

Lex Saturates

CONSTITUTION OF INDIA

State of Karnataka

vs.

*Associated Management of (Govt. recognized
Unaided English medium) Primary and Secondary Schools
and ors.*

Report by:

LAKSHMI MENON P

Lex Saturates

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PARTIES INVOLVED

CIVIL APPEAL Nos.5166-5190 OF 2013

State of Karnataka & Anr. ... Appellants

Versus

Associated Management of (Government
Recognised – Unaided – English Medium)
Primary & Secondary Schools & Ors.

... Respondents

WITH

WRIT PETITION (C) No.290 of 2009

Nallur Prasad & Ors. ... Appellants

Versus

State of Karnataka & Ors. ... Respondents

CIVIL APPEAL Nos.5191-5199 of 2013

R.G. Nadadur & Ors. ... Appellants

Versus

Shubodaya Vidya Samasthe & Anr. ... Respondents

AND

CIVIL APPEAL No. 5090 of 2014
(Arising out of S.L.P. (C) No.32858 of 2013)

State of Karnataka & Ors.

... Appellants

Versus

Mohamed Hussain Jucka

... Respondent

DATE OF JUDGEMENT : 06-05-2014

BENCH :

R.M. Lodha
A.K. Patnaik,
Sudhansu Jyoti Mukhopadhaya,
Dipak Misra,
Fakkir Mohamed Kalifulla

Facts of the Case

The State of Karnataka issued an order dated 29.04.1994 regarding the language policy to be followed in primary and high schools with effect from the academic year 1994-1995 prescribing that medium of instruction should be mother tongue or Kannada with effect from the in all Govt. Recognized Schools in classes 1 to 4. The order permitted the students to change over to English or any other language as medium at their choice, from 5th standard and directed to close down all unauthorized schools which do not comply with the above conditions. The Government Order dated 29.04.1994, however, clarified that permission can be granted to only those students whose mother tongue is English, to study in English medium in classes I to IV in existing recognized English medium schools.

Aggrieved by the Government order, the Associated Management of Primary and Secondary Schools in Karnataka filed a writ petition in the High Court of Karnataka wherein it was held that the right to choose a medium of instruction is implicit in the right of education and it is the fundamental right of the child and parent to choose their medium of instruction and the said order was held to be violative of this fundamental right.

Aggrieved by the judgment dated 02.07.2008 of the Full Bench of the High Court, the State of Karnataka filed Civil Appeal Nos.5166-5190 of 2013. Fifteen educationists claiming to be keen that primary education in the State of Karnataka from I to IV standard should be in the mother tongue of the child or Kannada have also filed Writ Petition (C) No.290 of 2009 for declaring that the Government Order dated 29.04.1994 is constitutionally valid in respect of unaided Government recognized primary schools and for a writ of mandamus directing the State Government to implement the Government Order dated 29.04.1994.

Issues Involved:

- What does Mother tongue mean? If it referred to as the language in which the child is comfortable with, then who will decide the same?
- Whether a student or a parent or a citizen has a right to choose a medium of instruction at primary stage?
- Does the imposition of mother tongue in any way affect the fundamental rights under Article 14, 19, 29 and 30 of the Constitution?
- Whether the Government recognized schools are inclusive of both government-aided schools and private & unaided schools?
- Whether the State can by virtue of Article 350-A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools?

Legal provisions involved

- Article 14,19,21,26,30,136, 162,350 A of The Constitution of India, 1949

Legal Pronouncements

- *T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors*; 1994 SCC (2) 195
- *Unni Krishnan, J.P. And Ors vs State Of Andhra Pradesh And Ors*; 1993 SCC (1) 645
- *Romesh Thappar vs The State Of Madras*; 1950 AIR 124
- *English Medium Students Parents Association vs State Of Karnataka*; 1994 AIR 1702
- *P.A. Inamdar & Ors vs State Of Maharashtra & Ors*; (2005) 6 SCC 537
- *Usha Mehta & Ors vs State Of Maharashtra & Ors*; (2004) 6 SCC 264
- *The State Of Bombay vs Bombay Education Society And Ors.*; 1954 AIR 561

Arguments

Appellants:

Mother tongue is the language in which the child is most comfortable with. The resolution adopted in Provincial Educational Ministers Conference held in August 1949 serves as a guide for State Governments in making arrangements for the education of school going children; the resolution provides that medium of instruction in the junior basic stage must be the mother tongue of the child, declared so by the parent or guardian. After the resolution in 1955, Art 350 A was introduced in the Constitution of India providing that, state shall endeavor to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority group. Accordingly, the order dated 29-04-1994 is regulatory in character and does not in a way effect fundamental rights enshrined in the Constitution.

