Supreme Court of India
State Of Karnataka & Anr vs Asstd.Mang.Of Gov.Rec.Prim.& ... on 6 May, 1947
Author: . .....
Bench: R.M. Lodha, A.K. Patnaik, Sudhansu Jyoti Mukhopadhaya, Dipak Misra, Fakkir Mohamed Kalifulla

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.5166-5190 OF 2013

State of Karnataka & Anr. … Appellants

Versus

Associated Management of (Government
Recognised – Unaided – English Medium)
Primary & Secondary Schools & Ors. … Respondents

WITH

WRIT PETITION (C) No.290 of 2009

Nallur Prasad & Ors. … Appellants

Versus

State of Karnataka & Ors. … Respondents

CIVIL APPEAL Nos.5191-5199 OF 2013

R.G. Nadadur & Ors. … Appellants

Versus

Shubodaya Vidya Samasthe & Anr. … Respondents

AND

CIVIL APPEAL No. 5090 OF 2014
(Arising out of S.L.P. (C) No.32858 of 2013)

State of Karnataka & Ors. … Appellants

Versus

Mohamed Hussain Jucka … Respondent

J U D G M E N T

A. K. PATNAIK, J.

Leave granted in S.L.P. (C) No.32858 of 2013.

Facts leading to the reference to the Constitution Bench:

2. The Government of Karnataka issued a Government Order dated 19.06.1989 prescribing that "from 1st standard to IVth standard, mother tongue will be the medium of instruction". On 22.06.1989, the Government of Karnataka issued a corrigendum substituting the aforesaid words in the earlier Government Order dated 19.06.1989 by the following words:

"from 1st standard to IVth standard, where it is expected that normally mother tongue will be the medium of instruction." The orders dated 19.06.1989 and 22.06.1989 were challenged before this Court and a Division Bench of this Court in its judgment dated 08.12.1993 in English Medium Students Parents Association v. State of Karnataka & Ors. [(1994) 1 SCC 550] held that the two orders of the Government of Karnataka were constitutionally valid.

3. Thereafter, in cancellation of all earlier orders pertaining to the subject, the Government of Karnataka issued a fresh order dated 29.04.1994 regarding the language policy to be followed in primary and high schools with effect from the academic year 1994-1995. Clauses 2 to 8 of the Government Order dated 29.04.1994, with which we are concerned in this reference, are extracted hereinbelow:-

> "2. The medium of instruction should be mother tongue or Kannada, with effect from the academic year 1994-95 in all Government recognized schools in classes 1 to 4.
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> 3. The students admitted to 1st standard with effect from the academic year 94-95, should be taught in mother tongue or Kannada medium.
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> 4. However, permission can be granted to the schools to continue to teach in the pre-existing medium to the students of standards 2 to 4 during the academic year 94-95.
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> 5. The students are permitted to change over to English or any other language as medium at their choice, from 5th standard.
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> 6. Permission can be granted to only students whose mother tongue is English, to study in English medium in classes 1 to 4 in existing recognized English medium schools.
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> 7. The Government will consider regularization of the existing unrecognized schools as per policy indicated in paragraphs 1 to 6 mentioned above. Request of schools who have complied with the provisions of the code of education and present policy of the government will be considered on the basis of the report of the Zilla Panchayat

routed through commissioner for public instructions.

8. It is directed that all unauthorized schools which do not comply with the above conditions, will be closed down." Thus, these clauses of the Government order dated 29.04.1994 provided that medium of instruction should be mother tongue or Kannada with effect from the academic year 1994-1995 in all Government recognized schools in classes I to IV and the students can be permitted to change over to English or any other language as medium of their choice from class V. The Government Order dated 29.04.1994, however, clarified that permission can be granted to only those students whose mother tongue is English, to study in English medium in classes I to IV in existing recognized English medium schools.

4. Aggrieved by the clauses of the Government Order dated 29.04.1994 which prescribed that the medium of instruction in classes I to IV in all Government recognized schools will be mother tongue or Kannada only, the Associated Management of Primary and Secondary Schools in Karnataka filed Writ Petition No.14363 of 1994 and contended inter alia that the right to choose the medium of instruction in classes I to IV of a school is a fundamental right under Articles 19(1)(a), 19(1)(g), 26, 29 and 30(1) of the Constitution and that the impugned clauses of the order dated 29.04.1994 of the Government of Karnataka are ultra vires the Constitution. The State of Karnataka and its officers, on the other hand, relied on the decision of the Division Bench of this Court in English Medium Students Parents Association v. State of Karnataka & Ors. (supra) and contended that the State in exercise of its power to regulate primary education can, as a matter of policy, prescribe that the medium of instruction in classes I to IV would be in mother tongue of the child or Kannada. The State of Karnataka also contended that Article 350A of the Constitution casts a duty on the State to provided adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups and the Government of Karnataka, after considering a report of experts in the field of education, has prescribed in the Government Order dated 29.04.1994 that medium of instruction for children studying in classes I to IV shall be in the mother tongue of the child.

