

English Medium Students Parents Assn vs State Of Karnataka on 8 December, 1993

Equivalent citations: 1994 AIR 1702, 1994 SCC (1) 550, AIR 1994 SUPREME COURT 1702, 1994 (1) SCC 550, 1994 AIR SCW 1537, 1994 (1) UJ (SC) 291, (1993) 6 JT 634 (SC), 1993 (6) JT 634, 1994 UJ(SC) 1 291, 1994 (2) UPLBEC 1183, (1994) 2 UPLBEC 1183, (1994) 2 SCJ 633

Author: S. Mohan

Bench: S. Mohan

PETITIONER:

ENGLISH MEDIUM STUDENTS PARENTS ASSN

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT 08/12/1993

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 AIR 1702

1994 SCC (1) 550

JT 1993 (6) 634

1993 SCALE (4) 627

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- All these cases can be dealt with under a common judgment since the issue involved is the same. We will first take up the writ petition.

2.The Government of Karnataka, wedded to the cause of promotion of Kannada, appointed a Committee of six persons with Dr V.K. Gokak as the Chairman and referred the following questions:

(1)Should Sanskrit remain as the subject for study in the school syllabus?

(2)If so, how to retain it without its being an alternative for Kannada?

(3)Would it be proper to have Kannada as a compulsory subject as per the three language formula and should the option of selecting the remaining two languages be left to students themselves?

3.The Committee submitted its report dated January 27, 1981 which is popularly known as Dr Gokak Committee Report. The gist of the recommendations is as under:

(1) Kannada should be introduced as a compulsory subject for all children from 3rd standard;

(2) Kannada should be the sole first language for the Higher Secondary Schools (i.e. VIIIth, IXth and Xth standards) carrying 150 marks, and this should be implemented for Kannada speaking people from 1981-82 itself and in respect of others 1986-87, after taking necessary steps to teach Kannada to them from the IIIrd standard from the academic year 1981-82 itself.

4.On a consideration of the aboveboard report, the State Government passedan order dated April 30, 1982 which is to the following effect:

"ORDER NO. ED. 11 3 SOH 79, BANGALORE DATED 30TH APRIL 1982 Government have carefully examined the recommendations of the Committee and having regard to all aspects of the matter are pleased to order as follows:

1.At the secondary school level, the language pattern to be adopted will be as follows:

A. First Language:

Kannada or mother tongue (Urdu, Tamil, Telugu, Marathi, English, Hindi) to carry 150 marks.

B. Two other languages from the following: Kannada, Hindi, English, Sanskrit, Arabic, Persian, Urdu, Tamil, Telugu, Marathi to carry 100 marks each.

Note.- (1) Students offering a language other than Kannada as first language will study Kannada as a compulsory language and any one of the remaining languages (from Group B) both of which will be examination subjects for the SSLC.

(2) Students offering Kannada as first language will take any two of the above languages (from B Group) except Kannada.

2. Students coming from outside the State and joining VIIIth, IXth or Xth standard and who have not studied any of the languages listed as first language may be allowed to take additional English or Hindi as first language.

3. The teaching of Kannada from IIIrd standard in non-Kannada schools will commence from the academic year 1982-83 itself and the language pattern for the High Schools prescribed in para (1) above will come into effect from the academic year 1987-88.

4. Students joining VIIth standard from the academic year 1982-83 cannot take Sanskrit as first language or as composite first language. They can take Sanskrit as third language. This system will continue till the language pattern prescribed in para (1) above comes into force from the academic year 1987-88.

5. The Commissioner for Public Instruction was requested to take necessary action in the matter immediately to implement the above orders."

