

(1990) 09 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 13134/1990 c/w Writ Petition Nos. 13862, 15551, 16729, 7412, 8565, 9153/90, 14831/89, 4613/90, 14709/89, 16760/89, 12001, 13979, 21726, 10141, 10615, 12926, 14602, 16151, 16439, 16571, 16759, 17378, 17706, 16542, 18996/89, 426, 1851, 540

G.N. Education Society

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Constitution of India, 1950 — Article 29

Citation : (1990) 4 KarLJ 272

Hon'ble Judges : N. Y. Hanumanthappa, J

Judgement

1. Since the question of law involved in all these petitions is the same and grievances of the petitioners are similar in nature all these petitions can conveniently be disposed of by passing a common order.

2. All these petitions for the sake of convenience can be divided into three types on the basis of the reliefs claimed. The first type of cases will be those where for the first time the petitioners have, sought for a writ of mandamus to direct the respondents to grant permission to these petitioners to start English medium or Urdu medium schools on the ground that they are religious or linguistic minority. According to them right to start educational institutions are guaranteed to such protected class in view of Articles 29, 30 and 350-A of the Constitution of India.

The second type of writ petitions are those where the petitions filed by either non-religious or non-linguistic minority institutions, seeking permission to start educational institutions with medium of instruction in English. But the reason for them to seek for such a permission is, when protection can be granted to those belonging to religious and linguistic minorities why not the same relief be granted to them when it is shown the existence of need to have such school in the area sought.

The third type of cases are two types namely:

3(a) These are the cases where in spite of direction issued by this Court earlier, the authorities without assigning valid reasons have rejected their applications seeking for permission, on untenable grounds, that too, without issuing notice to the applicants concerned;

3(b) These are the cases where earlier the Government accorded permission to teach the students with English as medium of instruction from Standards I to VII. Such institutions requested for up-grading the said schools from VIII to X Standard and also sought permission to impart education in English as medium of instruction for such up-graded classes.

3. When the Constitution envisages that there shall not be any discrimination in according permission to start school or teaching children in any one of the national languages including English, it is most unjust and unconstitutional on the part of the Government or the authorities concerned to deprive such of the students to seek education in English medium right from elementary school, is the line-of arguments of some of the Advocates who are appearing for petitioners namely, Sriyuths: M.C. Narasimhan, K.R.D. Karanth, V. Mohanrangam, N.B. Bhat, M. Shivappa, Umesh Malimath, Mahantesh Hosmath and few other Advocates. Their attack is almost identical. Their arguments on the questions involved are same. The authorities which they relied upon are also same. According to them, in case of institutions which fall under first category in view of Articles 29, 30 and 350-A such institutions need not seek permission to start school where education is to be taught in their mother tongue. As a matter of right, they could start schools, of course, recognition is to be accorded by the Department concerned taking into consideration whether establishment and other requirements of the institution are in conformity with Rules 11 and 12 of Grant-in-Aid Code. Their argument is that when the Constitution has conferred a special benefit on these religious and linguistic minority institutions it cannot be said that it is discriminatory and thus violative of Article 14 of the Constitution. To clear the doubt, they felt that it is desirable to bear in mind certain Articles of the Constitution, particularly, Articles 14, 29, 30, 45 and 350-A read with Rules 11 and 12 of the Grant-in-Aid Code Rules.

"Article 14: The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India."

"Article 29: (1) Any section of the citizens residing in the territory of India or any part of thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

"Article 30: (1) All minorities, whether based on religion or language, shall have

the right to establish and administer educational institutions of their choice.

(1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause.

(2) The State shall not, in granting aid to educational institutions discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language."

"Article 45: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

"Article 350-A: It shall be the endeavour of every State and of 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 the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities."

Rules 11 and 12 of the Grant-in-Aid Code Rules, read as follows:

"Rule 11.-While disposing off the applications for grant of permission to start an institution, the following factors shall be kept in view:

(a) that the institution is open to all communities without any distinction of caste, creed, race or religion;

(b) that there is need for an institution in a locality without involving any unhealthy competition with an existing institution of the same category in the neighbourhood. The main criterion for starting an institution shall be the educational requirement of the locality;

(c) that the school building should be ready before the school is opened. All rooms should be of the approved size. If it is not possible to construct the building before the school is opened, permission may be given, in deserving cases to conduct the school in a suitable rented or rent-free building for a period of one year from the date of starting of the school, as a special case. Before the end of this period, the construction of the permanent building should be completed. The Director may extend the period for a further period of two years in specially deserving cases;

(d) it shall be competent for the department to prohibit the use of any building or portion thereof for school purposes, if it is considered by the Department to be unsuitable."

Rule 12. Medium of Instruction.- (i) In all Primary Schools, the medium of

instruction shall ordinarily be the Regional Language or mother-tongue of the child.

(ii) With a view to creating facilities for the linguistic minorities provision shall be made for teaching their mother-tongue, subject to the prescribed conditions. English medium schools or English medium sections in the existing Primary schools may be opened with the permission of the Director for the benefit of the following categories of students:

(i) Students whose mother-tongue is English;

(ii) Students whose parents belong to All India Services, Central Services etc.; and are liable to be transferred from State to State (on production of Certificates from the concerned Department);

(iii) Students belonging to a migratory group-Migratory group means those who have no permanent abodes and who migrate from State to State frequently for business or other reasons e.g., Labour employed in construction work (iv) Students whose parents are employees of Banks, Firms and other Business concerns, which have branches in more than one State and the employees of which are liable to be transferred from State to State (on production of certificate from the concerned authorities);

(v) Students whose mother-tongue is a minority language for which there is no provision in the schools of the locality;

(vi) Such schools should be started only after obtaining the permission of the Director; and (vii) An English medium school or class may be permitted to be started subject to the condition that the minimum strength of each Standard is 10 or 30 for Standards I to IV taken together. For Standards V to VII the minimum strength shall be 10 per Standard."

