

(1994) 12 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 5506 of 1985

The Hindu Higher Secondary School

APPELLANT

Vs

The District Educational Officer, The Director of School
Education, The State of Tamil Nadu and Union of India (UOI)

RESPONDENT

Date of Decision : 09-12-1994

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 3, 56

Citation : (1994) 12 MAD CK 0010

Hon'ble Judges : Mishra, J

Bench : Single Bench

Advocate : Sivanandam, for the Appellant; Saraswathi Prasad, AGP (End.) and Nurgehan Razack, AGGSC, for the Respondent

Final Decision : Allowed

Judgement

Mishra, J.—The Petitioner is a Higher Secondary School under the management of a Society, registered under the Societies Registration

Act. The school was established in the year 1914 and since 1916, it has been under the control of the society with the object of providing quality

and needful education for boys and girls. In due course, it was recognised as a private school under the Tamil Nadu Private Schools (Regulation)

Act, 1973. In 1984, the school had a strength of 2261 pupils of whom 1013 were girls. The school used Tamil as the language of

coaching/instruction from VI to X Standards. It however started higher secondary education with 283 pupils and each year about 150 pupils

were/are admitted for higher secondary education with five section, with one section of students, who received instruction in English medium, he

Petitioner has alleged that coaching in the Petitioner school is given in all the

sections in the regional language i.e. Tamil, except at the higher secondary level, and in view of very rapid development in all walks of life, many parents living in Vaniyampadi are eager and keen on giving English medium education for their wards. In order to avail the higher educational opportunity as well as mingling with the vast Indian people and move and settle in other parts of India, there has been an urge everywhere to impart instruction in English to the youth of the country. There have been persistent demands and enquiries from parents about coaching in English medium in the Petitioner-school.

2. For the past ten years, the Petitioner has been endeavouring to obtain permission from the Respondents to introduce English medium from VI standard in view of the persistent demand. English medium section was introduced in the Petitioner school at Higher Secondary level in the year 1978. After the introduction of English medium at Higher Secondary level according, to him, it became necessary to have corresponding feeder courses.

3. The Petitioner, it is alleged, applied on 23-5-1983 for introducing parallel English medium section, apart from the existing Tamil Medium section, numbering eight, in VI standard. The 2nd Respondent, by his proceedings O. Mu. No. 196837/Po. Pa. Ayy. El.3/83 dated 8-8-1983, stated that

the Government would have to incur additional expenditure for creating posts for English medium VI standard, if it is opened, apart from Tamil medium Section. So, he advised the Petitioner school to apply for conversion of one of the Tamil medium sections in VI standard into English

medium section. In the same proceeding, the Petitioner was advised that, if it agreed for the conversion of one Tamil medium section into an

English medium section in VI Standard, it might well apply three months in advance before the commencement of the academic year 1984-85.

Pursuant to such communication, the Petitioner school applied on 7-3-1984 for permission to open English medium parallel section in VI standard

from 1984-85 to the 2nd Respondent, through the 1st Respondent. The 1st Respondent, however, informed the Petitioner that English medium

section in VI Standard could be started from the academic year 1984-85 only after getting firm orders from the Government, i.e. the 3rd

Respondent. The Petitioner had been, according to the allegations in the petition,

approaching the Government for permission, but received no response from them. The Petitioner tiled W.P. No. 9887 of 1984, in which, a learned judge of this Court directed the Respondents to consider the Petitioner's request for permission for opening one English medium parallel section in VI standard and to pass orders purely on merits on or before 28.2.1985. The 2nd Respondent disposed of the Petitioner's representation by his order dated 25-2-1985 (3 days before the last day for any such order as directed by the learned judge in W.P. No. 9887/84) stating that it was not possible to accept the Petitioner's request. The 2nd Respondent referred to a Government letter dated 21.2.1985 bearing No. 9970/D1/84 and stated that the Government had adopted a policy to this behalf and he had no discretion thus to do anything in the matter. The Petitioner's imminent problem, when he moved this Court, it appears, was attended to by the Respondents, pursuant to the order in W.M.P. No. 613 of 1986 in W.P. No. 5506 of 1985 dated 17.6.1986. Subsequent events however during the pendency of the writ petition, are stated by the Petitioner in an additional affidavit in the following words.

