

(1988) 07 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition 18313 of 1987

Sahyadri Education Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 350A, 360A, 45

Citation : (1988) ILR (Kar) 2188 : (1988) 3 KarLJ 266

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : M.C. Narasimhan, M.S. Subbarayappa, H. Neelkanta Rao and K.P. Bindu Kumar, for the Appellant; N. Devadas, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Bopanna, J.—In these Writ Petitions, an important but difficult question on the interpretation of certain provisions of the Constitution of India and also the provisions of the Grant -in-Aid Code for Primary Schools framed by the Department of Education, Government of Karnataka (in short the Code) arise for consideration. Since common questions of law arise for my consideration, these Writ Petitions are disposed of by a common order.

2. The petitioner in W.P. No. 18313 of 1987 is a registered Trust registered under the provisions of the Societies Registration Act. It is running a Kannada Medium Primary School and necessary permission has been obtained by it from the Government for running the aforesaid school in Kannada Medium. Having obtained such permission from the Government, this Court could proceed on the premise that the petitioner has fulfilled all the necessary conditions for locating a primary school as required under the relevant provisions of the Code. Sometime in the year 1986 the petitioner made an application to the authorities concerned for permission to start First Standard in English Medium from 1987-88. This request was made in accordance with the decision taken by the Management of the Petitioner/Society on 9-10-1986. The relevant Rule in the Code on which the

petitioner relies for starting an English Medium School is Rule 12(iv). It reads as under:

"... ..

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 :-

... ..

(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) ;"

This application was accompanied by a declaration of the parents and residents of Bhadravati who were working in certain Departments of Central Government and nationalised Banks and they joined in the request for granting permission for starting an English Medium Primary School. It is on record that nearly 115 parents had made the request in this regard in compliance with the statutory requirement of the aforesaid Rule. The annexure filed by the petitioner, Annexure-C-1, shows that the residents who had signed the representation to the authorities concerned in support of the petitioner's application for permission to start an English Medium School are employees of Nationalised Banks, of Visweswaraiah Iron & Steel Ltd., and other Government and quasi Government institutions. There are also some persons who are employed in the Railways. It is, therefore, quite natural that, all these employees who had signed the representation were desirous of their children acquiring education in English Medium, since these employees on account of their employment in Central Government Institutions and Departments are liable for transfer from place to place and State to State and such transfer would necessarily involve a change in the medium of instruction from State to State if the medium of instruction is confined to the regional language of the area in which the school is situate. But, if the medium of instruction is English, it would be easy for their children in the event of their transfer to join any other school in any other State where similar facilities for imparting training in English Medium are available. With this object, obviously the petitioner with a view to help a number of students who were eager to acquire Primary Education in English medium made the necessary application to the 2nd respondent, i.e., the Director of Public Instruction (Primary Education) (in short the DPI). It should be noticed at this stage that the Senior Assistant Director for Primary Education by his letter dated 31-10-1986 under Annexure-D-1 had forwarded the application of the petitioner to the Deputy Director for his report and recommendation as per the "check list". The Deputy Director, after making the necessary inspection, was satisfied that the petitioner/ Society had sufficient accommodation and there was no English Medium School within the radius of 1-2 k.m. from the school of the petitioner and accordingly

recommended the grant of permission to start an English Medium Primary School. This recommendation was also before the DPI. But, the petitioner was served with an endorsement dated 6-10-1987 rejecting its request to open an English Medium School. That is how this matter has come before this Court.

3. The petitioner has averred in para 4 of the Writ Petition that the State Government had accorded permission by an order dated 28-9-1987 for the English Medium Schools numbering 10; that the permission accorded amongst others was to certain schools which were opened prior to 1982-83 as is evident from the said order which has mentioned that the following schools which were started in the year 1982-83 were also granted permission :

Madyu Memorial English School,

J.S.S. English Medium School,

St. Michel English Medium School.