4. Thus, the case of the petitioner-institutions of the first category is that inaction on the part of the authorities in not considering their request for permission to start schools in English medium or in some cases in Urdu medium, though not such permission is required, is quite incorrect. Thus, they request for a direction to be issued to the Government.

5. Regarding Schools falling in second category, in spite of direction given by this Court, the authorities committed a mistake in not considering the petitioners' request either according permission or in some cases recognition though the petitioners' institutions established the need to have a school to be taught in English medium or in some cases Urdu medium; (2) Further they have shown that they have got requisite building, sufficient playground, qualified staff and other facilities. In addition to showing that the area where the institutions are intended to be started or already started, hoping that permission or recognition would be accorded by the authorities, mostly consisting of people whose mother-tongue is other than Kannada or majority of the officials are from outside Karnataka or majority of the officials are working in Central Government

institutions and establishments and they are liable to be transferred outside the State. Their further case is that even when the authorities come to a conclusion that there is no need to accord permission or recognition, though the institutions deserve to be recognised, the authorities cannot reject or turn down the request of the petitioners whose institutions are linguistic minority, by merely quoting Rule 12 of the Rules without applying their mind to the relevant particulars that are furnished in the application or the representation submitted by the institutions including referring the same with the reports sent by the subordinates of the Department. They submit that in fairness, though according permission or recognition is an administrative action still justice and fair play demands that an opportunity of filing objections to the reports submitted by the subordinates should have been given. The case of the petitioners is that in most of these cases, the authorities have issued orders which are in the nature of cyclostyled forms just putting a tick mark against relevant columns and then saying the request of the petitioners as rejected.

6. 3(a) type of cases are those where the authorities have rejected the request for recognition without assigning reasons in the orders. This point has been argued while arguing the case of the institutions which fall under category 2. Hence, the arguments submitted in respect of category No. 2 holds good for this also. Another category of institutions are those which fall under category No. 3(b) where permission and recognition was accorded earlier, sought for extending the said benefit to higher classes, but the authorities rejected the same on untenable grounds which according to the petitioners is incorrect and clear case of non-application of mind.

While so submitting, the petitioners rely upon some of the decisions of this Court as also the Supreme Court which dealt on similar aspects. They relied upon a decision rendered by this Court in the case of Sahyadri Education Trust (R) v State of Karnataka, 1988(3) Kar. L.J. 266: ILR 1988 Kar. 2188. According to them, it answers all their points and this Court can conveniently dispose of all the petitions following the said Judgment. According to the petitioners in the said decision not only the scope of Rule 12 of the Grant-in-Aid Code has been dealt with but also the scope of Article 350-A including Articles 16(1)(g) and 19(1)(a) has been considered. The petitioners rely upon, in support of their case, the decision rendered in the case of Sahyadri Education Trust, 1988(3) Kar. L.J. 266: ILR 1988 Kar. 2188. Paras 11, 15 and 16 of the said Judgment read as follows:

"Para 11.-Before considering the contentions of the petitioners, certain facts and the legal propositions which are not in dispute may be noticed.

The petitioners are basing their right under Rule 12 of the Code. Rule 12 indicates the circumstances under which English medium schools could be started subject to the permission from the authorities concerned. The right conferred under the Code is not an enforceable right as is clear from the decision of the Supreme Court in State of Maharashtra and Others v Lok Shikshan Sansta and Others, AIR 1973 SC 588. Dealing with a similar Code, viz., the Maharashtra

Grant-in-Aid Code, the Supreme Court observed as follows:

"Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the Judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two Writ Petitioners that their applications had been wrongly rejected by the authorities. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the Courts to interfere with the policy leading up to such assessment."

In that case what was called in question was the refusal of permission to some persons to start new schools. But the medium of instruction in which the school had to impart education did not arise for consideration. All the same, the Supreme Court while upholding the validity of the relevant rules framed under the Maharashtra Grant-in-Aid Code observed that the action taken by the State Government under the provisions of the Code should not be violative of the fundamental rights or the principles of natural justice.

In M.P. Jain's Constitutional Law, 4th Edition at page 433, medium of education at various levels is discussed very briefly. The learned author has observed:

"A difficult question arise regarding the medium of education at various levels. The Constitution prescribes no policy or principle, and makes no provision, in this regard. To begin with, the matter was left to the legislative power of the States as "Education" was a State subject. The States enjoyed full right to prescribe the media of instruction at the primary and the High School levels. But, their right to prescribe the media of instruction at the University level was not unrestricted, as has been discussed earlier. Education is now a concurrent subject. However, in the prevailing atmosphere in the country, it is doubtful if the Center would lay down conditions to be fulfilled before a switch-over, to the regional languages takes place at the University level. In fact, the center is itself encouraging the switch-over, and a policy decision has been taken that regional languages should replace English at all levels of education. This change over to, and too much stress on, regional languages as media of instruction may create a kind of isolationism in the country and weaken the channels of communication between the various language groups. To mitigate mis difficulty a three language formula

has been evolved according to which each student has to study three languages- the regional language, Hindi and an international language, i.e., English, and the students whose mother-tongue is Hindi should study some other regional language."

