

(1989) 07 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petns. No's. 12789 to 12791 of 1989

M.V. Latha and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 26-07-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 29 (1), 30 (1)

Citation : AIR 1990 Kar 81 : (1989) ILR (Kar) 2682

Hon'ble Judges : N. Venkatachala, J

Bench : Single Bench

Advocate : G.N. Seshagiri Rao and Mr. Garibdas, for the Appellant; S. Udayashankar, Govt. Pleader, for the Respondent

Judgement

1. By consent of learned counsel, these writ petitions are treated as having been posted for hearing and I have heard them.

2. The short point which arises for consideration and decision in these writ petitions relates to study of Sanskrit by students of VIII to X standards in the Secondary Schools of the State of Karnataka.

3. The State Government in the process of implementing the language policy to be adopted in primary and secondary schools pending decision of the matter in appeals before the Supreme Court, directed against the orders of this Court in Writ Petition No. 28566 of 1982 and connected matters, has issued an order G.O. No. ED 87 PROU SE BHA 88, dated 19-6-1989 (Annexure-A) thus:

"Proceedings of the Government of Karnataka

Sub: Implementation of Language Policy to be followed in the Primary and Secondary Schools -- reg.

Read : G.O. No. ED 113 SOH 79, dated 20-7-82.

Preamble:

As per the recommendation of Gokak Committee, the State Government made an order dated 20-7-82 cited above, prescribing that Kannada should be the sole first language at the Secondary School level from the academic year 1987-88 leaving the choice to the students in respect of only the other languages out of the list of languages, in which Kannada is also one. The order also directs that teaching of Kannada shall be compulsory from the first year of the primary school in non-Kannada schools and to children whose mother tongue is not Kannada, with immediate effect.

The abovesaid Government Order dated 20-7-1982 was challenged in the High Court in W.P. Nos. 28566, etc., of 1982, 1006/83, 18848/87 and 1097/88 (reported in General Secretary, Linguistic Minorities Protection Committee and Another etc. Vs. State of Karnataka and Another, On a reference made to the Full Bench, it expressed its opinion on the three questions referred to it as follows: (Para 60)

The Government Order dated 20th July, 1982 in so far as it relates to the making of study of Kannada as a compulsory subject to children belonging to linguistic minority groups from the first year of the primary school and compelling the primary schools established by linguistic minorities to introduce it as a compulsory subject from the first year of the primary school and also in so far it compels the students joining High Schools established by linguistic minorities to introduce Kannada as the sole first language in the Secondary Schools, is violative of Arts. 29(1) and 30(1) of the Constitution.

The Government Order dated 20-7-1982 in so far it relates to the making of study of Kannada as a compulsory subject to children belonging to linguistic minority groups from the first year of the primary school and compelling the primary schools established by linguistic minorities to introduce it as a compulsory subject from the first year of the primary school and also in so far it compels the students joining high schools to take Kannada as the sole first language and compel the high schools of linguistic minorities to introduce Kannada as the sole first language in the secondary schools, is violative of the pledge of equality guaranteed Under Art. 14 of the Constitution.

On the facts and in the circumstances of the case, the Circular dated 11-8-1982 issued by the Director of Public Instruction of the State Government is violative of Arts. 14, 29(1) and 30(1) of the Constitution. Thereafter, the cases were finally disposed of by the Division Bench, which allowed the writ petition's, inter alia, with the following observations:

The impugned Government Order dated 20-7-1982 as also Circular dated 11-8-1982 issued by the Director of Public Instruction pursuant to the aforesaid Government Order, are declared void as offending Arts. 14, 29(1) and 30(1) of the Constitution.

The Government shall, however, be at liberty:

(a) To introduce Kannada as one of the two languages from that primary school class from which study of another language in addition to mother tongue is made obligatory as part of the general pattern of primary education; and

(b) to make study of Kannada compulsory as one of the three languages for study in secondary schools, by making appropriate order or rules, and make it applicable to all those whose mother tongue is Kannada and also to linguistic minorities who are and who become permanent residents of this State, in all primary and secondary schools respectively, whether they are Government or Government recognised, including those established by any of the linguistic minorities.

Government have preferred an appeal to the Supreme Court of India against the orders of the High Court. The said appeal has been admitted in the Supreme Court, but no stay order has been issued. Since the academic year has already commenced, it is necessary to take an immediate decision on the language to be adopted in primary and secondary schools, bearing in mind the orders passed by the High Court in the aforesaid writ petitions.