In para 5 of the Writ Petition the petitioner has averred that by another order dated 9-7-1986 the State Government has granted permission to Sree Basaveswara Vidhyavardhaka Sangha, Bagalkote from 1986-87, to Sri. Renuka Yallamma Education Society from 1986-87 and Balbhavan Education Trust from the year 1987-88. The petitioner has also filed 2 more Government Orders after the filing of the Writ Petition and they are both dated 15-6-1988 according permission to Banu Education Society from 1984-85 and Sree Sharada English Medium School from 1988-89.

4. In Writ Petition No. 23373 of 1982 the petitioner is an Education Society registered under the Karnataka Societies Registration Act. Its grievance is that the residents of T. Narasipur were badly in need of English Medium Nursery and Primary School and about 100 children had registered themselves for admission to the petitioner's school with a view to acquire education in English medium; that the petitioner had spent about Rs.30,000/- towards the establishment of Nursery School with the fond hope that the authorities would certainly accord permission to start the school considering the urgent needs of the residents of T. Narasipur; that the strength of the school is about 100 students and the petitioner had appointed 4 teachers and 2 aayas and what all was necessary to legalise the commencement of the English Medium school was a formal order of the State Government; that its institution was inspected by the Assistant Educational Officer on 30-6-1981 and he had passed his remarks in the registers maintained by the petitioner appreciating the service done by the petitioner/institution; that subsequently the institution was also inspected by two Inspectors of Schools on 7-1-1982 and in token thereof they had recorded their observation expressing their appreciation over the working of the institution; that the District Superintendent of Physical Education attached to DDPI of Mysore had also inspected the institution and had made a report commending the work turned out by the petitioner/institution but all the same the authorities did not grant the requisite permission to the petitioner to legalise the commencement of

the English Medium Primary & Nursery School, The grievance of the petitioner is that the requisite order granting permission was not communicated to the petitioner because of certain extraneous consideration and the influence brought to bear upon the authorities concerned by the 4th respondent Little Flower Convent School. The petitioner has alleged that the 4th respondent had successfully influenced the officers of the Education Department and obtained permission to start a private Nursery School (English Medium) even though the 4th respondent submitted the application during April-May, 1981, whereas the petitioner filed its application in the month of November, 1980 but it was not considered by the authorities so far despite the representations to the Ministers and other higher authorities. However, by virtue of the interim order made by this Court, petitioner has been running the institution and. imparting education in English medium.

5. The petitioner in W.P. No. 3883 of 1988 is also a Society registered with the object of imparting education in a rural area and educating the rural masses belonging to the minority communities. This society is situate in Bannur which, according to the petitioner, is predominantly inhabited by persons who profess the Muslim faith; that a large number of people belonging to the minority group had requested the petitioner to start an English Medium Nursery and Primary School and, accordingly, the petitioner applied for permission to start such a school on 10-10- 1983. But the respondents did not respond to the said application. However, the petitioner in anticipation of the permission from the authorities concerned started an English Medium First Standard during 1984-85 by admitting 23 students. Similarly, Standards II, III and IV were started during 1985-86, 1986-87 and 1987-88 in the name of Ravindranath Memorial School, Bannur and the present strength is 240 students with 7 teachers and 2 attenders who are working for imparting education to the rural minority group in the locality. As noticed earlier in the other Writ Petition, i.e., W.P. No. 23373 of 1982, this institution was also inspected by various officers of the Education Department and no adverse remarks were made by them regarding the functioning of the petitioner/ institution. On this premise, the petitioner has alleged that it was sure of getting recognition from the authorities concerned; but, sometime in 1985-86 some officers of the Department who were ill-disposed towards the petitioner/ institution and with the connivance of other community people in the locality who had not liked the progress and achievement of the institution threatened that the petitioner/institution would be closed down as it had no recognition for starting the English Medium School from the Government; that the State Government was good enough to direct the DPI to scrutinise the petitioner's application for recognition under the provisions of the Code and to submit his report in the matter after inspecting the institution; that the Deputy Director of Public Instructions, Mysore, after inspecting the School on 25-7-1987 along with the Assistant Education Officer and other authorities, recommended the grant of recognition to the petitioner institution. The recommendation which is produced as Annexure J in the Writ Petition shows that the school had all the