In our State, under the Mysore Compulsory Primary Education Act, 1961, an obligation is cast on the State Government to ensure compulsory primary education for the children. If the State Government is not in a position to start its own schools for imparting free primary education, under Rule 24 of the Rules, it is open to a child to attend a private primary school and if that school charges fees for the children's attendance, the School Board in Bombay Area and the Director in other areas, "shall offer to compensate such school, the loss of the fee income on account of such child to the extent of the average cost of primary education of child for the standard calculated by the Director, for the whole State according to the information available. If the management does not accept the compensation offered, the Government or the School Board, shall open a school, if there is a sufficient number" children, or such children shall be granted exemption from attendance". So, the intentment of this Rule under the Mysore Compulsory Primary Education Rules, 1961, is that the primary education is not only free but also compulsory in this State. Though this obligation is cast on the State Government, the State Government did not think fit to prescribe the medium of instruction in which the primary education has to be imparted. The only Act which the State Legislature has passed making Kannada the official language is the Karnataka Official Language Act, 1973. But, this Act is meant for the adoption of Kannada language for official purposes of the State and for continuance of the use" of English for transaction of business of the State Legislature. This Act is not relevant for the purpose of considering the medium of instruction in primary schools. So, we have to fall back, in the absence of any statute in this State regulating the medium of instruction on the Constitutional provisions to see whether the State Government has any power under the Constitution to formulate and impose a policy in so far as it relates to medium of instruction. The relevant provisions in the Constitution which have some bearing on this important question are found at Articles 45 and 350-A of the Constitution. Article 45 of the Constitution which comes under the "Directive Principles of State Policy" reads as under:

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Article 350-A of the Constitution which comes under Chapter IV of Part XVII of the Constitution (Special Directives) reads as under:

"It shall be the endeavour of every State and of 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 the President may issue such directions to any State as he consider

necessary or proper for securing the provision of such facilities."

While Article 45 provides for the Constitutional goal of free and compulsory education from 10 years of the commencement of the Constitution. Article 350-A protects the rights of the linguistic minorities as regards their medium of instruction at the primary stage of education. A combined reading of these 2 provisions would indicate that the Constitution does not empower the State Government to thrust the language of the majority group as the medium of instruction for the children belonging to linguistic minority groups at the primary stage. Specific care has to be taken to teach students of minority groups at the primary stage of education in the mother-tongue of the students belonging to linguistic minority group. Who are the linguistic minority groups are indicated in Rule 12 of the Code:

- i) Students whose mother-tongue is English;
- ii) Students whose parents belong to All India Services, Central Services, etc.; and are liable to be transferred from State to State (on production of certificates from the concerned Department);
- iii) Students belonging to a migratory group-Migratory group means those who have no permanent abodes and who migrate from State to State frequently for business or other reasons e.g., Labour employed in construction work;
- iv) Students whose parents are employees of Banks, Firms and other Business concerns; which have branches in more than one State and the employees of which are liable to be transferred from State to State (on production of Certificate from the concerned authorities); and v) Students whose mother-tongue is a minority language for which there is no provision in the Schools of the locality.

So, from these provisions of the Constitution and the Code this Court could proceed on the basis that the Constitution does not envisage unless otherwise in the exercise of the powers conferred on the State Legislature (as education is a concurrent subject), the State Legislature makes the necessary legislative provisions for imparting education only in Kannada and not in English. Whether such legislation could be made without violation of Articles 14 and 19(1)(g) may arise for consideration. But, that does not trouble us in these petitions since it is common ground that no such legislation is made by the State Government as regards medium of instruction in primary/nursery schools. The State Government as noticed earlier, rests its case only on the cabinet policy, which finds a place in Rule 12(1) of the Code. Rule 12(1) reads as under: "In all Primary Schools, the medium of instruction shall ordinarily be the regional language or mother-tongue of the child."

"Para 15.- Mr. Devadas, learned Government Pleader, relied on the above observation and submitted that Rule 12(1) of the Code empowers the State Government to impose Kannada as the exclusive medium of instruction. There is

nothing in the language of Rule 12(1) of the Code which empowers the State Government to impose Kannada as the exclusive medium of instruction. What all it states is that the medium of instruction should ordinarily be in the regional language or mother-tongue in the Primary Schools. It is a salutary Rule. That rule is subject to the Code. In Dayabhai's case, AIR 1957 M.P. 1, the policy decision declaring Hindi as the language of subordinate Courts under the Madhya Bharat Official Language Act, 1950, was challenged in the Madhya Pradesh High Court, Dixit, J. observed:

"It appears to me that there is no ambiguity or difficult in construing the provisions on which learned counsel appearing for the parties have founded their contentions. Before the commencement of the Constitution, the language of the subordinate Courts was no doubt Hindi written in Devanagari script according to the notification issued on 27th November, 1948, and sub-sections (1) and (2) of Section 137 of the adapted Civil Procedure Code, but the recognition of Hindi as the language of subordinate Courts did not in any way affect the permissible use of English for purposes specified in sub-section (3) of Section 137 of the adapted Code."

