2026 INSC 799

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10669 OF 2010

GOVERNMENT OF INDIA & ANR. ......APPELLANT(S)

VS.

SRI DEVRAJ URS MEDICAL COLLEGE ......RESPONDENT(S)

WITH

CIVIL APPEAL NO............ OF 2026

(arising out of SLP (C) No.9079 of 2011)

J U D G M E N T

SHEEL NAGU, J.

CIVIL APPEAL NO.10669 OF 2010

1. The present appeal emanates from the impugned order of the Division Bench of the High Court of Karnataka rendered on 03.07.2009 in Writ Appeal No.1407 of 2009 (FDN-RES), upholding the order of the Single Bench passed on 05.11.2008 in Writ Petition No.15640 of 2005.

2. We have heard the learned counsel for the Government of India, the Government of Karnataka, and also the learned counsel for the respondent-college at length and have perused the relevant documents on record.

2.1. The Single Bench of the High Court of Karnataka, while allowing the writ petition filed by the respondent herein, passed the following orders:

I. Quashed communication dated 13.05.2005 issued by the Central Government (by which payment of the subvention amount was denied qua academic year 2002-03 & onwards).

II. Writ of mandamus was issued against respondent No.1-Government of India to make payment of the subvention amount in terms of the interim order dated 11.08.1995 in ***TMA Pai Foundation and Ors. vs. State of Karnataka and Ors.***[1] in respect of students, who were admitted latest in the academic year 2002-03 for a period of 5 years or until the students complete the course, whichever is earlier.

[1](1995) 5 SCC 220

III. However, it was directed that the petitioner-college is not entitled to the subvention amount in respect of students admitted in the academic year 2003-04, and thereafter, owing to the final decision dated 31.10.2002 by 11-Judge Bench in the case of ***TMA Pai Foundation & Ors vs. State of Karnataka***[2].

3. Rationale behind grant of relief by the Single Bench was that the subvention scheme floated pursuant to the interim order dated 11.08.1995, in ***TMA Pai Foundation*** case (supra) was meant to eliminate the evil of capitation fee and that merit ought to be the sole consideration in matters of admission to professional courses. It was also noticed by the Single Bench that the subvention scheme was made effective from academic year 1995-96. Therefore, the Single Bench held the respondent-college to be entitled to the subvention amount in respect of such students till they complete their course.

[2](2002) 8 SCC 481

4. Pertinently, the same interim order dated 11.08.1995, which created the subvention scheme, also referred the issue to a larger Bench, which led to the constitution of 11-Judge Bench in the case of ***TMA Pai Foundation & Ors. vs. State of Karnataka*** (supra) which finally overruled the decision of ***Unni Krishnan, J.P. And Ors. Etc. Etc vs State Of Andhra Pradesh And Ors. Etc. Etc.***[3] by laying down the law, which in context of this case is extracted below:-

> "*xxx*
>
> *Question No.9 Whether the decision of this Court in Unnikrishnan J.P. vs. State of A.P. 1993 1 SCC 645 (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?*
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> *Answer: <u>The scheme</u> framed by this Court in **Unni Krishnan's** case and the direction to impose the same, except where it holds that primary education is a fundamental right, <u>is unconstitutional</u>. However, the principle that there should not be capitation fee or profiteering is correct. <u>Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering</u>.*
>
> *xxx*"

[3](1993) 1 SCC 645

5. We, after hearing the learned counsel for rival parties, formulate the following questions to be answered by this order:

> **I.** Whether the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench renders the decision of the Single Bench as well as the Division Bench of the High Court of Karnataka, impugned herein, liable to be interfered with or not?
>
> **II.** Whether the appellants herein, Government of India and Government of Karnataka are entitled to any relief or not?

6. During the course of arguments, we put a pointed question to the counsel for the respondent-college, as to whether in regard to fee charged and expenses incurred by them for the academic year 2002-03, prior and subsequent thereof, any data has been furnished? The answer is in the negative.

6.1. In view of the above, in the absence of any data provided by the respondent-college, we are unable to adjudicate upon the said aspect and therefore, we move on with the assumption based on acquiescence of the respondent-college that fee was charged by the respondent-college from students qua academic year 2002-03, prior, and also subsequent thereto. However, whether the revenue (by way of tuition fee and other sources) generated by the respondent-college fell short of the expenses incurred to run the respondent-college, or not, is a question which remains unanswered.

