

## **7. State can regulate Minority Educational Institutions, says SC**

**Prelims Level: Rights Issues**

**Mains Level: GS- II Functions and responsibilities of the Union and the States, issues and challenges pertaining to the Federal Structure, Devolution of Powers and Finances up to local Levels and challenges therein**

### **Why in News?**

- The Supreme Court has recently held that the state can regulate minority educational institutions.

### **About:**

- The Supreme Court held that the State is well within its rights to introduce a regulatory regime in the “national interest” to provide minority educational institutions with well-qualified teachers in order for them to “achieve excellence in education.”
- The managements of minority institutions cannot ignore such a legal regime by saying that it is their fundamental right under Article 30 of the Constitution to establish and administer their educational institutions according to their choice.

### **Why this Guidelines?**

- The judgment came on a challenge to the validity of the West Bengal Madrasah Service Commission Act of 2008.
- The State Act mandated that the process of appointment of teachers in aided madrasahs, recognised as minority institutions, would be done by a Commission, whose decision would be binding.

### **Observations by SC:**

- The regulatory law should however balance the dual objectives of ensuring standard of excellence as well as preserving the right of the minorities to establish and administer their educational institutions.
- It also said that the regulations that embrace and reconcile the two objectives were reasonable. It referred to the TMA Pai Foundation case and said Article 30(1) (right of minorities to establish and administer educational institutions of their choice) was neither absolute nor above the law.
- Art 30 cannot be viewed in isolation and needs to be read with Art 26(a) which states that religious denominations can establish institutions for religious and charitable purposes as determined by SC in TMA Pai Foundation Case.

- When it comes to the right to appoint teachers, in terms of law laid down in the TMA Pai Foundation case, a regulation framed in the national interest must necessarily apply to all institutions regardless whether they are run by majority or minority as the essence of Article 30(1) is to ensure equal treatment between the majority and minority institutions.

#### **About TMA Pai Foundation Case:**

- In TMA Pai & others vs. State of Karnataka & others 2002 case, SC ruled that Minority Educational Institutions (MEI), can have separate admission process which is fair, transparent and merit based.
- They can also separate fee structure but should not charge capitation fee.

#### **Striking a balance between the Two:**

- The court explained how to strike a “balance” between the two objectives of excellence in education and the preservation of the minorities right to run their educational institutions.
- For this the court broadly divides education into two categories – secular education and education “directly aimed at or dealing with preservation and protection of the heritage, culture, script and special characteristics of a religious or a linguistic minority.”
- When it comes to the latter, the court advocated “maximum latitude” to be given to the management to appoint teachers.
- The court reasons that only “teachers who believe in the religious ideology or in the special characteristics of the concerned minority would alone be able to imbibe in the students admitted in such educational institutions, what the minorities would like to preserve, profess and propagate.”
- However, minority institutions where the curriculum was “purely secular”, the intent must be to impart education availing the Best Possible Teachers.