The position thus was that before the commencement of the Constitution, English language was being used in subordinate Courts to the extent permitted by Section 137(3) of the adapted Civil Procedure Code. Now, Article 345 of the Constitution merely empowers the Legislature of a State to adopt by law any one or more of the languages in use in the State or Hindi as the languages to be used for all or any of the official purposes of that State. It does not say that when Hindi or any other language has been adopted in use in the State as the official language, then the use of English shall be barred altogether so as to render invalid any official proceedings done in that language.

On the other hand, the effect of the proviso to Article 345 of the Constitution is that even after the adoption by the State of any of the regional languages or Hindi as the official language, the English language can continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution, until the Legislature of the State otherwise provides by law. The Madhya Bharat Official Language Act is clearly not a law contemplated by the proviso. It simply adopts Hindi as the language to be used for all official purposes in the State of Madhya Bharat.

It does not purport to be, and is not, a law prohibiting the continuance of the English language for those official purposes within the State for which it is being used immediately before the commencement of the Constitution. The notification issued on 26th January, 1952, under Section 2 of the Official Language Act does not more than to say that for the purposes of Judgments of the Court of District and Sessions Judges in certain cases Hindi shall not be the official language. From this it does not at all follow that the use of English for purposes mentioned in Section 137(3) of the adopted Civil Procedure Code was altogether prohibited by the Official Language Act and the notification issued thereunder."

"Para 16.-The petitioner in W.P. No. 18313 of 1987 with a view to impart education in English medium to the students who on account of the avocation of their parents are liable for transfer from one school in one State to another school in another State has sought for permission to start English Medium school. Likewise the other petitioners cater to the requirements of ethnic or linguistic minorities. That also involves the right of all the petitioners to carry on their business in terms of Article 19(1)(g) of the Constitution and that right cannot be denied to them on the basis of the policy taken by the State Government with a view to encourage Kannada as the sole medium of instruction. Though the decision of this Court in Bapuji Education Society's case is pending consideration before the Division Bench in appeal. I am inclined to accept the ruling of this Court on this point for holding that Societies which are engaged in promoting education are entitled to protection under Article 19(1)(g) of the Constitution and their rights could be curtailed by reasonable restrictions in public interest under the provisions of Article 19(2)(6) of the Constitution. The imposition of Kannada as the sole medium of instruction cannot be said to be in the interest of the general and has no nexus to public interest. In the circumstances, the petitioners are entitled to the protection under Article 19(1)(g) of the Constitution. I will go further and hold that the impugned orders and the policy decision of the State Government are violative of Article 19(1)(a) of the Constitution as the medium of instruction is one aspect of freedom of speech and expression and I do not know of any law which can say that a student should express himself in a particular regional language not in English if he has the inclination to study the curriculum in English in addition to English as the II language or the III language, as the case may be. Accordingly, these petitions have to be allowed."

Another decision relied upon by the petitioners is the one rendered by this Court in the case of Bapuji Educational Association v State of Karnataka, reported in ILR 1985 Kar. 80, wherein it is held as follows:

"The word "business" in Article 19(1)(g) cannot be considered as excluding the right to establish and administer educational institution. From this it follows that this right could be curtailed only by means of reasonable restrictions imposed in public interest as provided under Clause 6 of Article 19 of the Constitution and if it is found that the restriction imposed by all or any of the provisions of the Act is unreasonable, the same can be struck down. Petitioner institution could invoke Article 19(1)(g)."

Another decision of this Court which the petitioners relied upon is the one decided in the case of General Secretary, Linguistic Minorities Protection Committee v State of Karnataka, reported in ILR 1989 Kar. 1595. This Court has held as follows:

"8. For that purpose, it is necessary to set out a few relevant facts. The State of Karnataka was established with effect from 1-11-1956 bringing together all areas in which the majority of the people were Kannada speaking. Kannada is therefore

the regional national language of this State. The State Government promulgated the Grant-in-Aid Code for primary schools in exercise of its executive power, by order dated 19-10-1969, as the topic was not covered by any legislation. Rule 12 of the said Code reads:

"12. Medium of instruction: (i) In all primary schools, the medium of instruction shall ordinarily be the Regional Language or mother-tongue of the child.

(ii) With a view to creating facilities for the linguistic minorities provision shall be made for teaching their mother-tongue subject to the prescribed conditions. English medium schools or English medium sections in the existing Primary Schools may be opened with the permission of the Director for the benefit of the following categories of students:

(i) Students whose mother-tongue is English;

(ii) Students whose parents belong to All India Services Central Services, etc., and are liable to be transferred from State to State (on production of certificates from the concerned department);

(iii) Students belonging to a migratory group-Migratory group means those who have no permanent abodes and who migrate from State to State frequently for business or other reasons e.g. Labour employed in construction work;

(iv) Students whose parents are employees of Banks, Firms and other business concerned, which have branches in more than one State and the employees of which are liable to be transferred from State to State (on production of certificate from the concerned authorities);

(v) Students whose mother-tongue is a minority language for which there is no provision in the schools of the locality;

(vi) Such schools should be started only after obtaining the permission of the Director; and (vii) An English medium school or class may be permitted to be started subject to the condition that the minimum strength of each Standard is 10 or 30 for Standards I to IV taken together. For Standards V to VII the minimum strength shall be 10 per standard."

