

(2012) 01 GUJ CK 0030
In the Gujarat High Court
Case No : Writ Petition (Pil) No. 167 of 2011

Shamshad Pathan Convener	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1), 32

Citation : (2012) 2 GLR 1364

Hon'ble Judges : J.B. Pardiwala, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Mukul Sinha for Petitioner and Mr Subramaniam Iyer, for the Appellant; P.K. Jani, Government Pleader for Respondent : 1, Mr Ad Oza for Respondent : 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice J.B. Pardiwala

1. This petition has been preferred by Shri Shamshad Pathan, Convener of Jan Sangharsh Manch, a civil right organisation, in the nature of a Public Interest Litigation, challenging the legality and validity of a Government Resolution issued by Education Department dated May 3, 2011, amending Regulation No.20, whereby a decision has been taken that the question papers for the examinations of Secondary School Certificate and Higher Secondary School Certificate for the subjects other than the languages shall be prepared in Gujarati, Hindi and English languages and the students of Secondary School Certificate can answer the question papers of the examination alternatively in English, Gujarati, Marathi, Urdu, Hindi, Sindhi, Tamil or Telugu languages whereas the students of Higher Secondary School Certificate examination can answer the question papers only in Gujarati, Hindi or English language.

2. The facts relevant for the purpose of deciding this petition in the nature of a public interest litigation can be summarised as under.

2.1 The Government of Gujarat enacted Gujarat Secondary Education Act, 1972 and also framed Rules and Regulations thereunder for the purpose of imparting Secondary and Higher Secondary education to the students in various schools in the State of Gujarat. Under the said Act, Gujarat Secondary and Higher Secondary Education Board is established for the purpose of carrying out the aims and objects of the Act and for conducting public examinations for the students of Standard X and XII.

2.2 As per the averments made in the petition, a large number of schools imparting primary education from Standard Ist to VII and Secondary education from Standard VIII to X and Higher Secondary education from Standard XI to XII have been registered and recognized by the Board in the State of Gujarat. The medium of instruction in such schools right from inception is either Gujarat, Hindi, English, Urdu, Sindhi, Marathi, Tamil, Telugu etc. The students of Secondary education being imparted education in their respective language or mother-tongue are given question papers in examination in such language only and they would write answer papers in such respective languages. According to the petitioner, this practice has been prevailing since a long period of time.

2.3 The Government of Gujarat passed a Resolution dated May 3, 2011, whereby certain amendments have been carried out in the Gujarat Secondary and Higher Secondary Certificate Examination Regulations. The effect of the said Government Resolution would be :

(i) Standard X

In the forthcoming examination of Standard X (to be held in March, 2012), the students of Marathi, Urdu, Sindhi, Tamil, Telugu, Oriya medium schools will be provided question papers in Gujarati/Hindi/English language and they will be required to write answer papers in their respective medium of education.

(ii) Standard XII

In the forthcoming examination of Standard XII (to be held in March, 2012), the students of Marathi, Urdu, Sindhi, Tamil, Telugu, Oriya medium schools will be provided question papers in Gujarati/Hindi/English language and they will be required to write answer papers in Gujarati, Hindi or English language only irrespective of their medium of education.

2.4 It appears that pursuant to the aforesaid Government Resolution, respondent No.2 Board has issued Circular dated July 11, 2011 to the Principals of all Schools imparting education in Marathi, Urdu, Sindhi, Tamil, Telugu and Oriya medium, informing that the students of Standard X appearing in the forthcoming examination to be held in March, 2012 shall be issued question papers in Gujarati, Hindi and English and that they will be required to write answers in their respective language.

2.5 It appears that representation was preferred in this regard to the Gujarat Secondary and Higher Secondary Education Board at Gandhinagar, but according

to the petitioner, the representation seems to have gone unheeded.

It is in this background that the present petition has been preferred in the nature of a public interest litigation.

3. Notices were issued to the respondent and affidavit-in-reply has been filed by the Secretary of Gujarat Secondary and Higher Secondary Education Board. The stand taken by the Board, as discernible from the averments made in the affidavit-in-reply, can be summarized as under:

(a) So far as XII Standard is concerned, English is compulsory and any other language which a student may opt. So far as the other five subjects are concerned, the students have to opt from different section of the streams, namely general stream, science stream, post-basic and vocational. So far as the general stream is concerned, there are about 19 subjects from which students have to select two or three subjects. In all the streams, Board is offering more than 100 subjects to the students and therefore, to translate the question papers in all other languages would not only be difficult, but also create administrative problems and the Board would not be in a position to maintain confidentiality in the examinations.

(b) Since 1978, the Board is conducting the examinations of Standard XII and since then the Board is only supplying the question papers in Gujarati, Hindi and English languages and the students can answer the question papers in the language of their medium.

(c) This policy has continued and in light of this, the Board has now followed similar pattern for the Xth Standard examination too. However, in view of the representation the decision dated May 13, 2011 by which the students were asked to answer either in Gujarati or English language, has been revoked and all schools have been intimated accordingly.

(d) So far as Higher Secondary Examination is concerned, from the beginning i.e. 1978, the Board has been supplying question papers in Gujarati, Hindi and English. The students studying in different mediums like Marathi, Sindhi, Tamil, Oriya etc. are supplied question papers in Gujarati, Hindi as well as English, and are permitted to answer the questions in the medium of their language.

(e) English and Gujarati are compulsory subjects in Standard X. In Standard XII also English is compulsory and therefore, the students are in a position to understand the question paper either in Gujarati or English, or as the case may be in Hindi. Students are well acquainted with the subject of Gujarati from Standard III, and Hindi from Standard IV, and English from Standard V, thereby affording the students opportunity to master and excel in these languages.