(4) In para 11 of the main affidavit in support of this writ petition, W.P. No. 5506/85 we conceded that as alternative we may be permitted to run additional English medium sections with the permission of Government to collect nominal fees from students.

(5) The third Respondent passed G.O. Ms. No. 601 dated 21-6-93 enclosed in the first additional typed set, wherein new English medium sections are permitted as unaided ones notwithstanding the fact that the institution is an aided one.

(6) Petitioners humbly agree to abide the conditions of G.O. Ms. No. 601 dated 21.6.93.

(7) In 1985 at the time of filing the school at 6th std. 70 students were studying in 8 sections in total 562 pupil. In 1985 total strength of the school was 2261 but at present it is double, crossing 4000 pupil.

(8) At present, in most of the sections from 6th to 10th and in other Higher section in one Section 140 to 150 students and girls or boys study.

(9) We have R.C.C. buildings infrastructure and faculty to conduct three further English medium sections from 6th to 10th standards.

(10) By additional 3 sections of English medium in each standard, with the

students afford to pay government approved fees every month the other sections will be with students of 100 or more so that the quality of education in Tamil as well as English medium will improve.

(11) The advisable standard as per Educational scholars is 30 students per class.

(12) Under the above circumstances, it is prayed that the Hon''ble High Court may be pleased to permit the Petitioner school to run additional

three section of English medium on condition Petitioner complying necessary infrastructure facilities and collect only nominal approved fees and

deposit in Government account.

They have sought accordingly a direction from the Court to the Respondents to permit them to run three additional sections of English medium on

fulfillment of the requisite conditions.

4. The Respondents, however have filed no return in time until the filing of the additional affidavit on behalf of the Petitioner and a counter has been

filed only after part hearing of the case to state as follows.

(4) The Government in G.O. Ms. No. 1584/Education/dated 8.10.86 have permitted the Director of School Education to accord sanction to grant

permission to open English Medium section in Standard VI by converting one of the existing Tamil medium section to the Petitioner Hindu Higher

Secondary School, Vaniyambadi, North Arcot subject to the condition that in other remaining sections in Standard VI the instructions shall be

given through Tamil medium as per the orders of the High Court, Madras, in CMP No. 613/86 in W.P. No. 5506/85 dated 17.6.86. Accordingly,

the Hindu Higher Secondary School, Vaniyambadi, North Arcot District was permitted by the second Respondent in his proceedings No. Rc. No.

23107/L3/86 dated 22-2-87 to give instruction in English either by commencing a fresh section or by converting an existing section in VI standard.

This was on the conditions that in the other 6 sections the instructions shall be given through Tamil medium only. Now the school is running one

English Medium section accordingly. The prayer in the writ petition has been complied with and hence the W.P. is liable to be dismissed as

infructuous.

(5) The mate consideration for limiting the number of English medium section is that.

(i) the public or parents have got the option or facility to admit their children in recognised matriculation schools if they are keen on English

Medium.

(ii) As far as possible, the English medium section in the Government and in aided schools should be kept to the minimum to propagate Tamil

which is the regional and official language.

(6) It is respectfully submitted that the medium of instructions in recognised schools for the purpose of free education in "Tamil" only since the

official language of Tamil Nadu is Tamil only. Hence the continuance of English Medium instructions shall be subject to the Government policy

only.

5. Political considerations of people in power, whether in the Centre, or, in the State Governments, do on many occasions prompt them to act

some times in haste on considerations, which hardly find support from the Constitution of India and the laws made there under. Courts have

however to keep their hands of politics and that any decision or act of the Government in the Centre or in the State or any authority functioning

under them, strictly in accordance with law. A policy which is not in tune with the scheme of administration, as envisaged under the Constitution of

India, and the laws framed thereunder, cannot be thrust upon people living in any State of the country and in case any Government Orders are

issued by any one of them, they must show that the orders issued by them, are not in conflict with any existing law or are in no way subversive of

the right of the people, who are living in the State. Amongst the various types of educational institutions in the State of Tamil Nadu, the private

schools, are brought under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Act 29 of 1974) (hereinafter referred to as the

Act). Section 3 of the Act provides that the Government may regulate the different studies of education and courses of instruction in Private

Schools. Rule making power to carry out the purposes of the Act is delegated to the State Government u/s 56 of the Act. Before Tamil Nadu Act

29 of 1974 came to occupy the field, it appears, however, that certain Government instructions were issued and one such instruction in G.O. Ms.