facilities for running a primary class in English medium upto 4th standard and the institution was being run to the satisfaction of the parents and the Department. Without considering the said report of the DDPI, the application of the petitioner was rejected by the Government by its letter dated 28-12-1987 which is produced as Annexure K in the Writ Petition. The grievance of the petitioner is that the impugned order of the State Government is violative of Article 14 of the Constitution in that a number of schools in Mysore District who are imparting education in English medium from 1982 onwards like the petitioner were not ordered to be closed down by the authorities but the petitioner/institution has been singled out for the first time by an order declining to grant the recognition. The petitioner has also raised the plea of estoppel on the ground that it was permitted to run the school from 1982 onwards without any objection and, after having run the institution for 6 years, the respondents could not have directed the closure of the institution in the middle of the academic year.

6. In Writ Petition No. 9531 of 1988 the petitioner is a registered Sangha registered under the Karnataka Societies Registration Act. The main object of the Sangha is to establish schools for imparting education to the children of the locality in question. According to the petitioner, there was a need for both English Medium and Kannada Medium Primary Schools to satisfy the requirements of the children. The petitioner made the necessary application to the authorities concerned for grant of permission to run an English Medium School. On this application made by the petitioner, the authorities of the Education Department inspected the school premises with a view to satisfy themselves that the petitioner had the necessary facilities and accommodation for running the classes in English Medium and these persons had appreciated the fact that the Sangha had established all facilities as per the rules. The application for grant of permission should be disposed of within 3 months from the date of receipt of the same and in the event of refusal of permission to start, reasons should be communicated to the applicant. The grievance of the petitioner is that the petitioner was not served with any such communication either accepting or rejecting its application. Its further grievance is that when it met some of the authorities concerned including the DPI it was given to understand that there was some circular order dated 22/24-8-1987 to the effect that the Government had taken a decision not to grant any permission to start new English medium schools from the year 1987-88; that except this information no other communication was made available to the petitioner. All the same, the DPI issued orders granting permission to certain other institutions whose names are found in para 7 of the Writ Petition. The orders granting such permission are :

"Annexure-J - Order No. ED :57 PKN 86 dated 9-7-86 in which permission has been granted to Sree Basaveswara Vidhyavardhaka sangha, Bagalkot, to start English and Kannada Medium Primary School from 1986-87.

Annexure-K - Another order dated 27/29:8:86 wherein Government have granted permission for starting English Medium School from 1987-88.

Annexure-L - Government Order in No. ED 80 PGC 87 dated 7/13:5:1987 wherein permission has been granted in favour of Balabhavan Education for English Medium School from 1987-88 as against 1986-87.

Annexure-M - Order No. ED 248 PGC 87 dated 15-6-87 wherein permission has been accorded to KLE Society, Belgaum, for starting English Primary School, from 1986-87 from I Standard to VII Standard and from 8th standard to 10th Standard. They were earlier granted permission to start primary Standard I from 1986-87.

Annexure-N - Order dated 28-9-87 in which about 10 schools have been granted permission with retrospective effect that from 1980-81 in some cases and from 1979-80 in some other cases and 1971-72 in few cases, etc.

Annexure-O - Order dated 15-6-88 bearing No. ED 1 PGC 88 permission granted in favour of Sree Sharada English Primary School from 1988-89; for starting English Medium Primary School.

Annexure-P - Order dated ED 49 PES 87 dated 15-6-1988 permission has been granted in favour of Banu Vidhya Same the from English Medium Primary School from the year 1984-85. The permission is retrospective effect."