5. A Full Bench of the Karnataka High Court heard the writ petition and all other connected writ petitions and in its common judgment dated 02.07.2008, held:

"(1) Right to education is a fundamental right being a species of right to life flowing from Article 21 of the Constitution. By virtue of Article 21-A right to free and compulsory primary education is a fundamental right guaranteed to all children of the age of six to fourteen years. The right to choose a medium of instruction is implicit in the right to education. It is a fundamental right of the parent and the child to choose the medium of instruction even in primary schools.

(2) Right to freedom of speech and expression includes the right to choose a medium of instruction.

(3) Imparting education is an occupation and, therefore, the right to carry on any occupation under Article 19(1)(g) includes the right to establish and administer an educational institution of one's choice. 'One's choice' includes the choice of medium of instruction.

(4) Under Article 26 of the Constitution of India every religious denomination has a right to establish and maintain an institution for charitable purposes which includes an educational institution. This is a right available to majority and minority religious denominations.

(5) Every section of the society which has a distinct language script or culture of its own has the fundamental right to conserve the same. This is a right which is conferred on both majority and minority, under Article 29(1) of the Constitution.

(6) All minorities, religious or linguistic, have a right to establish and administer educational institutions of their choice under Article 30(1) of the Constitution.

(7) Thus, every citizen, every religious denomination, and every linguistic and religious minority, have a right to establish, administer and maintain an educational institution of his/its choice under Articles 19(1)(g), 26 and 30(1) of the Constitution of India, which includes the right to choose the medium of instruction.

(8) No citizen shall be denied admission to an educational institution only on the ground of language as stated in Article 29(2) of the Constitution of India.

(9) The Government policy in introducing Kannada as first language to the children whose mother tongue is Kannada is valid. The policy that all children, whose mother tongue is not Kannada, the official language of the State, shall study Kannada language as one of the subjects is also valid. The Government policy to have mother tongue or regional language as the medium of instruction at the primary level is valid and legal, in the case of schools run or aided by the State.

(10) But, the Government policy compelling children studying in other Government recognized schools to have primary education only in the mother tongue or the regional language is violative of Article 19(1) (g), 26 and 30(1) of the Constitution of India." The High Court accordingly allowed the writ petitions and quashed clauses 2, 3, 6 and 8 of the Government order dated 29.04.1994 in their application to schools other than schools run or aided by the Government but upheld rest of the Government order dated 29.04.1994.

6. Aggrieved by the judgment dated 02.07.2008 of the Full Bench of the High Court, the State of Karnataka and the Commissioner of Public Instruction, Bangalore, have filed Civil Appeal Nos.5166-5190 of 2013. Fifteen educationists claiming to be keen that primary education in the State of Karnataka from I to IV standard should be in the mother tongue of the child or Kannada have also filed Writ Petition (C) No.290 of 2009 for declaring that the Government Order dated 29.04.1994 is constitutionally valid in respect of unaided Government recognised primary schools and for a writ of mandamus directing the State Government to implement the Government Order dated 29.04.1994.

7. As the judgment dated 02.07.2008 of the Full Bench of the High Court was not implemented for more than a year, a Division Bench of the High Court passed an order dated 03.07.2009 in Writ Appeal No.1682 of 2009 and other connected matters asking the Government of Karnataka to

comply with the judgment dated 02.07.2008 of the Full Bench of the High Court and aggrieved by the said order dated 03.07.2009 in Writ Appeal No.1682 of 2009, different officers of the Education Department of the Government of Karnataka have filed Civil Appeal Nos.5191-5199 of 2013.

8. A learned Single Judge of the Karnataka High Court directed the State of Karnataka in Writ Petition No.3044 of 1994 to grant permission to an institution to run English medium school from 1st standard to 4th standard by order dated 22.01.1996. The order of the learned Single Judge was challenged before the Division Bench of the High Court in Writ Appeal No.2740 of 1997, but on 21.02.2012 the Division Bench of the High Court dismissed the writ appeal saying that the order dated 08.07.2008 of the Full Bench of the High Court in Associated Management of Primary and Secondary Schools in Karnataka v. The State of Karnataka & Ors. has not been stayed by this Court in the Special Leave Petition under Article 136 of the Constitution. Aggrieved by the order dated 21.02.2012 passed by the Division Bench in Writ Appeal No.2740 of 1997, the State of Karnataka has filed Special Leave Petition (C) No.32858 of 2013.