In these circumstances, the State Government, pending final decision in the appeal preferred to the Supreme Court of India, and after having taken into consideration all relevant aspects, are pleased to frame a language policy to be followed in primary and secondary schools and accordingly issue the following orders:

G.O. No. ED 87 PROU SE BHA 88, Bangalore, Dated 19-6-1989.

In the circumstances explained in the preamble of this G.O. Government are pleased to order that the following language policy shall be implemented in the Primary and Secondary Schools pending final decision of the Supreme Court.

(i) From 1st Standard to IVth Standard, mother tongue will be the medium of instruction, where it is expected that normally only one language from Appendix I will be the compulsory subject of study.

From IIIrd Standard onwards Kannada will be an optional subject for non-Kannada speaking students. This will be taught on a purely voluntary basis and it will not be at the cost of any other instruction imparted in the school or any other school activity in which all school children participate. There will be no examination at the end of the year in Kannada language.

(ii) From the Vth Standard onwards, where in the normal course IIInd language is introduced, the child has to study a IIInd language selected from Appendix I which will be other than the first language, subject to the condition that the child who has not taken Kannada as the first language will have to take Kannada as the Second language.

From Vth Standard onwards provision will be made for the study of the third language which will be other than languages studied by the student as First and

Second language. This has to be chosen from the list given in Appendix II.

Attendance in the third language class will be compulsory, writing of the examination in the third language will also be compulsory but from Vth to VIIth standards, it will not be obligatory to pass the third language examination. No extra credit will be given in rank, division, class, etc., on account of the marks obtained in the third language examination from 5th to 7th standard.

(iii) AT The secondary stage, i.e.. from VIIIth to Xth standards, three languages will be compulsory, First language carrying 125 marks, Second language 100 marks and the Third language carrying 100 marks. It will be obligatory to pass the examinations conducted in all these 3 languages, and one of them shall be Kannada. (Underlining is mine)

(iv) The standard expected in second and third languages at the end of Xth Standard will be what would have been achieved at the end of 6 years of study, if the language subject had been chosen as First language.

(v) As contemplated in Government Order No. ED 113 SOH 79, dated 20-7-1982, grace marks shall be given in Kannada language examination for non-Kannada speaking students and in Hindi for students whose mother tongue is not Hindi. Award of grace marks will be up to a maximum extent of 15 marks to enable the students to pass that language examination.

(vi) Exemption from studying Kannada as a compulsory language can be given to the students whose parents have come to the State on temporary transfer.

By Order and in the Name of the President of India

Sd/- (A.R.M.Iqbal Ahmed) Secretary to Government--II, Education Department.

To

The Complier, Karnataka Gazette for publication in the next issue of Gazette and to supply 1000 copies to this Department.

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6. The Secretary to Governor of Karnataka, Bangalore.
7. All the Divisional Commissioners in the State.

8. All the Deputy Commissioners in the State.

9. All the Additional Joint/Deputy Secretaries to Government of Karnataka, Bangalore.

APPENDIX-I

1. Kannada 2. Tamil 3. Telugu 4. Malayalam 5. Marathi 6. Hindi 7. Urdu 8. English

APPENDIX-II

1. Kannada 2. Tamil 3. Telugu 4. Malayalam 5. Marathi 6. Hindi 7. Urdu 8. English 9. Sanskrit 10. Arabic 11. Persian.

4. Circular No. A5(1)(A3). Irate 6/87-88 dated 29-6-1989 issued by the Commissioner for Public Instruction in Karnataka (Annexure-B) purporting to give effect to the above Government Order as regards study of languages in the High School level (Secondary School level) states thus:

"From the year 1989-90, in the High School level, the new language policy is introduced from 8th standard. As per the G.O., First Language has 125 marks and second and third languages will have 100 marks each. All the three are compulsory examination subjects. Those who have not studied Kannada as First language have to compulsorily study Kannada either as second language or third language. The parents whose mother tongue is not English have to give a declaration about their mother tongue.