6.2 In the absence of any pleading in support of the aforesaid query raised by this Court, we draw inspiration from the law laid down by this Court in the case of ***Bharat Singh and Others. vs. State of Haryana and Others***[4]. Relevant paragraph 13 of ***Bharat Singh*** (supra), for reference and convenience is reproduced herein below:

> *"xxx*
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> ***13.*** *As has been already noticed, although the point to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point*

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4. *(1988) 4 SCC 534*

argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

xxx"

As such, in view of the above, we are unable to subscribe to the view of the impugned orders for payment of the subvention amount to the respondent-college for the period after academic year 2002-2003.

7. We further take judicial notice of the fact that only two colleges have approached this Court against the stoppage of the subvention amount by the Government of India/Government of Karnataka despite the stoppage having affected a large number of professional colleges. Though this data is insufficient to draw an adverse inference against the respondent-college but certainly has persuasive force.

8. The final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench impliedly declared the subvention scheme to be unconstitutional. It may not be out of place to mention here that under the subvention scheme an amount of Rs.5,000/- per annum per student was extended by the Central Government (except to NRI's). The scheme also provided that the subvention amount shall be paid till the students complete the course or for a period of 5 years, whichever is earlier. However, these directions issued under this scheme were made subject to the final outcome in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench, which was pronounced on 31.10.2002.

8.1 The Single Bench, while allowing the writ petition, made the following findings and observations:

I. The final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench did not touch upon the provision of the subvention amount pursuant to the interim order passed by this Court on 11.08.1995 (meaning thereby that things done pursuant to the interim order dated 11.08.1995 were saved).

II. That pursuant to the interim order dated 11.08.1995, the subvention amount has already been paid to the college in respect of the students admitted from academic year 1995-96 onwards till they completed their course or for a period of 5 years, whichever is earlier.

III. That vested right was created in favour of the colleges to receive the subvention amount which could not be curtailed or taken away retrospectively by virtue of the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench.

IV. It was thus held by the Single Bench that all actions taken pursuant to the interim order dated 11.08.1995, in ***TMA Pai Foundation*** (supra) are treated to be valid and continued till the academic year 2002-03 (since final judgment in ***TMA Pai Foundation*** case was rendered on 31.10.2002).

V. The Single Bench also noticed that the Division Bench of this Court by the clarificatory decision dated 01.04.2003 passed in ***State of Karnataka vs. TMA Pai Foundation and Ors.***[5] held that the declaration of law in the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench is prospective, meaning thereby that there would be no re-opening of the settled issues.

VI. That the respondent-college cannot be denied payment of the subvention amount in respect of students admitted during the academic year 2002-03 and prior thereto, and that these students so admitted are entitled to receive the subvention amount for the entire 5 years period of the course.

9. Pertinently, the clarificatory decision dated 01.04.2003 of the Division Bench of this Court in ***State of Karnataka vs. TMA Pai Foundation and Ors.*** (supra), which was held by the Single Bench to give prospectivity to the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench, on perusal does not expressly lay down that the ratio in ***TMA***

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[5](2003) 6 SCC 790

Pai Foundation (supra) case, was prospective. For ready reference, the said clarificatory decision dated 01.04.2003 in ***State of Karnataka vs. TMA Pai Foundation and Ors.*** (supra) is reproduced in toto as follows:

> *"1. Leave granted in special leave petitions.*
> *2. The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in T.M.A. Pai Foundation v. State of Karnataka and the connected batch of cases decided on 31.10.2002. Since larger questions have been decided by this Court, it becomes necessary for the High Court to re-examine the matters which have been decided and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law.*
> *3. Status quo shall continue unless the High Court so decides to modify the same by an appropriate application made to them by any of the parties. The parties are at liberty to file fresh pleadings, if any, within the period fixed by the High Court. 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 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.*
>
> *4. The appeals are disposed of accordingly.*
>
> *5. The questions of law are left open."*

10. From the aforesaid, it is obvious that after the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench laid down the law on 31.10.2002, certain petitions in the High Courts of various States were pending before this Court which were taken up and decided by the said clarificatory decision dated 01.04.2003. This Court in the clarificatory decision dated 01.04.2003 held that since larger questions on the issue have already been decided by the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench, the orders of different High Courts challenged before this Court, are set aside without expressing any opinion on merits and the matters are remitted to the respective High Courts for fresh consideration in accordance with law. This clarificatory decision dated 01.04.2003 further laid down that status quo shall continue unless the High Court so decides to modify the same and the parties before the High Court were granted liberty to file fresh pleadings. Further, the clarificatory decision dated 01.04.2003, before concluding, held that all statutory enactments, orders, schemes, regulations will have to be brought in conformity with the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench decided on 31.10.2002.