7. Petitioner in W.P. No. 8101 of 1988 is an Educational Trust having its registered office at Sharavathinagar Shimoga. It is running a Primary School at Siddapura village. To meet the requirements of the students of the locality, it had made an application on 8-1-1988 for starting an English Medium School after complying with all the requirements of such an application. But that application was turned down by the respondents which was communicated by Respondent-2 under Annexure A without assigning any reasons.

8. So the principal grievance of the petitioners in all these cases is that the so-called policy of the Government refusing to accord permission to start English Medium Primary/Nursery School from the year 1987-88 onwards is hit by the vice of arbitrariness which is protected by Article 14 of the Constitution and this policy of the Government is also violative of the provisions of Article 19(1)(g) of the Constitution, since it is the fundamental rights of the petitioners to carry on their legitimate profession business in the light of the decision of this Court in Bapuji Educational Association Vs. State, ; that it is opposed to the provisions of the Grant- in- Aid Code, viz.. Rule 12 since in all these cases the petitioners have satisfied the requirements of the said rule and, therefore, the Government was bound to accord permission sought for by the petitioners.

9. The State Government, in the absence of their return in all these petitions, had not seriously disputed the facts averred by the petitioners. But, they have rested their case on their policy decision. This is found in the note submitted by the Secretary to the Government, Education Department, after seeking instructions from the Government. That note is reproduced below since the learned Government Advocate sought to sustain the action of the Government

only on the basis of this note. It reads as under:

"As per the instructions of the Chief Secretary to me on 25-6-1988 at 6.30 P.M. to meet the Hon"ble Chief Minister in person and seek his instructions, I met the Hon"ble Chief Minister today after the Cabinet meeting was over at 10.55 A.M. The Hon"ble Chief Minister has instructed me that a decision has already been taken in this behalf that the policy of the Government is not to sanction English Medium Schools. However in rare cases where there are a considerable number of non-Kannadiga residents as also Minority institutions are involved., an exception has been made. The Hon"ble Chief Minister pointed that there is already a Cabinet decision on this issue and the same have to be brought to the notice of the concerned."

10. So the defence of the respondents is based on the policy decision of the Cabinet not to sanction English Medium Schools except in rare cases mentioned at Item No. 8 of the Government file which I have excerpted above.

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 *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, . 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 educational 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 has 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 Indian 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 Centre would lay down conditions to be fulfilled before a switch-over to the regional languages takes place at the University level. In fact, the Centre 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 this 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 a 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 of children, or such children shall be granted exemption from attendance." So, the intendment 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, 1963. 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 Article 45 and 350A 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 450A 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 considers 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 450A 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."

12. Now I will consider the contentions of the learned Counsel for the petitioners. Sri. M.C. Narasimhan who addressed the leading arguments in these petitions submitted that the decision as reflected in the note of the Education Secretary is violative of Article 14 of the Constitution since the said policy is discriminatory in character in that many other institutions have been given permission to impart primary education in English medium but the petitioners have been singled out by denying them the right to impart education in English medium. He submitted that though the policy which is based on the Code is not enforceable by the Court as noticed by the Supreme Court in *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, it can be attacked on the ground that it is violative of Article 14 of the Constitution. He relied on the decision of the Supreme Court in *Om Prakash Sud and Others Vs. State of Jammu & Kashmir and Others*, on this point. That was a case for allotment of resin, a forest product, by the State to various industrial units to be made in conformity with the industrial policy of the State Government which inter alia required that the units should be formally registered. However, in actual practice quota was granted to some unregistered units, while denied to some units which were registered. Such allotment of quota violated Article 14 of the Constitution as the selection of allottees had no rational nexus to the object sought to be achieved in the industrial policy of the State Government. Though the facts in that case are not similar for considering the challenge to the Government Policy in this State,