The questions referred to the Constitution Bench:

9. All these matters were heard by a Division Bench of this Court and on 05.07.2013, the Division Bench passed an order referring the following questions for consideration by the Constitution Bench:

"(i) What does Mother tongue mean? If it referred to as the language in which the child is comfortable with, then who will decide the same?

(ii) Whether a student or a parent or a citizen has a right to choose a medium of instruction at primary stage?

(iii) Does the imposition of mother tongue in any way affect the fundamental rights under Article 14, 19, 29 and 30 of the Constitution?

(iv) Whether the Government recognized schools are inclusive of both government-aided schools and private & unaided schools?

(v) Whether the State can by virtue of Article 350-A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools?" In its order dated 05.07.2013, the Division Bench also observed that the Constitution Bench may take into consideration ancillary or incidental questions which may arise during the course of hearing of the cases and further directed that all other connected matters including petitions/applications shall be placed before the Constitution Bench.

Contentions of learned counsel for the State of Karnataka:

10. At the hearing before the Constitution Bench, Professor Ravi Varma Kumar, the learned Advocate General for the State of Karnataka, submitted that the State Reorganization Commission,

1955 in paragraphs 773 to 777 of its report has referred to the resolution adopted at the Provincial Education Ministers' Conference held in August, 1949 that the medium of instruction and examination in the junior basic stage must be the mother tongue of the child and that the mother tongue of the child will be the language declared by the parent or guardian to be the mother tongue. He submitted that this resolution adopted at the Provincial Education Ministers' Conference held in August, 1949, has been approved by the Government of India and now serves as a guide for the State Governments in making arrangements for the education of the school-going children in the respective States. He submitted that after the report of the State Reorganization Commission, 1955, Article 350A has been introduced in the Constitution providing that 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 a linguistic minority group.

11. The learned Advocate General submitted that, in this background, the Government order dated 29.04.1994 was issued by the Government of Karnataka prescribing that the medium of instruction for children studying in classes I to IV in all primary schools recognized by the Government will be mother tongue or Kannada from the academic year 1994-95. He cited the judgment of the Division Bench of this Court in English Medium Students Parents Association v. State of Karnataka & Ors. (supra) to submit that experts are unanimous in their view that the basic knowledge can easily be acquired by a child through his mother tongue and that the State Government has the power to lay down a policy prescribing that the medium of instruction for children studying in I to IV standards in all Government recognized schools in Karnataka will be Kannada or mother tongue.

12. The learned Advocate General next submitted that the High Court was not right in coming to the conclusion that the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution includes the right to choose a medium of instruction and that in exercise of this right, it is a fundamental right of the parents and the child to choose a medium of instruction in the primary schools. He submitted that similarly the High Court was not right in coming to the conclusion that the right to establish and administer an educational institution under Articles 19(1)(g) and 26 of the Constitution will include the right to choose a medium of instruction. He submitted that in any case if the State takes a policy decision that the medium of instruction for the children studying in classes I to IV will be their mother tongue, such a policy decision of the State Government will be within the regulatory powers of the State. He cited the judgment of this Court in Gujarat University & Anr. v. Shri Krishna Ranganath Mudholkar & Ors. [AIR 1963 SC 703] in which a Constitution Bench of this Court has taken the view that the State Legislature has the regulatory power to legislate on medium of instruction in institutions of primary or secondary education. He submitted that under Article 162 of the Constitution, the State Government has executive powers co-extensive with its legislative powers and therefore the Government order dated 29.04.1994 prescribing that the medium of instruction of all children studying in classes I to IV will be mother tongue was well within the powers of the State Government. He argued that even if it is held that children and parents have a right to choose a medium of instruction for classes I to IV or that citizens who have established schools have a fundamental right under Article 19(1)(g) of the Constitution to choose the medium in which education will be imparted to the children studying in their schools, the State could restrict their right by virtue of its regulatory powers and prescribe that

a medium of instruction for children studying in classes I to IV will be their mother tongue.

13. The learned Advocate General next submitted that the High Court was again not right in coming to the conclusion that the Government policy compelling children studying in schools recognized by the Government to have primary education only in mother tongue or the regional language is violative of Article 30(1) of the Constitution. He submitted that so long as the State permits a medium of instruction to be the same as the language of the minority community which has established the educational institution, the fundamental rights under Article 29(1) and 30(1) of the Constitution are not violated because the purport of Articles 29(1) and 30(1) of the Constitution is to promote the language of every community including the language of a linguistic minority. He cited State of Bombay v. Bombay Education Society & Ors. [AIR 1954 SC 561] wherein a Constitution Bench of this Court has held that a minority group such as the Anglo-Indian community, which is based, inter alia, on religion and language, has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institutions of its choice under Article 30(1) and, therefore, there must be implicit in such fundamental right, the right to impart education in its own institution to the children of its own community in its own language. He also cited D.A.V. College, etc. etc. v. State of Punjab & Ors. [(1971) 2 SCC 269] wherein a Constitution Bench of this Court has held that the purpose and object of linguistic States is to provide greater facility for 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 of the Constitution and accordingly neither the University nor the State could impart education in a medium of instruction in a language and script which stifles the language and script of any section of the citizens. According to him, the rights under Articles 29(1) and 30(1) of the Constitution are thus not affected by the order dated 29.04.1994 of the Government of Karnataka because it prescribes that the students in classes I to IV will be imparted education in the medium of instruction of the mother tongue of the children and the mother tongue of the children will be none other than the language of their linguistic community.

