

(2008) 10 KAR CK 0060

In the Karnataka High Court

Case No : Regular Second Appeal No. 1336 of 2006

Daffodils English School

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 21, 26, 30 (1)

Citation : (2009) ILR (Kar) 104

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : V. Tapsi and Rosa Paramel, for the Appellant; B. Manohar, AGA, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—In this set of petitions, petitioners have challenged the Government Order dated 30.5.02 passed in continuation of the Government Order dated 29.4.94 regarding language policy wherein the State Government has extended Kannada as Medium of Instruction for 5th standard also as a medium of instruction, wherein in the earlier Government Order it had directed the schools recognized by the State to have Kannada as medium of instruction from 1st standard to 4th standard."

2. Heard the learned Senior Counsel Sri. Vijay Shankar for the petitioners and the learned Addl. Government Advocate Sri. B. Manohar.

3. The learned Senior Counsel appearing for the petitioners has relied upon the decision of the Full Bench of this Court reported in Associated Managements of Primary and Secondary Schools in Associated Managements of Primary and Secondary Schools in Karnataka Vs. The State of Karnataka and Others, wherein Clauses 2,3,6 & 8 of the Government Order dated 29.4.94 compelling the children studying in other Government recognized schools to have primary education in the mother tongue or the regional language have been struck down by the Full Bench decision and accordingly, submitted that as the matter is set at rest by the decision of Full Bench the subsequent order" dated 30.5.02 making

Kannada language as medium of instruction from 1st standard to 5th standard is unenforceable and that the language policy has been decided long back in the decision reported in *The State of Bombay Vs. Bombay Education Society and Others*, and even the Full Bench in the above referred decision has come to the conclusion that the "Right to education is a fundamental right being a species of right to life flowing from Article 21 of the Constitution. By virtue of Article 21-A right to free and compulsory primary education is a fundamental right guaranteed to all children of the age of six to fourteen years. The right to choose a medium of instruction is implicit in the right to education. It is a fundamental right of the parent and the child to choose the medium of instruction even in primary schools."

4. Per-contra, the learned Addl. Government Advocate referring to the decision of the Apex Court reported in *Usha Mehta and Others Vs. State of Maharashtra and Others*, wherein the Apex Court while imposing Marathi language as a medium of instruction has held that "The impugned policy decision was taken by keeping in view the larger interest of the State, because the official and common business are carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easily carrying out the day to day affairs of the people living in the State of Maharashtra and also for proper carrying out of daily administration. Hence, the regulation imposed by the State of Maharashtra upon the linguistic minorities to teach its regional language is only a reasonable one. A particular State can validly take a policy decision to compulsorily teach its regional language, accordingly submitted that there is no illegality in the impugned Government Order.

5. It is the argument of the learned Senior Counsel for petitioners that the condition imposed by the Apex Court in *Usha Mehta's* case would not vitiate, in view of the fact that Kannada is one of the languages that would be taught in the schools which are run in the State adopting either CBSE OR ICSE or State syllabus. The State would impose a condition that Kannada be studied as one of the languages in the Primary Schools by the students who are residing in the State of Karnataka, thus promoting Kannada language instead of insisting for Kannada as a medium of instruction.

6. After having heard the learned Counsel for the respective parties, let me consider whether the ratio laid down by the Full Bench of this Court reported in *Associated Managements of Primary and Secondary Schools in Karnataka Vs. The State of Karnataka and Others*, is squarely applicable to the case on hand.

7. The Government Order dated 30-5-2002 is almost in paramateria with that of the Notification issued on 29-4-1994 vide Annexure-C.

8. Certain clauses namely conditions 2, 3, 6 and 8 which are quoted above in the Government Order dated 29-4-1994 have been quashed by the Full Bench of this Court in the above said decision. The only difference in respect of this circular is extending primary education from I to V Standard instead of I to IV Standard as

it was earlier. This extension is because of the National Policy of Education.

9. For the present, as to the medium of instruction from I to V standard is concerned, the Full Bench of this Court having struck down certain clauses in the 1994 Government Order enables the Government to take a decision to accord permission to run the schools either in English Medium as medium of instruction for I to IV standard and also in other medium of the choice of the parents of the child in private Government recognised schools. This enables the State to take a decision in the matter to accord permission to the schools, which are intended to impart medium of instruction as English or Kannada or any other language which the School authorities or parents prefer for imparting education to the child at the inception.

10. In paragraph 193 of the said judgment, the Full Bench of this Court has noted as follows:

The State could be compelled to provide free and compulsory primary education. However, the State cannot be compelled to give that primary education in a language of the choice of the child. Conversely the State can make primary education compulsory and choose the medium of instruction of its choice in the schools run or aided by the State. But it cannot compel the child to have primary education in the mother tongue or the official language of the State. The Choice of medium of instruction is that of the child and it should be left to the parents of the child. It is the element of compulsion which is frowned upon. It is arbitrary. It offends fundamental right guaranteed to the citizens of this country. The golden thread which runs through the constitution is the . concept of FREEDOM, which cannot be compromised to the protean concept of "State necessity", as conceived by the rulers of the day. Even the majority has no right to take away the said right guaranteed under Article 30(1) of the constitution to the linguistic minorities as it would subvert the very purpose for which the right was given. The Indian constitution is a living document for the present and future generation. The rights conferred therein are eternal. Except in the manner provided in the constitution and the law declared by the apex Court, the said rights cannot be abridged or denied. That is the constitutional guarantee promised to the citizens of this country.

11. Paragraph 196 of the said judgment reads thus:

Freedom of individual development is the basis of democracy. The primary purpose of education is to provide him with the widest opportunity to develop his potentials to the full. Right to freedom of speech and expression is a right one gets by birth. It is a basic human right and a natural right. It is basic and indivisible from a democratic polity. It is implicit in such a right the right to choose the medium of instruction.

