The Constitution recognizes the right of the

individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan's case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. **There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula.** It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. **There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions.** Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, **in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence.** While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, **it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.**"

(emphasis supplied)

From bare perusal of the observations made by the Supreme Court in the judgment and in particular the aforementioned paragraphs, it is clear that even private unaided colleges are expected to appoint

teaching staff having requisite qualification acquired from recognized University. Whether the teaching staff appointed by the petitioner-institution holds such qualification or not, needs to be verified by the University as contemplated by sub-rule (7) of Rule 10 of the Rules. If, for any reason, the University finds that any particular member of the staff does not comply with the requisite qualification to be appointed as teaching staff, it is always open to the University to deny approval of such appointment after recording reasons for the same, and if any such order is passed, it is always open to the institution, if aggrieved, to challenge the same in appropriate proceedings. As far as this procedure is concerned, learned counsel for the petitioner has no objection for following the same. His submission is recorded and accepted.

In the circumstances, we dispose of this writ petition in terms of this order.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J

Date: 09.02.2016

Stp/Lrkm

[\[1\]](#) (2002) 8 SCC 481