14. The learned Advocate General further submitted that this Court has held in Usha Mehta & Ors. v. State of Maharashtra & Ors. [(2004) 6 SCC 264] that the State can impose reasonable regulations for protecting the larger interests of the State and the nation even in the case of minority educational institutions enjoying the right under Article 30(1) of the Constitution and the “choice” that could be exercised by the minority community in establishing educational institutions is subject to such reasonable regulations imposed by the State, but while imposing regulations, the State shall be cautious not to destroy the minority character of institutions. He argued that the Government Order dated 29.04.1994 by providing that the medium of instruction of children studying in classes I to IV in primary schools will be the mother tongue of the children does not in any way destroy the minority character of the institutions protected under Article 30(1) of the Constitution.

15. The learned Advocate General submitted that the High Court has relied on the judgment of this Court in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. [(2002) 8 SCC 481] in coming to the conclusion that the Government order dated 29.04.1994 violates the fundamental rights under

Articles 19(1)(g) and 30(1) of the Constitution. He submitted that the High Court has not noticed some of the paragraphs of the majority judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra) in coming to its conclusions. He referred to the paragraph 54 of the aforesaid majority judgment in which it has been held that the right to establish and maintain institutions for religious and charitable purposes under Articles 19(1)(g) and 26(a) of the Constitution is subject to regulations made by the State for maintaining educational standards etc. He referred to paragraph 115 of the majority judgment in which it has also been held that the right of the religious and linguistic minorities to establish and administer educational institutions of their choice is not absolute and that such institutions have to follow statutory measures regulating educational standards etc. He submitted that in paragraph 122 of the majority judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), however, it has been held that such regulations must satisfy the test of reasonableness. He submitted that the Government Order dated 29.04.1994 prescribing that the medium of instruction for all children studying in classes I to IV in primary schools in the State of Karnataka would be the mother tongue of the children is a regulatory measure and satisfies the test of reasonableness.

16. The learned Advocate General finally submitted that Article 21A of the Constitution is titled 'Right to Education' and provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. He argued that Article 21A is thus the sole depository of the right to education and it is not open for any citizen to invoke any other fundamental right like Article 19(1)(a) or Article 21 to contend that he has a right to be educated in a medium of instruction of his choice. He submitted that Parliament has made the Right of Children to Free and Compulsory Education Act, 2009 under Article 21A of the Constitution, and Section 29(2)(f) of this Act provides that the medium of instruction shall, as far as practicable, be the child's mother tongue. He submitted that the High Court was, therefore, not right in coming to the conclusion that the right to choose a medium of instruction is implicit in the right to education under Articles 21 and 21A of the Constitution.

Contentions on behalf of the respondents who support the Government order dated 29.04.1994:

17. Mr. K. N. Bhat, learned senior counsel appearing for respondent nos. 2, 5, 6, 7, 9, 10, 11, 15, 17 and 18 in Civil Appeal No.5166 of 2013, submitted that mother tongue is the language in which the child is the most comfortable. He cited Usha Mehta & Ors. v. State of Maharashtra & Ors. (supra) in which a three-Judge Bench of this Court clearly held that the State can impose reasonable regulations in the larger interests of the State and the nation even on institutions established by religious and linguistic minorities and protected under Article 30(1) of the Constitution and that the word 'choice' in Article 30 of the Constitution is subject to such regulation imposed by the State. He submitted that the only caution that the State has to exercise is that by imposing such regulations the minority character of the institutions is not destroyed. He submitted that accordingly if the State Government has issued the order dated 29.04.1994 under Article 162 of the Constitution prescribing that the medium of instruction for all children studying in classes I to IV would be mother tongue, such an order being regulatory in nature and not affecting the minority character of the institutions, does not in any way affect the right guaranteed under Article 30(1) of the Constitution. He submitted that the conclusion of the High Court that the Government Order dated 29.04.1994

insofar as it compels minority institutions to adopt medium of instruction for students studying in classes I to IV as mother tongue is violative of right under Article 30 of the Constitution, therefore, is not correct.