12. Paragraph 198 of the said judgment reads thus:

In the light of the aforesaid discussion and in response to the reference, we

record the following conclusions:

- (1) Right to education is a fundamental right being a species of right to life flowing from Article 21 of the Constitution. By virtue of Article 21-A right to free and compulsory primary education is a fundamental right guaranteed to all children of the age of six to fourteen years. The right to choose a medium of instruction is implicit in the right to education. It is a fundamental right of the parent and the child to choose the medium of instruction even in primary schools.
2. Right to freedom of speech and expression includes the right to choose a medium of instruction.
3. Imparting education is an occupation and, therefore, the right to carry on any occupation under Article 19(1)(g) includes the right to establish and administer an educational institution of one's choice. "One's choice" includes the choice of medium of instruction.
4. Under Article 26 of the Constitution of India every religious denomination has a right to establish and maintain an institution for charitable purposes which includes an educational institution. This is a right available to majority and minority denominations.
5. Every section of the society which has a distinct language script or culture of its own has the fundamental right to conserve the same. This is a right which is conferred on both majority and minority, under Article 29(1) of the Constitution.
6. All minorities, religious or linguistic, have a right to establish and administer Educational Institutions of their choice under Article 30(1) of the Constitution.
7. Thus, every citizen, every religious denomination, and every linguistic and religious minority, have a right to establish, administer and maintain an educational institution of his/its choice "under Articles 19(1)(g), 26 and 30(1) of the Constitution of India, which includes the right to choose the medium of instruction.
8. No citizen shall be denied admission to an Educational Institution only on the ground of language as stated in Article 29(2) of the Constitution of India.
9. The Government Policy introducing Kannada as first language to the children whose mother tongue is Kannada is valid. The policy that all children, whose mother tongue is not Kannada, the official language of the State, shall study Kannada language as one of the subjects is also valid. The Government policy to have mother tongue or regional language as the medium of instruction at the primary level is valid and legal, in the case of schools run or aided by the State.
10. But, the Government policy compelling children studying in other Government recognized schools to have primary education only in the mother tongue or the regional language is violative of Article 19(1)(g), 26 and 30(1) of the Constitution of India.

13. In the earlier Notification it was restricted to I to IV standards, but there are no other changes found in the second Notification at Annexure-E. As a matter of National Policy, Primary Education is to be considered from I to IV standards and even V standard is also to be included as primary education. The fiat given by this Court by striking down certain conditions namely Clauses 2,3,6 and 8 of the 1994 Government Order, would be applicable to the subsequent Government Order at Annexure-E which is dated 30-5-2002.

14. Change of policy would enable the private educational institutions to run English Medium schools or in any other language of their choice as per requirement under Article 29 of the Constitution of India. When there is less competition, necessarily the parents who are intending to afford education to their children in English Medium need not run from pillar to post seeking admission for their children in such of those schools. When there is less demand, necessarily the Management would come forward to offer seats even for the person who is a downtrodden and who cannot afford to pay higher fees as it is a fact that for the survival of the schools also they have to admit the children. Imposing of more fees or donation would be curbed in reality by according permission to those schools who come forward for imparting education in English. It is also the need of the day, which has been considered by the Full Bench of this Court in its decision.

15. In the decision reported in English Medium Students Parents Association Vs. State of Karnataka and others, , the Apex Court in paragraph 21 has held as follows:

All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and tortuous. The basic knowledge can easily be garnered through the mother tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother-tongue. When the pupil comes of age and reaches the 5th Standard level the second language is introduced.

16. It is also as scientific view that can learn can learn many languages when they are young and if they are made to learn at a later stage, it will become difficult process for the children to learn and talk fluently the foreign language and also it is the opinion of the experts that children could be taught many languages when they are young just like mother tongue. In that view of the matter, even introducing English or any other language as medium of instruction at the basic level while maintaining the kannada as language to be imparted to the child, would serve the purpose of not only learning mother tongue as one of the languages/subjects but also exposure to some other languages to enrich the knowledge from the other language. In the world of Information Technology, Bio-

Technology and other Technologies, to communicate ideas with the persons who do not know the mother tongue of other persons, English language is universally adopted in view of the globalization where the technology plays an important role. Even to learn and to ably communicate the technical skills of technology, it may be difficult if it is learnt in mother tongue throughout. Imparting English at primary level would enable the children to learn the language easily and express fluently and to compete with other people in securing employment as a matter of right to life in the country and else where in the world at large.

17. In the circumstances, even the decision of the State to allow some of the schools which are recognized by the State to impart education in English as a matter of need for the overall development of the child would not come in the way of power given to State under the Constitution at item No. 25 of the concurrent list of the VII Schedule. As a matter of balancing, Kannada as one of the language is being imparted/to be imparted in all the schools invariably which are Government Schools, Government aided schools, Government recognized private schools and the Central Schools such as ICSC & CBSE. Kannada is one of the subjects/languages to be studied either as first language, second language or third language as a matter of choice of the parents/students, in the primary level in the State on the basis of place of residence as is the power given to the State under Item No. 25 of List III of Seventh schedule as it is not violative of Article 15 of the Constitution.

As such, this set of petitions filed by the petitioners may have to be allowed in part while striking down conditions imposed by the Government at Annexure-E which is in paramateria with that of 1994 Government Order.

18. In that view of the matter, similar conditions found in 2002 Government Order are to be modified by striking down the conditions as to the medium of instruction. Condition Nos. 2,4 and 5 of 2002 Government Order reads as under:

19. The above conditions in the Government Order of 2002 are quashed and the petitions are allowed in part.