the principle that could be deduced from that decision is that a Government policy which is not blessed by legislation could be attacked on the ground that it is violative of Article 14 of the Constitution, if the affected person makes out that there is discrimination which is not relatable to the object sought to be achieved by the State Government. It may be that the policy of the State Government is to encourage Kannada as a medium of instruction in primary schools. That is evident from Rule 12(1) of the Code. The State Government's policy is to encourage the regional language or mother tongue of the child in all primary schools. Whether this policy is adopted by the State Government uniformly in this State needs to be considered. We have already referred to the Government Orders dated 15-6-1988 and other Government Orders more particularly mentioned in W.P. No. 9531 of 1988, W.P. No. 18331 of 1987 and W.P. No. 2333 of 1988. Those Government Orders were issued permitting the respective institutions mentioned therein to start English Medium Schools before the filing of the Writ Petition and after the filing of the Writ Petitions. Government should have been aware of Regulation 12(1) of the Code at the time of according permission to start English Medium Schools both before and after the filing of the Writ Petition and therefore, how the Government could formulate a different policy in regard to the petitioners' schools resulting in denial of the petitioners' right to impart education in English Medium arises for consideration. It cannot be said that by the Government Orders according permission to a number of other institutions to impart education in English medium, the regional language or the mother tongue of the child would be seriously affected and relegated to an inferior position. By refusing permission to the petitioners, the regional language or the mother tongue of the child would not get a fillip. Only on this ground alone, the petitioners are entitled to succeed, since I am of the view that the object sought to be achieved could not be achieved by the Government under Rule 12(1) of the Code by denying permission to start English medium schools to these medium schools to these petitioners only while affording permission to a number of other institutions to run English medium schools. To overcome this objection, learned Government Advocate relied on the "need based theory" to sustain the action of the Government. According to him, there was no need in the localities in question for starting English medium schools and therefore. Government was justified in refusing permission to the petitioners. The "need based" theory is not supported by factual material. I have made a reference to the favourable reports of the authorities concerned for running English Medium schools. In all these petitions there are reports from the authorities concerned and in none of the reports placed before this Court the authorities who inspected the schools had made any adverse remarks either on the running of the institution or against the need for imparting primary education in English medium.

13. Mr. Devadas, learned Government Pleader, relied on 2 decisions of the Court of Appeals in U.K. in this regard to drive home the point that in matters of educational policy this Court should be very slow to interfere with the actions of

the authorities since education is a subject with which the Government is primarily concerned and as the Government is the final authority for formulating and implementing its policy, those policies should not be interfered with by this Court in the exercise of its extra-ordinary jurisdiction. I am in entire agreement with the ruling of the Court of Appeals in CUMINGS AND ORS. v. BIRKENHEAD CORPORATION (1971) 2 All E.R. 881 and in SMITH AND ORS. v. INNER LONDON EDUCATION AUTHORITY (1978) 1 All E.R. 411. In both the cases, the policy of the local authority in question in the matter of education in English schools was challenged in certiorari proceedings before the Courts in U.K. In both the cases, the Court of Appeals refused to interfere with the policies formulated and implemented by the local authorities in question. But, it should be noticed that the education policy which came up for consideration before the Court of Appeals was based on the Education Act, 1944. That Act was passed on the basis of the White Paper of 1943. The White Paper followed on two unanimous reports by committees representative of the best minds of the time. One, headed by Sir William Spens, was published in 1939. The other, headed by Sir Cyril Norwood, was published in 1943. To quote the words of Lord Denning ;

"If you should read those reports, and also the White Paper, you will find that even then, there were those who looked forward to the time when secondary education was organised on comprehensive lines or, as it was then called, on multi-lateral lines. It was anticipated that for some time there would be a tripartite system; grammar school for children with an academic bent; technical high schools for children with a practical bent; modern schools for the rest. But that in the future, the way forward was for all secondary education to be in comprehensive schools combined in one building or on one site."