18. Mr. Bhat next submitted that Article 19(1)(a) of the Constitution guarantees the right to freedom of speech and expression to all citizens and the only restrictions that the State can impose on this right are those mentioned in Article 19(2) of the Constitution. He submitted that a reading of Article 19(2) of the Constitution will show that it empowers the State to make law imposing reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, but does not empower the State to impose reasonable restrictions in the interest of general public. He vehemently argued that if the right to freedom of speech and expression is interpreted so as to include the right to choose the medium of instruction, the State will have no power to impose any reasonable restrictions in the larger interests of the State or the nation on this right to choose the medium of instruction and such an interpretation should be avoided by the Court. He submitted that the rationale of the right to freedom of speech and expression in Article 19(1)(a) of the Constitution and the power of the State to impose reasonable restrictions under Article 19(2) of the Constitution in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, have been explained in the judgments of P.B. Sawant, J. and B.P. Jeevan Reddy, J. in Secretary, Ministry of Information & Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Ors. [(1995) 2 SCC 161]. He submitted that considering these serious consequences which may arise if we take the view that the right to freedom of speech and expression includes the right to choose medium of instruction, we should leave this question open if it is not necessary to decide it in this case.

Contentions on behalf of the respondents who challenge the Government order dated 29.04.1994:

19. Mr. Mohan V. Katarki, learned counsel appearing for respondent no.1 in Civil Appeal No.5166 of 2013, submitted that under Article 350A of the Constitution, the State has no power to compel any educational institution to adopt mother tongue as the medium of instruction. He submitted that Article 350A of the Constitution only casts a duty on every State and 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 does not empower the State to interfere with right to freedom of speech and expression and the right to establish and administer schools under Article 19 of the Constitution.

20. Mr. Katarki submitted that the reliance placed by the State on the decision of this Court in English Medium Students Parents Association v. State of Karnataka & Ors. (supra) in which the earlier Government Order dated 22.06.1989 prescribing mother tongue as the medium of instruction was upheld is misplaced as the reason given by this Court in the aforesaid decision for upholding the order dated 22.06.1989 of the State Government is that the order did not have an element of compulsion. He submitted that the Government order dated 29.04.1994, on the other

hand, makes it compulsory for all Government recognized schools including private unaided schools to adopt mother tongue of the child as the medium of instruction in classes I to IV.

21. Mr. Katarki submitted that this Court has held in Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. [(1993) 1 SCC 645] that the right to education of a child up to the age of 14 years is part of the right to life under Article 21 of the Constitution and, therefore, the High Court was right in coming to the conclusion that the right to be educated in the medium of instruction of the choice of the child is also part of the right under Article 21 of the Constitution. He submitted that similarly the right to freedom of speech and expression will include the right to choose the medium of instruction in which the child is to be educated and the High Court was, therefore, right in coming to the conclusion that compelling a child to be educated through a particular medium of instruction, such as his mother tongue, is violative of his right under Article 19(1)(a) of the Constitution.

22. Mr. Katarki next submitted that Article 30(1) of the Constitution confers on religious and linguistic minority communities the right to establish and administer educational institutions of their choice and the word "choice" clearly indicates that the State cannot compel an institution established by a religious or linguistic minority to impart education in their institution to the children of classes I to IV only in the mother tongue of the children. In support of this submission, he relied on the decisions of this Court in In re The Kerala Education Bill, 1957 [1959 SCR 995], Rev. Father W. Proost & Ors. v. The State of Bihar & Ors. [1969 (2) SCR 73], D.A.V. College, etc. etc. v. State of Punjab & Ors. (supra), D.A.V. College, Bhatinda, etc. v. The State of Punjab & Ors. (supra) and The Ahmedabad St. Xavier's College Society & Anr. v. State of Gujarat & Anr. [(1974) 1 SCC 717]. He submitted that even the educational institutions which have not been established by a religious or linguistic minority have a right to freedom under Articles 19(1)(g) and 26 of the Constitution and in exercise of this right, they have a right to choose the medium of instruction in which they want to impart education to their students. In support of this proposition, he relied on the majority judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra) and P.A. Inamdar & Ors. v. State of Maharashtra & Ors. [(2005) 6 SCC 537].

23. Mr. G.R. Mohan, appearing for respondent Nos.10 and 11 in Civil Appeal No.5186 of 2013, while adopting the aforesaid submissions of Mr. Katarki, further submitted that Article 26(3) of the Universal Declaration of Human Rights adopted by the members of the United Nations including India provides that parents have a prior right to choose the kind of education that shall be given to their children. Mr. K.V. Dhananjay, learned counsel appearing for some of the respondents, also adopted the submissions of Mr. Katarki.