5. Since it was felt that the order dated April 30, 1982 did not sufficiently reflect the aspirations of the Kannada speaking people, the Government thought it expedient to place the entire matter before the State Legislature. The State Legislature resolved that in the High Schools Kannada must be the sole first regional language carrying 125 marks. In addition, a student might study any two languages carrying 100 marks each. 15 grace marks might be given for a period of 10 years to students belonging to linguistic minority community who study Kannada as first regional language and also those who study Hindi and whose mother tongue is not Hindi to enable the students whose mother tongue is not Kannada to learn Kannada as the sole first language in High Schools. Government have taken steps to start teaching Kannada from IIIrd standard from this academic year i.e. 1982-83. In addition to the above it was also recommended that the Government should take steps to start teaching Kannada from the first standard itself from 1982-83.

6. In accordance with the above resolution, the State Government made an order dated July 20, 1982. That order reads as follows:

"ORDER NO. ED 113 SOH 79, BANGALORE DATED 20TH JULY, 1982 Keeping in view the above, Government are pleased to direct as follows:

1. At the secondary school level, the language pattern to be adopted shall be as follows (from the academic year 1987-

88):

A. First language:

Kannada shall be the sole first language (to carry 125 marks) B. Two other languages from the following:

Urdu, Tamil, Telugu, Marathi, English, Hindi, Sanskrit, Arabic, Persian, Malayalam and Kannada (to carry 100 marks each) Note: 15 grace marks shall be given for a period of 10 years, (a) in the first language examination, to students whose mother tongue is not Kannada; and (b) in Hindi examination to students who study Hindi and whose mother tongue is not Hindi.

2. Students coming from outside the State and joining VIIIth or IXth or Xth standard in the State of Karnataka and who did not study Kannada earlier may be permitted to take English or Hindi as first language.

3. The teaching of Kannada from 1st standard in non-Kannada schools will commence from the academic year 1982-83 itself and the language pattern for High Schools prescribed in para (1) above will come into force from the academic year 1987-88.

4. Students joining VIIIth standard from the academic year 1982-83 should not be permitted to take Sanskrit as first language or as composite first language. They can, however, take Sanskrit as third language. This will continue till the language pattern prescribed in para (1) takes effect from the academic year 1987-88.

Note: Para (4) above which corresponds to para (4) of Government Order No. ED II 3 SOH 79 dated April 30, 1982 shall not be given effect to pending disposal of Writ Petition Nos. 18882 to 18885 of 1982 in the High Court of Karnataka wherein operation of the corresponding para (4) of Government Order dated April 30, 1982 has been stayed.

5. The Commissioner for Public Instruction is requested to take necessary action in the matter immediately to give effect to the above orders.

6. Separate orders will issue regarding constitution of the High Power Committee for effective implementation of the language policy.

7. The orders issued in Government Order No. ED 115 SOH dated April 30, 1982 are hereby withdrawn."

7. Pursuant to the abovesaid order, the Director of Public Instructions issued a Circular dated August 11, 1982 in the following terms:

"All the non-teaching Kannada schools in the State should begin to teach Kannada language from the 1st standard in the year 1982-83 as per instructions contained in para (3) of the Government Order. For that purpose the following periods of subjects and text books and lessons for study are prescribed as under:

- 1.Periods: Five periods a week i.e., two periods for work experience, 2 periods for physical training and one for singing education.
2. Text books: Kannada Bharathi.
3. Lessons for study: 1 to 16, 18 and 36 lessons.
4. Marks: This being a subject for examination, 100 marks are fixed.
5. Marks giving: Marks giving and examination rules as prescribed for the 1st standard are made applicable to this."

8. Aggrieved by the abovesaid order dated July 20, 1982 some of the educational institutions (the respondents in the civil appeal) preferred writ petitions in the High Court of Karnataka. It was contended that the order was violative of the rights of minorities under Articles 29 and 30 of the Constitution of India. It was further contended that it was discriminatory and violative of Article 14 of the Constitution of India. Initially, when the writ petitions came up for hearing before a Single Judge the matters were referred to a Division Bench. The Division Bench by an order dated January 27, 1984 referred the abovesaid questions to the Full Bench. The Full Bench in *General Secretary Linguistic Minorities Protection Committee v. State of Karnataka* expressed its opinion on the three questions as follows:

"(1) The Government Order dated July 20, 1982 insofar 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 insofar it compels the students joining High Schools to take Kannada as the sole first language and compelling the High Schools established by linguistic minorities to introduce Kannada as the sole first language in the secondary schools, is violative of Articles 29(1) and 30(1) of the Constitution.