From the discussion of the facts in those 2 cases, it could be seen that there was a well formulated education policy in U.K. based on the statutory provisions of the Education Act, 1944, and that policy as also the Act was based on the report of 2 well known educationists of the time. That is the reason in both the cases the Court of Appeal declined to interfere the action of the authorities under the aforesaid Act on the ground that matters pertaining to the Education Policy must be best left to the Government to be handled and it is not for the Courts to substitute their views to the views of the authorities concerned. This is a well settled principle on the exercise of the extra ordinary jurisdiction of this Court under Article 226 of the Constitution and with respect I am in agreement with the views of the Court of Appeal in U.K. on this point. Our Supreme Court has also laid down the same principle in matters pertaining to educational institutions. But, in this case, when there is no formulation of policy at all either under Statute or based on expert opinion, the decision taken by the cabinet on the ground of policy could be examined and tested by this Court on the touch stone of Articles 14 and 19(1)(g) of the Constitution. As noticed earlier, if there had been a policy, it should be applicable to all the primary schools in the State. But in the absence of uniform application of that policy, the same is open to question before this Court and could be laid bare for the scrutiny of this Court

and I am of the view that the decision of the State Government based on a policy decision which is neither uniform nor based on an objective consideration of the rights of linguistic minorities is violative of Article 14 of the Constitution and on that ground alone, it has to be struck down.

14. There is another substantial point for consideration, i.e., the right of the parents to give their children education in English medium which, according to them, would advance their future career. There could be no ban on English medium of instruction as could be deduced from the 2 decisions, viz., (1) Dayabhai Poonambhai and Another Vs. Natwarlal Sombhai Talati and Others, and (2) Shri Krishna Rangnath Mudholkar Vs. Gujarat University and Others, The Full Bench of the Gujarat High Court in Shri Krishna Rangnath's case while dealing with the Gujarat University Act, 1949, observed as follows :

"In our view the Act gives no power to the University to impose Gujarati or Hindi as the sole medium of instruction and examination or even as one of the media of instruction and examination on affiliated colleges or to prohibit the use of English as a medium of instruction and examination in affiliated colleges. The substitution of the new proviso in Section 4(27) and the addition of Section 38-A in the Act by Act IV of 1961 make no difference and do not add any such power to the powers of the University under the Act. Consequently, Statutes 207, 208 and 209 as they stood originally or as amended are ultra vires the powers of the University and the Senate and are, therefore null and void."

That was a case where the Gujarat University Act by virtue of the provisions of Sections 208 to 209 of that Act sought to impose only Gujarati and/ or Hindi as media of instruction for examinations held by the University. The Full Bench of the Gujarat High Court observed :

"In the result, we hold that :

(i) Statutes 207 and 209 in so far as they seek to lay down and impose Gujarati and/or Hindi in Devanagiri script as the media of instruction and examination on institutions other than its own institutions are unauthorised and beyond the powers of the University and the Senate and are therefore null and void as neither Section 4(27) nor any other provision of the Act empowers the University to lay down Gujarati or Hindi as a medium of instruction and examination for such institutions or to forbid the use of English as a medium of instruction and examination for and in such institutions.

(ii) Assuming that Section 4(27) and/or any other provisions of the Act do contain such power, that power at best is only to lay down Gujarati or Hindi as one of the media of instruction and examination and not as the only medium of instruction and examination to the exclusion of other languages and does not extend to forbid the use of English or any other language as a medium of instruction and examination and Statutes 207 to 209 are therefore null and void."

The observation of the Full Bench of the Gujarat High Court on the rights of the

parents may be noticed in this connection:

"It cannot be denied, though the American decisions may not be a guide to the interpretation of the provisions of Part III of the Constitution, that the petitioner is entitled as a parent to direct and education of his son in the manner he considers best suited and to guide thereby his future prospects, The State has no concern and we hope, no right to direct him to do so in a particular manner. That can only happen in countries which do not boast of democratic Constitutions. Though such a right may not arise from a Statute or a contract, he is entitled and has the liberty in law to educate his son in the manner he thinks best."