Our answers to the five questions referred to us:

24. Question No.(i): "What does Mother tongue mean? If it referred to as the language in which the child is comfortable with, then who will decide the same?".

As this question is referred to us in context of our Constitution, we have to answer this question by interpreting the expression "mother tongue" as used in the Constitution. We must not forget that the Constitution is not just an ordinary Act which the court has to interpret for the purpose of declaring

the law, but is a mechanism under which the laws are to be made. As Kania C.J. observed in A.K. Gopalan v. State of Madras (AIR 1950 SC 27):

> "Although we are to interpret words of the Constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting – to remember that it is a Constitution, a mechanism under which laws are to be made and not a mere Act which declares what the law is to be." The only provision in the Constitution which contains the expression "mother tongue" is Article 350A. We must therefore understand why Article 350A was inserted in the Constitution. The State Reorganization Commission, 1955, made recommendations for reorganizing the States on linguistic basis. In Part IV of its report, the State Reorganization Commission, 1955, has devoted Chapter I to "safeguards for linguistic groups" and has recommended that the linguistic minorities of the States should have the right to instruction in mother tongue. In support of this recommendation, the State Reorganization Commission, 1955, has relied on the resolution adopted at the Provincial Education Ministers' Conference held in August, 1949, which had been approved by the Government of India and which had served as a guide to the State Governments in making arrangements for the education of the school-going children whose mother tongue is different from the regional language. This resolution is extracted hereinbelow:
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> "The medium of instruction and examination in the junior basic stage must be the mother tongue of the child and, where the mother tongue is different from the regional or State language, arrangements must be made for instruction in the mother tongue by appointing at least one teacher, provided there are not less than 40 pupils speaking the language in the whole school or 10 such pupils in a class. The mother tongue will be the language declared by the parent or guardian to be the mother tongue. The regional or State language, where it is different from the mother tongue, should be introduced not earlier than Class III and not later than the end of the junior basic stage. In order to facilitate the switching-over to the regional language as medium in the secondary stage, children should be given the option of answering questions in their mother tongue, for the first two years after the junior basic stage." From the aforesaid resolution adopted at the Provincial Education Ministers' Conference held in August, 1949, and from the recommendations of the State Reorganization Commission, 1955, it is clear that while recommending language as the basis for reorganization of the States in India, the Commission wanted to ensure that the children of the linguistic minority which had a language different from the language of the State were imparted education at the primary stage in their mother tongue. In the resolution adopted at the Provincial Education Ministers' Conference held in August, 1949, extracted above, it was also clarified that the mother tongue will be the language declared by the parent or guardian to be the mother tongue.

> 25. After the recommendations of the State Reorganization Commission, 1955, Article 350A was inserted in the Constitution by the Constitution (VIIth Amendment) Act. Article 350A reads:
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> "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." A mere reading of Article 350A of the Constitution would show that it casts a duty on every State and 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.

Hence, the expression 'mother tongue' in Article 350A means the mother tongue of the linguistic minority group in a particular State and this would obviously mean the language of that particular linguistic minority group.

26. Mother tongue in the context of the Constitution would, therefore, mean the language of the linguistic minority in a State and it is the parent or the guardian of the child who will decide what the mother tongue of child is. The Constitution nowhere provides that mother tongue is the language which the child is comfortable with, and while this meaning of "mother tongue" may be a possible meaning of the 'expression', this is not the meaning of mother tongue in Article 350A of the Constitution or in any other provision of the Constitution and hence we cannot either expand the power of the State or restrict a fundamental right by saying that mother tongue is the language which the child is comfortable with. We accordingly answer question no.(i).

27. Question No.(ii): Whether a student or a parent or a citizen has a right to choose a medium of instruction at primary stage ?

The High Court has held that the parent or a child has a right to choose medium of instruction in primary schools as part of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution and the right to choose the medium of instruction is also implicit in the right to education under Articles 21 and 21A of the Constitution. We have to decide whether these conclusions of the High Court that the parent or a child has a right to choose the medium of instruction in primary schools as part of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution and also has a right to choose the medium of instruction in primary schools under Articles 21 and 21A of the Constitution are correct.

28. Article 19 of the Constitution is titled "Right to Freedom" and it states that all citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) x x x

(g) to practise any profession, or to carry on any occupation, trade or business.

The word 'freedom' in Article 19 of the Constitution means absence of control by the State and Article 19(1) provides that the State will not impose controls on the citizen in the matters mentioned in sub-clauses

(a),(b),(c),(d),(e) and (g) of Article 19(1) except those specified in clauses 2 to 6 of Articles 19 of the Constitution. In all matters specified in clause (1) of Article 19, the citizen has therefore the liberty to choose, subject only to restrictions in clauses (2) to (6) of Article 19.