As can be seen from first part of the Rule, that is Rule 12(i) and (ii), the policy of imparting primary education in mother-tongue, which in majority of the cases happens to be the regional language, has been incorporated. The prescription that primary education should be in regional language or mother-tongue, is obviously for the reason that as pointed out in paragraph 14 of the Full Bench Judgment, children of permanent residents of the State also pick up the regional language from their childhood and it also practically becomes their additional mother-tongue. In fact, it is a matter of common knowledge that among the linguistic minorities representing Marathi, Urdu, Tamil and Telugu, a substantial section of them are residents of this State from a very long time and as a result they have practically adopted the regional language, that is, Kannada, as their

second mother-tongue. Similar is the position of certain sections of the people of this State who have been permanently residing in this part of the Country, whose mother-tongue is a minor language like Tulu and Konkani. For children of such section of people, primary education in Kannada would be as good as in their mother-tongue. As held by the Full Bench, it is the unanimous opinion of all educational experts that primary education has to be in mother-tongue. The object is that imparting instruction at the primary level upto fourth standard, which necessarily includes pre-primary level, to the children in the mother-tongue, the language with which they communicate with their parents, members of family and the relatives, and the play fellows is most conducive, to the effective acquisition of knowledge, for, the children clearly think and grasp subjects without any difficulty and develop creative talent and develop their personality in natural environment if they are taught in their mother-tongue at that level. Therefore, Rule 12(i) and (ii) of the Grant-in-Aid Code which provides for imparting primary education in mother-tongue is whole-some and has a rational basis. It is in the interest of excellence in education and in the interest of linguistic minorities, who are the petitioners in these Writ Petitions and who have established primary schools for imparting instruction at that level in mother-tongue. In fact, it has been their sheet anchor in challenging the impugned Government Order. The Full Bench has upheld their right to have the first four years of primary education in their mother-tongue and that Kannada, the regional and official language of the State, also should not be brought in at that stage. It is also well settled, by the decisions of the Supreme Court referred to in the Full Bench decision, that any reasonable regulatory provision intended to ensure excellence in education as also a regulation which is in the interest of linguistic minorities themselves, would not be violative of Articles 29 and 30. In fact, Rule 12(i) and (ii) ensures the development of the language of the linguistic minorities by providing that the primary education shall be in the mother-tongue. In fact, the basis of challenge of the petitioners to the impugned Government Order is consistent with and receives support from Rule 12(i) and (ii) of the Grant-in-Aid Code."

"Para 11.-It is also necessary to observe that the view expressed in Sahyadri Education Trust at paragraph 16 of the Judgment that orders refusing permission to start English medium schools, was violative of Article 19(1)(g) and 19(1)(a) of the Constitution was unnecessary for a decision in that case, as the case was decided solely on the ground of violation of Article 14, on the ground that applications of others for starting English medium primary schools had been granted, whereas the application of the petitioners therein were rejected. As pointed out in the Full Bench Judgment relying on the several decisions of the Supreme Court, that any regulation which is reasonable, which is in the interest of excellence in education, which is in the interest of minorities, constitutes no infringement of Article 30 of the Constitution, which confers right on linguistic as well as religious minorities to establish educational Institutions of their choice. A regulation which requires the imparting of pre-primary and primary education

upto 4th standard in mother-tongue is a reasonable regulation, in the interest of excellence in education and in the interest of minorities. It is also consistent with the claim of the linguistic minorities, who are the petitioners, some of whom are also religious minorities, that they have the right to impart instruction in primary schools in their respective mother-tongue and that is also necessary to protect their right to conserve and develop their language under Article 29 of the Constitution. From this it follows that the right to establish primary schools claimed by minorities or non-minorities under Article 14 or Article 19, also being subject to reasonable regulation made in the interest of excellence in education, would not be violated by a provision which requires the imparting of instruction upto fourth year of primary school in the mother-tongue of the children. In fact, in Sahyadri Education Trust case, the learned Judge has stressed about the obligation of the State to impart primary education in mother-tongue:

"While Article 45 provides for the constitutional goal of free and compulsory education from 10 years of the commencement of the Constitution, Article 350-A provides the rights of the linguistic minorities as regards their medium of instruction at the primary stage of education. A combined reading of these 2 provisions would indicate that the Constitution does not empower the State Government to thrust the language of the majority group as the medium of instruction for the children belonging to linguistic minority groups at the primary stage. Specific care has to be taken to teach students of minority groups at the primary stage of education in the mother-tongue of the students belonging to linguistic minority group." Hence, we clarify that it is open to the State Government to implement its policy of permitting primary schools upto fourth year, in mother-tongue uniformly and without any discrimination."

7. The petitioners relied upon a Division Bench of this Court in the case of Al-Ameen Educational Society: Hazarat Madarasa Education Society: Evershine Educational Trust: Jain Mahila Mandal: Sarabeshwar Vidya Peetha v State of Karnataka and Another, reported in 1989(3) Kar. L.J. 104: ILR 1989 Karnataka 2715. According to the petitioners though the said case laid down the interpretation of Section 54(2), (4) and (5) of the Karnataka State Universities Act, 1976, but the principles laid down therein apply on all fours to the facts involved in these cases. In support of their case, the petitioners relied upon paras 19, 21, 23 and 24 of the Judgment, which read as follows:

"Para 19.-The subject of grant of affiliation, here, has been treated by the Legislature, by enacting Section 53 of the Act; the field, thus, is occupied by the legislation. The power to grant or refuse affiliation has become statutory. It can be and has to be exercised in the manner laid down by the statute, to advance its purposes. The statutory purpose, if any, cannot be subjected to any executive policy, not falling within the statutory scheme. The extreme stand taken by the State Government, that it has an absolute discretion under Section 53 of the Act and the provisions of Section 53 could be overridden by any policy decision, is patently untenable and strangles the doctrine of ultra vires; the attitude that

moulded this contention exhibits a tendency to obstruct and denigrate the rule of law. Executive cannot overstep the limits carved out for it by the Legislature; it shall follow the path laid by the Legislature, in the exercise of its statutory power."