The decision of the Gujarat High Court was challenged in the Supreme Court and the Supreme Court dismissed the appeal preferred by the Gujarat University. In para 17 of its judgment in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, the Supreme Court observed as follows :

"A Corporation has ordinarily an implied power to carry out its objects ; power to indicate a medium of instruction in affiliated or constituent colleges may therefore be deemed to be vested in a University but the power to indicate a medium of instruction does not carry with it, in the absence of an express provision, power to impose upon the affiliated institutions an exclusive medium of instruction."

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 certain qualifications as found in Rule 12(4) to (7) of the Code. In *Dayabhai Poonambhai and Another Vs. Natwarlal Sombhai Talati and Others*, 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 difficulty 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 445 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 language or 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 445 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 was being used immediately before the commencement of the Constitution. The notification issued on 26th January, 1952, u/s 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 CPC was altogether prohibited by the Official Language Act and the notification issued thereunder."

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 Educational Association Vs. State, 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 public 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.

17. Regarding the reliefs to be granted to the petitioners, Mr. Devadas, learned Government Pleader, submitted that since the petitioners' request should be considered on other points which the petitioners have to satisfy namely requirements specified in the applications submitted by them in Form I, the matter has to be remitted to the authorities concerned for assessment of those applications on other points. Ordinarily I would have accepted this contention of the learned Government Pleader. But, in these cases, in the absence of any material to show that the petitioners' applications on other points are not in compliance with the requirement of Form I and in view of the fact that the education of the students who have already obtained admission would be in jeopardy if the petitioners are not granted permission within a reasonable time to start English medium schools, it becomes necessary for this Court to issue the necessary direction to the State Government to accord permission as prayed for within a reasonable time. Ordinarily the Mandamus sought for according permission will not be issued by this Court, But, on the facts of these cases, the authorities who were under an obligation to consider the applications of the petitioners within 3 months from the date of receipt of the same as provided under Rule 10 have not done so. Only when the petitioners approached this Court, the authorities have taken the plea of a "policy decision" based on the Cabinet Note. Even in cases where the decisions had been communicated to some of the petitioners, it is not made known to them about the policy decision of the State Government on which it has relied. Now, as this Court has held that the said policy is violative of Articles 14 and 19(1)(g) of the Constitution, it would be a futile exercise to direct the Government to consider again the same policy. Therefore, these are fit cases in the light of the decision of the Supreme Court in Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Majdoor Sabha, which was followed by this Court in G. Lakshman Vs. State of Karnataka, to issue the necessary direction to the State Government to accord permission to the petitioners to start English medium primary schools. The other contentions of the petitioners are left open, since they have succeeded in their main contentions.

18. Accordingly, these petitions are allowed, the impugned orders, viz.,

i) the Order No. E 14(c) permission : 27.86-87 dated 6-10-1987 (Annexure-F) in Writ Petition No. 18313 of 1987 ;

ii) the Orders No. E 14(B).99180 PER/81-82 dated 7-4-1982 and No. E3.27166 PER/117/81-82 dated 23-4-1982 (Annexures C and D) in Writ Petition No. 23373 of 1982 ;

iii) the order No. Chi.3/2818/8/86-87 dated 28-12- 1987 (Annexure-K) in Writ Petition No. 3883 of 1988 ;

iv) the Order No. ED 316 PGC 86(P) dated 22/24-8-1987 (Annexure-H) in Writ Petition No. 9531 of 1988 ; and

v) the Order No. E.14(c) Permission 4/87-88 dated 20/22-2-1988 (Annexure-A) in Writ Petition No. 8101 of 1988 ;

are quashed and the State Government is directed to accord permission as prayed for. The Government shall implement this direction within a period of 2 weeks from the date of receipt of this order.