(f) According to the Board, there is a laudable object to be achieved with this amendment as such a pattern of examination would actually prepare a student to be competent for higher University examination because University education is only provided in English or Gujarati, so far as the State of Gujarat is concerned.

(g) The medium in the professional courses like Engineering, Technical and Medicine etc. is only English.

(h) This decision has been taken after due deliberations with the expert in the field of education and more particularly keeping in mind the overall interest and development of a student.

4. We have heard learned Counsel Dr. Mukul Sinha for the petitioner, learned counsel Mr. A.D. Oza appearing for respondent No.2 Board and learned Government Pleader Mr. P.K. Jani for respondent No.1 State of Gujarat.

Contentions of petitioner:

Dr. Sinha vehemently urged that the problem is genuine as it is very difficult for a student to get himself prepared within a short period of time to understand the question papers either in English, Hindi or Gujarati, more particularly if the medium of instruction all through out has been either Marathi, Urdu, Sindhi, Tamil, Telugu, Oriya etc. Therefore, Dr. Sinha urged that this Court may direct the respondents to implement this decision from next year so that the students can get sufficient time in this regard.

Dr. Sinha also contended that the decision of the authority by impugned Government Resolution is absolutely arbitrary, irrational and without application of mind. Dr. Sinha contended that the impugned Government Resolution is violative of Article 19(1)(a) of the Constitution of India. It is also contended that the Board has no power to frame such Regulations that would prejudicially affect the career of large number of students.

Contentions on behalf of Respondents Nos. 1 and 2:

It has been vehemently submitted by Mr. A.D. Oza as well as by Mr. P.K. Jani that there is no public interest involved as such, as a pure policy decision has been challenged and this Court may not disturb the policy decision which has been taken by the State Government after due deliberations with team of experts in the field of education.

They submitted that on the contrary the decision should be welcomed as it is in the larger interest of the future of a student. They further submitted that the affidavit-in-reply filed by the Secretary of the Board, has exhaustively dealt with all issues which have been raised in this petition by the petitioner.

5. The letter dated November 1, 2011 addressed by the Examination Secretary of Gujarat Secondary and Higher Secondary Education Board, Gandhinagar to all Principals of registered Higher Secondary Schools in the State of Gujarat makes the position very clear. Since the representation on behalf of the students has been partly accepted by the Board, the students of Higher Secondary Certificate Examination (Standard XII) General and Science stream will be given question papers of Main Subjects, except language in G.H.E (Gujarati, Hindi, English) in the ensuing examinations, as is being given now. It is also decided that students

studying in whatever medium, can answer the question papers in their medium of language i.e. Gujarati, Hindi, English, Marathi, Sindhi, Tamil or Urdu except language subject question paper.

Thus, students of Standard X as well as Standard XII will be permitted to answer the question papers in their own language i.e. medium of instruction, but the question papers will be in Gujarati, Hindi and English. To clarify, if the medium of language of a student is other than Gujarati, Hindi or English, then he will have a question paper in all three languages i.e. Gujarati, Hindi and English.

Thus, the only question now for our consideration is as to whether the petitioner has been able to make out any case for issuance of writ or order upon the respondents directing them to provide question papers in different medium of language i.e. Marathi, Sindhi, Tamil or Urdu.

6. Having heard learned counsel for the respective parties and after going through the materials on record, we are of the view that in a matter relating to educational policy, this Court should decline to interfere. Where the State by means of the impugned Government Resolution and the amendments desires to bring about academic discipline as a regulatory measure, it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere. In *Hindi Hitrakshak Samiti and others Vs. Union of India and others*, , the Supreme Court laid down as under:

Every educational institutions has right to determine or set out its method of education and conditions of examination and studies provided these do not directly or indirectly have any causal connection with violation of the fundamental rights guaranteed by the Constitution. It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in charge of any particular situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference.

7. The Supreme Court proceeded further to observe in paragraph 8 of the judgement as under:

It is well settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the judiciary and judicial forums and not by the administrators or executives. But it is

equally true that citizens of India are not to be governed by the judges or judiciary. If the governance is illegal or violative of rights and obligations, other questions may arise but whether, as mentioned hereinbefore, it has to be a policy decision by the government or the authority and thereafter enforcement of that policy, the court should not be, and we hope would not be an appropriate forum for decision.

8. In the background of the facts and circumstances of the case and the nature of controversy that has arisen, we are of the opinion that proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination in any particular language to the institution on that basis, is a matter of policy. The Supreme Court in *Hindi Hitrakshak Samiti Vs. Union of India* (supra) has clearly observed that whether in the particular facts and circumstances of the case, admission to medical or dental institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision.

9. In the present case, we have noticed that so far as examination of Xth Standard is concerned, the question papers will be in Gujarati, English and Hindi and the students will be free to answer the same in their medium of language. In the same manner, considering the importance of Standard XII so far as the academic career of a student is concerned, as per the policy decision the question papers would be in Gujarati, Hindi and English and the students will be free to answer in the language of his/her own medium like Marathi, Tamil, Telugu, Sindhi etc.

10. Thus, the role of statutory expert bodies on education and role of Courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the Courts keep their hands off. If any provision of law has to be interpreted, applied or enforced, with reference to or in connection with education, Courts will step in. In *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, , the Supreme Court observed:

Judges must not rush in where even educationists fear to tread.. While there is no absolute bar, it is a rule of procedure that courts should hesitate to dislodge decisions of academic bodies.

11. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the Supreme Court has reiterated:

... the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.

12. In the result, the writ petition fails and is hereby rejected with no order as to costs.