10.1 It appears that the impression of the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench is prospective, was derived by the Single Bench by reading the clarificatory decision of the Division Bench of this Court dated 01.04.2003, where the direction of status quo was issued with further direction that all statutory enactments, orders, schemes, regulations will have to be brought in line with the final decision in ***TMA Pai Foundation*** by 11-Judge Bench.

11. If a decision of the Apex Court does not expressly provide its application to be prospective, then it is settled law that all decisions of this Court are retrospective in application as held in paragraph 29 of ***P.V. George v. State of Kerala*[6]*,*** which is reproduced herein below:

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[6](2007) 3 SCC 557

> *"**29.** ....The law declared by a Court will have a retrospective effect if not otherwise stated to be so specifically. ....."*

12. That another extract of the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench which indicates towards the intention of the 11-Judge Bench decision to be prospective, in paragraph 393 which is reproduced below:

> *"**393**. The learned Chief Justice has repeatedly emphasised that capitation fees cannot be charged and that there must be no profiteering. We clarify that the authorities concerned will always be entitled to prevent by enactment or by regulations the charging of exorbitant fees or capitation fees. There are many such enactments already in force. We have not gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this judgment. Of course now by virtue of this judgment the fee structure, fixed under any regulation or enactment, will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats"*

12.1 A conjoint reading of paragraph 393 of the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench and the clarificatory order dated 01.04.2003 of the

Division Bench of this Court makes it abundantly clear that the intention of this Court was to give prospective application to only such statutory provisions which stipulated something contrary to the ratio laid down in the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench.

12.2 However, the schemes or executive instructions, particularly the subvention scheme, died its own death on 31.10.2002 when the scheme was declared unconstitutional by the final decision in ***TMA Pai Foundation*** (supra) case by 11-Judge Bench.

12.3 Moreso, the scheme of subvention, which was formulated by way of the interim order dated 11.08.1995, during pendency of ***TMA Pai Foundation*** (supra) case before this Court, obligated the Central Government to pay the subvention amount to each eligible college on an annual basis and not for the entire course in lump sum. Thus, the said obligation is for payment of the subvention amount annually. Therefore, it was not incumbent upon the Central Government to pay the subvention amount for the entire 5-

year course in one go and therefore, the Single Bench and the Division Bench of the High Court of Karnataka were incorrect in directing release of the subvention amount for the entire 5 years even after academic year 2002-03. Such a course was impermissible once the subvention scheme was declared unconstitutional on 31.10.2002. (see answer to question No.9 of final order in *TMA Pai Foundation*)

13. In the conspectus of the above discussion, we partly uphold the order of the Single Bench as well as the Division Bench of the High Court of Karnataka, to the extent it denies the payment of the subvention amount beyond the academic year 2002-03.

13.1 We are persuaded to hold so, primarily because of absence of any pleading furnished by the respondent-college as to whether the revenue generated by way of tuition fees and from other sources was enough or not to cater to the expenditure incurred to run the respondent-institution. Consequently, this appeal is partly allowed to the extent indicated below:

A) The order of the Single Bench as well as the Division Bench of the High Court of Karnataka, are set aside to the extent it directs payment of the subvention amount for the entire course of 5 years for students who were admitted in 2002-03.

14. Consequently, the questions framed in paragraph No.5 of this judgment are answered accordingly.

CIVIL APPEAL NO…… OF 2026 @ SLP (C) No.9079 of 2011

1. Leave granted.

2. Disposal of Civil Appeal No….of 2026 (arising out of SLP (C) No.9079 of 2011) shall be governed *mutatis mutandis* by this order.

……………………………….J.
(DIPANKAR DATTA)

……………………………….J.
(SHEEL NAGU)

NEW DELHI;
AUGUST 04, 2026