According to this arrangement, the language-grouping that will be chosen by most of the students will be as follows:--

I Lang/ Mother Tongue

II Language

III Language

Kannada

English

Hindi

Tamil

Kannada/English

Kannada/English

Tdugu

Kanndada/English

Kannada/ English

Malayalam

Kannada/ English

Kannada/ English

Marathi

Kannada/ English

Kannada/English

Hindi

Kannada/ English

Kannada/English

Urdu

Kannada/ English

Kannada/English

English

Kannada

Hindi

To those whose mother tongue is not either Kannada/Urdu, if they chose Kannada/ Hindi, they are eligible for 15 grace marks for passing. Temporarily there will be relaxation in the study of Kannada to those children whose parents come from other States.

This year a declaration has to be received from the parents/guardians of those students who have taken English as I Language, to the effect that their mother tongue is English. From this year, Sanskrita can be studied either as 2nd language or 3rd language."

5. In the present writ petitions, the challenge is directed against the excerpted portion of the Circular to the extent it purports to restrict the study of Sanskrit in VIII to X standards of Secondary Schools in (he State of Karnataka, either as one of the three languages or as the First language, the study of which is permitted under Cl. (iii) of the aforesaid Government Order. According to learned Counsel appearing for the petitioners in the writ petitions, when Cl. (iii) of the Government Order does not impose any restriction on the study of Sanskrit as one of the three languages or the First language in VIII to X standards of the Secondary Schools in the State of Karnataka, the Circular to the extent it imposes restriction on the study of Sanskrit has to be regarded as ultra vires of Cl. (iii) of the Government Order and declared as void. On the other hand, the argument advanced by learned High Court Government Pleader in sustaining the restriction imposed in the impugned Circular on the study of Sanskrit language was that such restriction can be regarded as one founded on Cls. (i), (ii) and (v)

of the Government Order, which give certain primacy to study of Kannada language in primary and secondary schools.

6. In the light of the controversy raised at the Bar, what needs consideration is whether the Government Order referred to above could be regarded as one which restricts the study of Sanskrit as one of the three languages or the first language in VIII to X Standards of Secondary Schools in the State of Karnataka as brought out in the impugned Circular.

7. From a perusal of the above Government Order which should form the basis for deciding the controversy, it is only Cl. (iii) of that Government Order which adverts to the languages to be studied by the students of VIII to X Standards of Secondary Schools in the State. No doubt, the other clauses in the Government Order refers to languages to be studied by students from I Standard to VII Standard of Primary Schools and how exemption could be got in the study of Kannada language as a compulsory language. But, they do not in any way deal with, muchless concern themselves with the study of three languages by the students of VIII to X Standard of Secondary Schools as envisaged in Cl. (iii) of the Government Order. Therefore, Cl. (iii) of the Government Order alone has to be looked into to find whether the restriction imposed by the Circular, the material portion of which is excerpted hereinbefore, as to study of Sanskrit as one of the three languages or the first language in VIII to X Standard of Secondary Schools, is ultra vires or not. As could be seen from Clause (iii), the language employed in relation to study of three languages in VIII to X standard is neither ambiguous nor doubtful as would require application of Principles of Statutory Interpretation to know its real meaning. The first sentence of Cl. (iii) merely states that three languages will be compulsory for Standards VIII to X in the secondary stage. The second sentence states that the first language while should carry 125 marks, the second language and the third language shall carry 100 marks each. Coming to the third sentence i.e., the last sentence in the clause, all that it states is that it will be obligatory for students of VIII to X Standard to pass in the examination in all the three languages, one of them being Kannada. Thus, from a plain reading of the said Cl. (iii), it is rather impossible to think that there is any restriction placed by that clause on the study of Sanskrit as one of the three languages envisaged therein or as the first language envisaged therein. Hence, I am of the view that the material portion of the impugned Circular (Annexure-B) excerpted hereinbefore, to the extent it purports to impose restrictions on the study of Sanskrit either as one of the three languages or as the first language in VIII to X Standard being in- Government Order (Annexure-A), cannot be sustained and has to be declared as void and inoperative.

8. In the result, I allow these writ petitions and quash the impugned Circular (Annexure B) in so far as it purports to impose restrictions on the study of Sanskrit language either as one of the three languages or as the first language in VIII to X Standard of the Secondary Schools of the State of Karnataka.

9. Sri S. Udayashankar, learned High Court Government Pleader, is permitted to file his memo of appearance within two weeks from today.

10. Petition allowed.