(2) The Government Order dated July 20, 1982 insofar 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 insofar it compels the students joining High Schools to take Kannada as the sole first language and compelling the High Schools established by linguistic minorities to introduce Kannada as the sole first language in the secondary schools, is violative of the pledge of equality guaranteed under Article 14 of the Constitution.

1 AIR 1989 Kant 226, 264 (3) On the facts and in the circumstances of the case, the Circular dated August 11, 1982 issued by the Director of Public Instructions of the State Government is violative of Articles 14, 29(1) and 30(1) of the Constitution of India.

These petitions have to be posted before a Division Bench for final disposal of the petitions."

9. After rendering this opinion the matter was sent back to the Division Bench for disposal in accordance with the opinion and accordingly the cases were dismissed by a judgment dated January 25, 1989. It is against this judgment the State of Karnataka has come up in appeal in Civil Appeal Nos. 2856-57 of 1989. After this judgment the Government of Karnataka enunciated the policy in GO No. 87 PRU SE BHA 88, Bangalore dated June 19, 1989 which is to the following effect:

"In the circumstances explained in the preamble of this Government Order, 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 the 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 not 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 second language is introduced, the child has to study a second 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 language 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 standard 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 Vth to VIth 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 carrying 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.

(iv) The standard expected in second and third language 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 July 20, 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 student 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.

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"

10. The validity of the GO is questioned in the writ petition on the ground that it is violative of Articles 29 and 30 of the Constitution of India. Further, it is violative of Article 14 of the Constitution of India insofar as equal opportunity is not provided, in that, students belonging to minority communities are discriminated against. The infringement of right guaranteed under Article 350-A of the Constitution of India is apparent on the face of the impugned order as it prevents linguistic minority group to avail the opportunity of choices of languages.

11. Insofar as Kannada is made a compulsory language in spite of the clear direction in the judgment of the Full Bench of the Karnataka High Court it is bad. The impugned order throws an undue burden on the students since the children are obliged to study three languages from the primary school stage itself. Accordingly, a writ of mandamus is prayed for directing not to enforce the order in question.

12. In support of the grounds urged in the writ petition learned counsel for the petitioner would contend that Articles 29 and 30 must be read along with Article 39(f) because as on today that directive principle has assumed significance. If, therefore, the children are to be given proper opportunities in relation to education no language should be imposed. It is the choice of the parents to select the language for the child. Under the impugned order from Vth standard onwards Kannada is made compulsory. That cannot be done vis-a-vis linguistic minorities. In support of this reliance is placed on D.A. V. College v. State of Punjab². Again when Punjabi was made the sole medium of instruction this Court struck down such a provision as seen from D.A. V. College, Bhatinda v. State of Punjab³. If as laid down in Ahmedabad St. Xavier's College Society v. State of Gujarat⁴ the linguistic minorities have a fundamental right to conserve their language or culture. That cannot be interfered with and there cannot be an element of force obliging the student to study another language. By forcing them to study Kannada there is a violation of Article 14. Insofar as there is no equal opportunity an arbitrary act is liable to be struck down as held in Maneka Gandhi v. Union of India⁵.

13. The learned Advocate-General of Karnataka submits that the impugned government order is consistent with the judgment of the Full Bench. The State of Karnataka has accepted the judgment and has passed the impugned order. The GO is only a regulatory measure to bring about academic discipline. Having regard to the fact that the minority institutions exist in the State of Karnataka it is obligatory on the part of these institutions to impart knowledge of Kannada. This is the regional language of the State. The GO removes the compulsory element during the primary stage as is required to be provided under Article 350-A of the Constitution. The arguments of the petitioner proceed on a wrong basis as though minorities are

deprived of its right to preserve its language or culture. That is not so. There is no violation of either Article 29 or Article 30 nor even of Article 14 of the Constitution.