"Para 21.-Having regard to the need to have a flexible power, provisions of Section 53(5), which vests a similar power in the State Government also should be liberally construed, so that the scope of inquiry by the State Government need not always be confined to the enumerated factors under Section 53(2). Again, here, the factors to be considered by the State Government while considering the application for affiliation, cannot be irrelevant or too remote to the purposes of establishing a recognised educational institution. Primary object of affiliation is to safeguard excellence in education; normally, this could be achieved by entrusting the power to affiliate or refuse affiliation to the University. But legislature has given a substantial power to the State, under Section 53(5). This indicates, that, apart from the requirement of maintaining excellence in the standard of education, there are other factors which may have to be considered while granting affiliation. One of the purposes of an affiliation, is to enable the students to get degrees which, in turn would enable them to seek employment. Therefore, the number of graduates that may enter the market of employment would be a relevant factor for the Government to consider, while considering an application seeking affiliation. The State has several Universities within its area. Each University by itself will not be in a position to find out the requirements of the State as a whole, for a particular type of graduates. Employment opportunities are to be created by the State; it has the machinery to measure the needs of its society; in fact, the State Government may have regard not only to its requirements and its capacity to provide employment, but also the situation prevailing generally in the Country, as a whole. Graduates from one State, may go out of the State seeking employment and the State may gather information as to how far the educational institutions in the State may cater to the needs of other parts of the Country, to some extent."

"Para 23.-Whether, the institution is of a religious or linguistic minority has to be decided with reference to the entire State. In a case where, the University finds that the need of the locality wherein the applicant seeks affiliation is already met by existing educational institutions, it may reject the application; in such a situation, the State may still, step in, while acting under Section 53(5) to safeguard the interest of the minorities with reference to Article 30 of the Constitution. Having regard to the situation in the entire State, the State Government may opine that the particular minority institution may be granted affiliation as an exceptional measure, in spite of the number of institutions having reached the maximum limit. In a particular case, to advance and protect the interest of the particular minority group, the State Government may reduce the intake strength fixed in other educational institutions, if possible, so that, the new entrant to the particular field of education which is a minority institution may be affiliated; however by such affiliation, the total output of graduates may

not exceed the limits which the State should produce.

Therefore, having regard to the objects behind the requirement of an affiliation to the University and its effect, the provisions of Section 53(2), 53(4) and 53(5) are to be read together,, so as to vest a wide but guided power in the University and the State Government, while considering an application for affiliation by a college."

"Para 24.-Section 53, as we read it, thus, does not confer an absolute discretion to reject an application for affiliation. Section 53 creates a statutory power. The power has to be exercised by the application of relevant consideration to the subject matter (i.e., education and its objectives) in respect of which the power is exercised. The relevant factors are not confined to the enumerated matters, in Section 53(2).

Similarly, Section 53 does not impose a mandatory duty to grant affiliation, just because, the applicant satisfies the conditions enumerated in Section 53(2). The University and the State have other responsibilities to be discharged to safeguard the public interest, and the Legislature has seen to it by enacting inter alia Section 53(4), 53(5) and 53(10) of the Act in this regard. An aspect of the above contention requires to be considered here. It was contended that under Section 53(2)(a), need of a locality only is to be considered and the decision of the State Government not to permit new affiliated colleges in the State, is a decision with respect to the entire geographical area of the State, overlooking the needs of any particular locality. The short answer to this contention lies in understanding the State as a conglomeration of localities and when the State considered the question of the need of the State as a whole, the needs of several entities (in the nature of localities) are to be assumed to have been considered. State was held to be conglomeration of "particular areas" in *Bheemankatte Bheemasethu Munivrunda Mutt Swamiji v State of Mysore and Others*, 1960 Mys. L.J. 576. Concept of a locality varies from context to context; it is a comparative term like the idea of a neighbour, varying, in the context of one house, its neighbour is the one situated next to it or near about; in the context of a State, its neighbours are, the States found across its entire boundaries. The concept of "needs of a "locality"" may be understood with reference to a town, a taluk, a District or a Division. With reference to a minority, the locality may have a larger area of operation. Further, this concept of "locality" has to be understood in the context of the subject to be taught in the educational institutions concerned. In the case of a primary school, locality to which it caters may be a village, or a part of the village. In the case of an ordinary college (in contradistinction to a college, imparting professional courses), "locality" may be a taluk or even a District. A college where professional courses are taught, like medicine, Engineering, law, etc., where the movement of students for studies extend all over the State, "locality" may have to be understood as the entire State.

Similarly, we are of the view, that the needs of the minorities are not foreign to the considerations under Section 53(2)(a). Needs of a locality means needs of

those who are within the locality. Any "locality" has, as its residents, majority, as well as minority groups. Expression used in a law like the Karnataka State Universities Act, has to be understood broadly so that all the relevant considerations may not be ignored, while applying its provisions to a given set of facts."

