

Topic: Rules For Determining Religious Or Linguistic Minority Under Article 29 And 30

Name of the Case: TMA PAI Foundation v. State of Karnataka, AIR 2003 SC 355

Bench: Justice S.S.M. Quadri, Justice Ruma Pal, Justice S.N. Variava, Justice K.G. Balakrishnan, Justice P.V. Reddi, Justice Ashok Bhan, Justice Arijit Pasayat

Issue: Whether in order to determine the existence of a religious or linguistic minority in relation to Article 30, the State or the country as a whole is to be taken as a unit?

Judgment: Of the 11 judges constituting the bench, Chief Justice of India Kirpal deliver judgement for six of the judges. There were three concurring and two dissenting judgements on the issue. The majority view was that the language being the basis for the establishment of different states, for the purpose of Article 30, holding victim and nobody will have to be determined in relation to the state in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30. Therefore, the test for determining who are linguistic or religious minorities within the meaning of Article 30 would be one and the same either in relation to a state legislation or central legislation.

The minority view was that the question of minority status must be judged in relation to the offending pieces of legislation or executive order. If the source of the infringing action is the state, then the protection must be given against the state and this status of the individual or group claiming the protection must be determined with reference to the territorial limits of the State. When the entire nation is sought to be affected by Union legislation, the question of minority status must be determined with reference to the country as a whole. Thus, Parliament itself describe Hindi as the compulsory medium of instruction in all educational institution throughout the length and breadth of the country, if the minority status is to be determined only with respect to the territorial limits of a state, non-Hindi speaking person who are in majority in their own state but in a minority in relation to the rest of the country, would not be able to impinge the legislation on the ground that it interferes with the right to preserve distinct language and script. Such examples can be multiplied. The Supreme Court in TMA Pai was unanimously of the view that the right to establish and administer an institution in Article 30 of the Constitution, comprises the rights:

- a. To admit students,
- b. To set up reasonable fee structure,
- c. To constitute a governing body,
- d. To appoint staff (teaching and non- teaching),
- e. To take action if there is dereliction of duty on the part of any of the employees.

However, the court in TMA Pai did not decide about the authority competent to decide the minority status under Article 30.

Further Constitutional development:

The National Commission For Minority Educational Institution Act, 2004, was enacted which enables the commission set up under the act to decide all the questions relating to the status of any institution as a Minority Educational Institution and declare its status as such.