14. In order to appreciate the respective contentions it is necessary to find out the purport of the Full Bench decision of the Karnataka High Court 2 (1971) 2 SCC 269 1971 Supp SCR 688 3 (1971) 2 SCC 261 1971 Supp SCR 677 4 (1974) 1 SCC 717 (1975) 1 SCR 173 5 (1978) 1 SCC 248: (1978) 2 SCR 621, 686 reported in General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka 1. At page 265 it is inter alia stated thus:

"In W.P. Nos. 18848/1987 and 1097/1988: I. The writ petitions are allowed.

II. The impugned Government Order dated July 20, 1982 as also the Circular dated August 11, 1982 issued by the Director of Public Instructions pursuant to the aforesaid Government Order are declared void as offending Articles 14, 29(1) and 30(1) of the Constitution of India. III. 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."

15. The above ruling is based on the fact that Kannada was made compulsory even in the primary stage. That was the gravamen of the charge by the minority institutions (the writ petitioners). This was the reason why the Full Bench expressed its opinion on the three questions quoted above, in those terms.

16. In view of the liberty given to the State of Karnataka the present GO bearing No. 87 PROU SE BHA 88, Bangalore dated June 19, 1989 (quoted above) has come to be passed. A corrigendum also came to be issued on June 22, 1989 which reads as under:

"For para (i) of Order portion of the abovesaid Government Order dated June 19, 1989 i.e., from the words 'From 1st standard... subject to study' the following para shall be substituted:

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

17. A careful reading of the above GO would clearly indicate that the element of compulsion at the primary stage is no longer there because the GO is unequivocal when it says from 1st to IVth standards mother tongue will be the medium of instruction, only one language from Appendix I will be compulsory subject of study. From IIIrd standard onwards Kannada will be an optional subject for non-Kannada speaking students. It is to be taught on a voluntary basis there being no examination at the end of the year in Kannada language. This part of the GO is clearly in consonance with Article 350-A of the Constitution of India which reads as follows:

"Facilities for instruction in mother tongue at primary stage.- It shall be the endeavor 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."

18. This article is designed to implement one of the States Organisation Commission's important recommendations regarding safeguards for linguistic minorities in the States after reorganisation.

19. Mahatma Gandhi, the Father of the Nation, on more than one occasion emphasised on the mother tongue being the medium of instruction. He forcefully said:

"The babe takes its first lesson from its mother. I, therefore, regard it as a sin against the motherland to inflict upon her children a tongue other than their mother's for their mental development.

I hold it to be as necessary for the urban child as for the rural to have the foundation of his development laid on the solid rock of the mother tongue.

Who can calculate the immeasurable loss sustained by the nation owing to thousands of its young men having been obliged to waste years in mastering a foreign language and its medium, of which in their daily life they have the least use and in learning which they had to neglect their own mother tongue and their own literature."

20. All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and torturous. The basic knowledge can easily be garnered through the mother tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother tongue. When the pupil comes of age and reaches the Vth standard level, the second language is introduced. The child who has not taken Kannada as a first language is required to take it as a second language. At the secondary stage the three language formula is introduced. However, in cases of non-Kannada speaking students grace marks up to 15 are awarded. Certainly, it cannot be contended that a student studying in a school from Karnataka

need not know the regional language. It should be the endeavor of every State to promote the regional language of that State. In fact, the Government of Karnataka has done commendably well in passing this GO Therefore, to contend that the imposition of study of Kannada throws an undue burden on the students is untenable. Again to quote Mahatma Gandhi:

"The medium of instruction should be altered at once and at any cost, the provincial languages being given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating."