If the State takes a policy decision, that the medium of instruction for the children studying in classes I to IV will be their mother tongue, such a policy decision of the State Government will be within the regulatory powers of the State. Appellants cited the judgment of the Apex Court in *Gujarat University & Anr. v. Shri Krishna Ranganath Mudholkar & Ors.*¹ in which Constitution Bench of this Court has taken the view that the State Legislature has the regulatory power to legislate on medium of instruction in institutions of primary or secondary education. Under Article 162 of the Constitution, the State Government has executive powers co-extensive with its legislative powers and therefore the Government order dated 29.04.1994 prescribing that the medium of instruction of all children studying in classes I to IV will be mother tongue was well within the powers of the State Government.

Even if it is held that children and parents have a right to choose a medium of instruction for classes I to IV or that citizens who have established schools have a fundamental right under Article 19(1)(g) of the Constitution to choose the medium in which education will be imparted to the children studying in their schools, the State could restrict

¹ AIR 1963 SC 703

their right by virtue of its regulatory powers and prescribe that a medium of instruction for children studying in classes I to IV will be their mother tongue. So long as the State permits a medium of instruction to be the same as the language of the minority community which has established the educational institution, the fundamental rights under Article 29(1) and 30(1) of the Constitution are not violated because the purport of Articles 29(1) and 30(1) of the Constitution is to promote the language of every community including the language of a linguistic minority.²

Respondents:

Article 26(3) of the Universal Declaration of Human Rights adopted by the members of the United Nations including India provides that parents have a prior right to choose the kind of education that shall be given to their children. Under Article 350A of the Indian Constitution, the State has no power to compel any educational institution to adopt mother tongue as the medium of instruction. Article 350A of the Constitution only casts a duty on every State and every local authority within the State to provide adequate facilities for instruction in the mother- tongue at the primary stage of education to children belonging to linguistic minority groups, and does not empower the State to interfere with right to freedom of speech and expression and the right to establish and administer schools under Article 19 of the Constitution.

Article 30(1) of the Constitution confers on religious and linguistic minority communities the right to establish and administer educational institutions of their choice and the word “choice” clearly indicates that the State cannot compel an institution established by a religious or linguistic minority to impart education in their institution to the children of classes I to IV only in the mother tongue of the children. Even the educational institutions which have not been established by a religious or linguistic minority have a right to freedom under Articles 19(1)(g) and 26 of the Constitution and in exercise of this right, they have a right to choose the medium of instruction in which they want to impart education to their students.³

² *State of Bombay v. Bombay Education Society & Ors.* [AIR 1954 SC 561]

³ *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* [1994 SCC (2) 195]

Judgement

The Constitution nowhere provides that mother tongue is the language which the child is comfortable with, and while this meaning of “mother tongue” may be a possible meaning of the ‘expression’, and hence the power of the State cannot be expanded or restrict a fundamental right by saying that mother tongue is the language which the child is comfortable with. A child, and on his behalf his parent or guardian, has the right to choose the medium of instruction at the primary school stage under Article 19(1)(a) of the Constitution. State will have no power to impose reasonable restrictions on this right of the child for purposes other than those mentioned in Article 19(2) of the Constitution. The State cannot stipulate as a condition for recognition that, the medium of instruction for children studying in classes I to IV in minority schools protected under Articles 29(1) and 30(1) of the Constitution and in private unaided schools enjoying the right to carry on any occupation under Article 19(1)(g) of the Constitution would be the mother tongue of the children as such stipulation. The imposition of mother tongue affects the fundamental rights under Articles 19, 29 and 30 of the Constitution. All schools, whether they are established by the Government or whether they are aided by the Government or whether they are not aided by the Government, require recognition to be granted in accordance of the provisions of the appropriate Act or Government order. Accordingly, Government recognized schools will not only include government aided schools but also unaided schools which have been granted recognition. Article 350A cannot be interpreted to empower the State to compel a linguistic minority to choose its mother tongue only as a medium of instruction in a primary school established by it in violation of this fundamental right under Article 30(1). Hence the State has no power under Article 350A of the Constitution to compel the linguistic minorities to choose their mother tongue only as a medium of instruction in primary schools. The Civil Appeal is dismissed.