29. One of the reasons for giving this liberty to the citizens is contained in the famous essay 'On Liberty' by John Stuart Mill. He writes:

"Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong." According to Mill, therefore, each individual must in certain matters be left alone to frame the plan of his life to suit his own character and to do as he likes without any impediment and even if he decides to act foolishly in such matters, society or on its behalf the State should not interfere with the choice of the individual. Harold J. Laski, who was not prepared to accept Mill's attempts to define the limits of State interference, was also of the opinion that in some matters the individual must have the freedom of choice. To quote a passage from "A Grammar of Politics" by Harold J. Laski:

> "My freedoms are avenues of choice through which I may, as I deem fit, construct for myself my own course of conduct. And the freedoms I must possess to enjoy a general liberty are those which, in their sum, will constitute the path through which my best self is capable of attainment. That is not to say it will be attained.

It is to say only that I alone can make that best self, and that without those freedoms I have not the means of manufacture at my disposal." Freedom or choice in the matter of speech and expression is absolutely necessary for an individual to develop his personality in his own way and this is one reason, if not the only reason, why under Article 19(1)(a) of the Constitution every citizen has been guaranteed the right to freedom of speech and expression.

30. This Court has from time to time expanded the scope of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution by consistently adopting a very liberal interpretation. In Romesh Thappar v. The State of Madras [AIR 1950 SC 124], this Court held that freedom of speech and expression includes freedom of propagation of ideas which is ensured by freedom of circulation and in Sakal Papers (P) Ltd. v. Union of India [AIR 1962 SC 305], this Court held that freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views. In Bennett Coleman & Co. v. Union of India [(1972)2 SCC 788], this Court also held that the freedom of press means right of citizens to speak, publish and express their views as well as right of people to read and in Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana [(1988) 3 SCC 410], this Court has further held that freedom of speech and expression includes the right of citizens to exhibit films on Doordarshan.

31. This Court also went into the question whether receiving information or education by a citizen was part of his right to freedom of speech and expression in Secretary, Ministry of Information & Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Ors. (supra) and held that the right to freedom of speech and expression in Article 19(1(a) of the Constitution will not only include the right to impart information but also the right to receive information. In his opinion, P.B. Sawant, J. observed that the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. In line with the earlier decisions of this Court, we are of the view that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution includes the freedom of a child to be educated at the primary stage of school in a language of the choice of the child and the State cannot impose controls on such choice just because it thinks that it will be more beneficial for the child if he is taught in the primary stage of school in his mother tongue. We, therefore, hold that a child or on his behalf his parent or guardian, has a right to freedom of choice with regard to the medium of instruction in which he would like to be educated at the primary stage in school. We cannot accept the submission of the learned Advocate General that the right to freedom of speech and expression in Article 19(1)(a) of the Constitution does not include the right of a child or on his behalf his parent or guardian, to choose the medium of instruction at the stage of primary school.

32. We cannot also accept the submission of Mr. Bhat that if the right to freedom of speech and expression in Article 19(1)(a) of the Constitution is held to include the right to choose the medium of instruction at the stage of primary school, then the State will have no power under clause (2) of Article 19 to put reasonable restrictions on the right to freedom of speech and expression except in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. In our view, the Constitution makers did not intend to empower the State to impose reasonable restrictions on the valuable right to freedom of speech and expression of a citizen except for the purposes mentioned in clause (2) of Article 19 of the Constitution because they thought that imposing other restrictions on the freedom of speech and expression will be harmful to the development of the personality of the individual citizen and will not be in the larger interest of the nation. In the words of Pantanjali Shastri speaking for the majority of the judges in Romesh Thappar v. The State of Madras (supra):

> "Thus, very narrow and stringent limits have been set to permissible legislative abridgment of the right of free speech and expression and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible.

A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison who was 'the leading spirit in the preparation of the First Amendment of the Federal Constitution', that "it is better leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits" (Quoted in Near v. Minnesotta, 283 U.S. 607 at 717-8)." Therefore, once we come to the conclusion that the freedom of speech and expression will include the right of a child to be educated in the medium of instruction of his choice, the only permissible limits of this right will be those covered under clause (2) of Article 19 of the Constitution and we cannot exclude such right of a child from the right to freedom of speech and expression only for the reason that the State will have no power to impose reasonable restrictions on this right of the child for purposes other than those mentioned in Article 19(2) of the Constitution.