21. In view of this analysis, it is clear that there is no violation of Article 29 or 30 of the Constitution infringing the right of the minorities. In *D.A. V. College, Bhatinda v. State of Punjab*³ this Court held as under: (SCR p. 687 :

SCC p. 268, para 17) "The University by adopting Punjabi as the sole or exclusive medium for the Colleges affiliated to the University, notwithstanding the concessions granted, acted in excess of the power conferred on it. While the University can prescribe Punjabi as 'a' medium of instruction it cannot prescribe it as the exclusive medium nor compel affiliated Colleges established and administered by linguistic or religious minorities or by a section of the citizens who wish to conserve their language script and culture, to teach in Punjabi or take examination in that language with Gurmukhi script. The University Act having compulsorily affiliated these Colleges must of necessity cater to their needs and allow them to administer their institutions in their own way and impart instructions in the medium and write examination in their own script."

Therefore, this ruling has no application to the facts of the present case.

22. Reliance placed on this decision by learned counsel for the petitioner is misconceived. In *D.A. V. College v. State of Punjab*² it was held thus: (SCR pp. 703-04: SCC pp. 279- 80, paras 27 and 28) "Sub-section (3) of Section 4 also does not in our view transgress the guarantee under Article 29(1). Whether one may like it or not, linguistic States in this country have come to stay. The purpose and object of these linguistic states is to provide with greater facility the development of the people of that area educationally, socially and culturally, in the language of that region but while the State or the University has every right to provide for the education of the majority in the regional medium, it is subject to the restrictions contained in Articles 25 to 30. Neither the University nor the State can provide for imparting education in a medium of instruction in a language and script which stifles the language and script of any section of the citizens. Such a course will trespass on the rights of those sections of the citizens who have a distinct language or script and which they have a right to conserve through educational institutions of their own. In our view Section 4(3) does not lend itself to the interpretation that the medium of instruction of all affiliated Colleges has to be Punjabi. The provision, as we construe it, is for the promotion of Punjabi studies and research in and in the development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated Colleges particularly those of the minority to give instruction in the Punjabi language or in any way impede the right to conserve their

language, script and culture.

It is again contended that while provision is made in Sections 4(2) and 4(3) for the study and research of the life and teachings of Guru Nanak and for the study of Punjabi language, script and literature no similar provision is made for the study, of religious Heads of Hindus or for the study of Hindi and Devnagri script though Hindus form a substantial portion of the population of the State. These provisions therefore are discriminatory and violative of Article 14 of the Constitution. This argument in our view is devoid of merit. The State of Punjab is created as a unilingual State with Punjabi as its language and if provision is made for study of Punjabi language that does not furnish a ground for discrimination nor can the provision for study of the life and teachings of Guru Nanak afford any cause for complaint as in neither case as we have noticed, is there any compulsion on any person to undertake such studies nor is any of the communities prohibited from pursuing studies in respect of either Hindi or of the life and teachings of any Hindu saint. The facts of the case in our view do not attract Article 14."

The directive principle contained in Article 39(f) does not advance the case of the petitioner.

23.As rightly contended by the learned Advocate-General where the State by means of the impugned GO 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 v. Union of India*⁶ this Court laid down as under: (SCR p. 592 : SCC p. 355, para 6) "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."

6 (1990) 2 SCC 352: (1990) 1 SCR 588

24.In a matter relating to policy this Court should decline to interfere. In the result, we conclude the writ petition is devoid of merits and is accordingly dismissed.

25.As regards civil appeals we find the majority opinion of the High Court has approached the matter in a proper perspective. We have already extracted the relevant portions of the judgment. The sting of the earlier GOs and orders was the element of compulsion especially the children belonging to linguistic minorities from the first year of the primary school making Kannada as the sole first language in the secondary schools. Such a provision is violative of Articles 29 and 30 of the Constitution. We have no difficulty in upholding the well-considered judgment of the High Court. In fact, the State has accepted the position and issued GO dated June 19, 1989 which is impugned in

W.P. No. 536 of 1991. Therefore, the civil appeals will also stand dismissed. However, in the circumstances of the case, there shall be no order as to costs.