The petitioners also relied upon a decision of the Supreme Court in the case of *The Managing Board of the Milli Talimi Mission, Bihar, Ranchi and Others v The State of Bihar and Others*, reported in AIR 1984 SC 1757, wherein the Supreme Court had to deal with the scope of Article 30 of the Constitution, which reads as follows:

"1) That while Article 30 undoubtedly seeks to preserve the religious freedom, autonomy and its individuality; there is no fundamental right under which an institution can claim either aid or affiliation as a matter, of right. It is permissible for the State or the University, as the case may be, to lay down reasonable conditions to maintain the excellence of standard of education but in the garb of doing so, refusal to grant affiliation cannot be made a ruse or pretext for destroying the individuality and personality of the said institution. If this is done, then apart from being wholly arbitrary and unreasonable it would amount to a clear infraction of the provisions of Article 30 because what cannot be done directly is done indirectly.

2) While the State or a University has got an absolute right to insist on certain course of study to be followed by institutions before they could be considered for affiliation but these conditions should not in any way take away the freedom of management or administration of the institution so as to reduce it to a satellite of the University or the State. This is wholly impermissible because such a course of action directly violates Article 30 of the Constitution.

3) While imposing conditions before granting affiliation, the State or the University cannot kill or annihilate the individuality or personality of the institution in question by insisting on following a particular kind of syllabus or a course of study which may be directly opposed to the aims, objects and ideals sought to be achieved by the institutions.

4) There is a very thin line of distinction between withholding of affiliation for a particular purpose on extraneous grounds so as to subject the institution to rigorous orders, edicts or resolutions which may run counter to the dominant purpose for which the institution has been founded, and insisting on genuine and reasonable conditions to be imposed in the larger interest of education.

In the instant case, the position is that the State has refused to grant affiliation on purely illusory grounds which do not exist and failed to consider the recommendation of the Education Commissioner which was made after full inspection for grant of affiliation. In other words, the affiliation was refused without giving any sufficient reasons and such a refusal contravenes the provisions of Article 30 of the Constitution." In view of the principles laid down by

this Court and the Supreme Court in the decisions referred to above, the petitioners submit that the reliefs claimed by them in the petitions be granted.

8. As against the said arguments, Sri N.B.N. Swamy, learned Government Pleader, submits that granting of permission or not is the discretion given to the State, because the State is the best Judge to arrive at a conclusion whether there exists a need to start a school. If so, whether the need is genuine to impart education in English as medium of instruction or not; whether requisite and adequate facilities are available in case of those institutions where schools have already been started; and whether such institutions have complied with the provisions of Grant-in-Aid Code. It is also the duty of the State to see that language policy of the State shall have the prominent place. If English is allowed to be started at primary level itself, Shri Swamy apprehends that in one or two decades the entire official language of the State, namely, Kannada will be extinguished. According to him, the fear of the petitioners that unless their students are taught in English medium it is very difficult for them to compete with the students who have studied in English medium, is quite incorrect. He submits that the principles laid down in Sahyadri's case cannot be made applicable to the cases on hand in view of the law laid down by this Court in the case of General Secretary, Linguistic Minorities Protection Committee v State of Karnataka, ILR 1989 Kar. 1595. He also submits that merely because the religious or linguistic minority institutions submitted their applications seeking recognition, that does not mean that they automatically get recognition unless it is shown that those institutions are upto the standard, namely, maintaining academic excellence and other important factors. According to him, at no time the authorities refused to recognise with vindictive attitude or their approach in any way arbitrary. Wherever the orders have been passed are on the basis of the report submitted by the officers who in turn had collected information and other materials after holding spot inspections. He further contends that intention of all these petitioners to start schools with English medium and in some cases Urdu medium is not a genuine one in imparting education to the students of the area, but they are purely commercial in nature. If one such permission is granted, these institutions will come up like mushroom. Thus, ultimately it results in a sort of business which is alien to the business or trade as contemplated under Article 19(1)(g) of the Constitution of India. According to him, even the orders passed turning down the request of the petitioners either seeking permission or recognition are quite justifiable and in conformity with the law laid down by this Court. He submits that as far as the law laid down in Sahyadri's case is concerned that matter is now before the Supreme Court and as such it cannot be proper to place any reliance on the said decision. For this reason Mr. Swamy submits that the petitions which fall under category Nos. 2 and 3(a) and (b) be dismissed. Whereas, in the case of the institutions which fall under first category, since the petitioners have made applications afresh, a direction be given to the authorities to dispose of the same on merits within reasonable period.

9. After hearing both the sides and also going through the pleadings and the

principles laid down by this Court and the Supreme Court in the cases referred above under similar circumstances, I am of the view that these are the cases where the reliefs sought for by the petitioners deserve to be granted for the following reasons:

(1) Regarding cases which fall under first category, there cannot be any complaint or any finding need be given in view of the stand taken by the State itself that the applications of such institutions will be considered on merits.