No. 1853 Education, dated 7th November, 1970, provided inter alia, that courses of instructions shall ordinarily be given through the regional

language, pupils, whose mother tongue is different from the regional language may be given instruction through the medium of their mother tongue

or any language other than the regional language provided that there is a minimum strength of 45 pupils in the three standards in the respective

stages of the secondary schools, viz., Standards VI to VIII and IX and X. Love for one's own language and concern to impart education to

children in their mother tongue are nicely stated in the Government Order referred to above and care is expressed for pupils,

whose mother tongue is different from the regional language, is indeed a welcome Approach. The Petitioner has demanded nothing more than what

is contemplated in the said Government Order and has affirmed in the affidavit before this Court that it would demand sections in Standards VI to

VIII and IX and X using English as the medium of instruction only after fulfilling the conditions therein. There is no reason why any Director of

School Education, who is authorised by the Government to act in this behalf, would refuse permission to impart education in English medium to

pupils, who desire to learn through English medium.

6. Mrs. Saraswathi Prasad, learned Additional Government Pleader for the Respondents 1 to 3 has however contended (1) that this Court should

decline any prayer of the Petitioner, which is introduced only in the first additional affidavit and dismiss the petition as infructuous. According to her,

the petition must fail as infructuous because, as per the direction of this Court in the writ miscellaneous petition, Respondents have permitted one

English medium section in the Petitioner school. (2) The Government policy of the day, according to her, is to discourage Institution seeking

recognition under the Act and accordingly receiving aid from the Government to instruct students in languages other than Tamil because schools

like the one before the Court, i.e. Petitioner, who have been imparting instructions to students in Tamil, may switch over to English and other

mediums of instructions and that would cause injury to the cause of Tamil, the language of the region and the official language of the State. She has

submitted that in case any institution is desirous of choosing English or any other language as the medium of instruction, it may seek

affiliation/recognition elsewhere, i.e. recognition, which is extended to Matriculation schools by the State Government or other Authorities, who

conduct Secondary Higher Secondary examinations.

7. It is not possible, however, to recognise any force of law in any of the contentions of the Learned Counsel for the Respondents. Nothing has

been shown except the aforementioned Government Order, to support the statement in the counter affidavit that the Government of the State has a

policy not to permit English medium sections in the schools, in which Tamil is also used as a medium of instruction. This Government Order, has no

force of law, and is only directory in nature, of course, the order or instruction which is directory or mandatory, is also issued for being obeyed any

violation of such an order or instruction may not render anything done invalid, but observance and compliance therewith, to refuse to grant

recognition, may be legal and in order. The Government-instruction afore quoted, however, does not have any a sting to impinge in the Institution's

right to choose its own medium of instruction. It has rather stipulated that such institutions, which fulfil the conditions should be recognised for

imparting education in any language other than Tamil. The statement as to the policy at the Bar and in the counter and the desire to force Tamil as

the medium of instruction, Upon unwilling pupils, can hardly be sustained as a legal proposition, it is indeed surprising that it is said in a state where

a very large number of students and a very large number of people are not provided with proper education and the Government's promises to

establish schools to ensure that youngsters in the state are sent to schools, is yet to be fulfilled. If there is any sincere adherence to the policy, the

Government should proceed to ensure that directive principles of the state, policy are implemented in full in the State of Tamil Nadu and all children

below 14 years of age are given free education and students coming from the weaker sections of the society are fully encouraged and protected.

Regional or language chauvinism can never help any State or Government service to people and dedication to the welfare of the people of the state

alone will give a good name. I have no doubt in my mind that the Respondents are duty bound to honour their own commitment that all Institutions,

who fulfil the conditions as stipulated in the Government order, should be permitted to impart education in English or any other language, as

medium of instruction. The Respondents, however, shall always be entitled to refuse permission to any Institution or person, who does not fulfil the

required conditions.

8. In the result, the application is allowed, the Respondents are directed to consider the case of the Petitioner for recognition as prayed for, in

accordance with law and in the light of the observations, as above, on the facts of the case, however, there shall be no order as to costs.