(2) Whereas in the case of institutions fall under category Nos. 2 and 3(a) and (b) are concerned, it is not in dispute that most of the orders passed by the authorities, when compared, are all cyclostyle in nature. Because, all the orders carry a common defect or irregularity, namely, "No need"; "already such schools are existing round about"; "people speaking language other than Kannada as mother-tongue in the area are lesser in number"; "there are no Central Government employees in the area"; "building is not suitable"; "no playground and no adequate teaching facility etc.". Of course the authorities passed these orders on the basis of the report submitted by their subordinates. But in some cases though the reports of its subordinates" favourable to the petitioners, the Department took almost a similar view. It is true, there is a controversy regarding the effect of Grant-in-Aid Code. Some authorities say that Grant-in-Aid Code has a force of law. But whereas the Supreme Court has said that Grant-in-Aid Code cannot be equated to Rules made under the statute. But they are in the nature of guidelines to the authorities. However, since, the said Rules are made for the public interest, namely, in the interest of the students and their parents, some importance has to be attached to the Regulations made in Grant-in-Aid Code as importance that will be attached to any Rules and Regulations made by the Government or subordinate legislation.

10. No doubt, Rules 11 and 12 of the Code give powers to the authorities to accord permission, recognition and de-recognition. Even if it is assumed that Grant-in-Aid Code are purely administrative in nature, now the present view of thinking is that such administrative orders shall not be passed in an arbitrary way. They shall be passed in a just manner opinion to be formed while exercising powers under Rules 11 and 12, it shall be an honest one and the approach shall be a judicious one. In case of refusal to grant permission or according recognition, the duty is cast on the authorities concerned atleast to give a notice to the persons concerned or institutions concerned to submit their say in spite of the reports which the authorities have collected from their subordinates who have reported against starting or according recognition to the institutions. In none of the cases falling under Category Nos. 2 and 3(a), there is an indication to show that the authorities after receipt of the report, before passing a final order of rejection that the petitioners or institutions concerned were notified and heard" in the matter. Since, the principles of natural justice is not complied with before passing the orders of either refusing permission or recognition or in some cases passing orders of de-recognition, the orders which relate to the cases

under category Nos. 2 and 3(a) deserve to be held as bad in the eye of law.

11. In so far as the institutions which relate to category Nos. 3(b), my finding will be the same as in the cases of the institutions falling under category Nos. 2 and 3(a). No doubt, as far as the policy relating to medium of instruction is concerned, it is nobody's case that the same shall not be implemented. Petitioners do not say that the Kannada shall not be taught to the children. They submit that three language-formula is very well existed in the States, particularly in the State of Karnataka. But their grievance is that imparting education in the mother-tongue in some cases cannot be practicable and in such cases giving of education with English as a medium of instruction is practicable. For example, if a person of Kerala who is working in Karnataka wants his children to be taught in Malayalam, as they constitute linguistic minority in the State of Karnataka, then it is possible for the State to give such admission to his children, who are hardly three or four, by appointing necessary teaching staff? Likewise, a person who hails from Assam transferred to Karnataka and wants his children to be taught in his own mother-tongue, then is it impossible as in the case of Malayalee? So also in the case of parents whose mother-tongue is other than Kannada, who are working in Karnataka on transfer from different parts of the country. To avoid such eventuality, it is proper to accord sanction for starting English medium school wherever it is practicable and desirable. No doubt, it is the duty of the Department to see that excellence of education in the schools and colleges is maintained. It cannot be said, merely by permitting all these institutions to start schools with English as medium of instruction, the standard of education will fall down. Wherever it is felt that excellence of standard of education has come down or there is unrest in the school atmosphere, definitely the Grant-in-Aid Code applies to the Primary Schools and Higher Primary Schools and High Schools and the authorities will have ample power to withdraw such recognition. Further, in case of those institutions who like to start schools either in English or Urdu medium or other language as medium of instruction without seeking any aid from the Government, the Government need not turn down the same. But it may simply allow the institutions to start schools in any language they like because those students who will have taught in such schools, in view of the Grant-in-Aid Code and other Regulations will not be allowed to appear public examination unless such schools are recognised by the Department.

12. The principles laid down by this Court and also the Supreme Court referred above are in favour of not to refuse to grant permission or recognition to start schools with English as medium of instruction wherever such need exists and in case of religious and linguistic minority give permission and then to insist of recognition and on its failure to de-recognise.

13. In view of the principles laid down above and for the reasons given by me, I feel all these cases are to be allowed with a direction to the respondents to accord permission or recognition. Accordingly, all the writ petitions are allowed and order is made as follows:

i) The respondents are directed to consider the petitioners' applications wherever they have sought for permission for the first time to start English medium schools or Urdu medium schools, so also permission to upgrade schools from Primary to High School with English or Urdu as medium of instruction in accordance with law within three months from the date of receipt of this order.

ii) In the case of those institutions which claim that they belong to either religious or linguistic minorities, a direction is given to the respondents to accord permission and also grant recognition, reserving liberty to the respondents to withdraw the recognition in case if it is found later that such institutions are not upto the standard and the norms prescribed by the Department, either by way of Grant-in-Aid Code or by way of other guidelines or statutory requirements, within three months from the date of receipt of this order.

iii) In the case of those institutions whose applications came to be rejected by the respondents without assigning reasons, it is made clear that such orders are as quashed. However, liberty is reserved to the respondents to give a notice to such institutions including furnishing to them a copy of the report which the respondents would like to rely upon, hear the petitioners or the institutions and take appropriate decision on their applications either for recognition or for withdrawing for de-recognition, as the case may be, within three months from the date of receipt of this order.

No costs.

Office to send copies of this order both to the Government and the Commissioner of Public Instruction, Bangalore forthwith. Sri N.B.N. Swamy, learned High Court Government Pleader is permitted to file Memo appearance in all these cases within 4 weeks from today.