33. We may now consider whether the view taken by the High Court in the impugned judgment that the right to choose a medium of instruction is implicit in the right to education under Articles 21 and 21A of the Constitution is correct. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. In Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. (supra), a Constitution Bench of this Court has held that under Article 21 of the Constitution every child/citizen of this country has a right to free education until he completes the age of 14 years. Article 21A of the Constitution provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Under Articles 21 and 21A of the Constitution, therefore, a child has a fundamental right to claim from the State free education upto the age of 14 years. The language of Article 21A of the Constitution further makes it clear that such free education which a child can claim from the State will be in a manner as the State may, by law, determine. If, therefore, the State determines by law that in schools where free education is provided under Article 21A of the Constitution, the medium of instruction would be in the mother tongue or in any language, the child cannot claim as of right under Article 21 or Article 21A of the Constitution that he has a right to choose the medium of instruction in which the education should be imparted to him by the State. The High Court, in our considered opinion, was not right in coming to the conclusion that the right to choose a medium of instruction is implicit in the right to education under Articles 21 and 21A of the Constitution. Our answer to Question No.(ii), therefore, is that a child, and on his behalf his parent or guardian, has the right to choose the medium of instruction at the primary school stage under Article 19(1)(a) and not under Article 21 or Article 21A of the Constitution.

34. Question No.(iii): Does the imposition of mother tongue in any way affect the fundamental rights under Article 14, 19, 29 and 30 of the Constitution?

As the High Court has not come to the conclusion in the impugned judgment that imposition of mother tongue in any way affects the fundamental right under Article 14 of the Constitution, it is not necessary for us to decide this question. We will have to decide whether imposition of mother tongue in any way affects the fundamental rights under Articles 19, 29 and 30 of the Constitution.

35. Articles 29(1) and 30(1) of the Constitution are quoted hereinbelow:

> 29. Protection of interests of minorities:- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

30.Right of minorities to establish and administer educational institutions:- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." A reading of clause (1) of Article 29 of the Constitution provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same and clause (1) of Article 30 provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

36. In D.A.V. College, Bhatinda, etc. v. The State of Punjab & Ors. (supra), the Punjabi University in exercise of its power under Section 4(2) of Punjabi University Act (35 of 1961), made Punjabi the sole medium of instruction and examination in all colleges affiliated under Punjabi University. It was contended inter alia before this Court that prescription of such medium of instruction and examination in a language which is not the mother tongue of the minority which has established the educational institution is violative of the rights conferred under clause (1) of Article 29 and clause (1) of Article 30 of the Constitution and the Constitution Bench of this Court has upheld this contention in the following words:

> "The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) with Article 29(1)." Thus, a Constitution Bench of this Court in D.A.V. College, Bhatinda, etc. v. The State of Punjab & Ors. (supra) has already held that minorities have a right to establish and administer educational institutions of 'their choice', and therefore they have the choice of medium of instruction in which education will be imparted in the institutions established and administered by them.

37. The contention of the learned Advocate General, however, is that the aforesaid decision and other decisions of this Court have been rendered in cases where the State imposed a medium of instruction in a language different from the language of the minority community, but if the State prescribes the medium of instruction to be the mother tongue of the child, which is the language of the minority community, there is no violation of the right of the linguistic minority under Article 30(1) of the Constitution. We do not find any merit in this contention because this Court has also held that the "choice" of the minority community under Article 30(1) need not be limited to

imparting education in the language of the minority community. In re The Kerala Education Bill, 1957 (supra), S.R. Das, CJ, writing the majority opinion of a seven Judge Bench of this Court, held:

> "23. Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Art. 30(1). The first point to note is that the article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children."

38. We may now examine whether an unaided non-minority school has a similar right to choose a medium of instruction under Article 19(1)(g) of the Constitution at the primary school stage. Under Article 19(1)(g) of the Constitution, a citizen has the right to practise any profession, or to carry on any occupation, trade or business. In T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), Kirpal C.J. writing the majority judgment interpreted this right under Article 19(1)(g) of the Constitution to include the right to establish and run educational institutions. In paragraph 25 of the aforesaid judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), the majority judgment held:

> "The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. " Thus, the word "occupation" in Article 19(1)(g) of the Constitution was interpreted by the majority judgment of this Court in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), to include the activity which results in imparting of knowledge to the students even if there is no element of profit generation in such activity. However, unlike Article 30(1) of the Constitution, Article 19(1)(g) does not have the word

> "choice". The absence of the word "choice", in our considered opinion, does not make a material difference because we find that Article 19 of the Constitution is titled "Right to Freedom" and the word "freedom" along with the word "any" before the word "occupation" in Article 19(1)(g) of the Constitution would mean that the right to establish and administer an educational institution will include the right of a citizen to establish a school for imparting education in a medium of instruction of his choice.

If a citizen thinks that he should establish a school and in such a school, the medium of instruction should be a particular language then he can exercise such right subject to the reasonable regulations made by the State under Article 19(6) of the Constitution. We are thus of the considered opinion that a private unaided school which is not a minority school and which does not enjoy the protection of Articles 29(1) and 30(1) of the Constitution can choose a medium of instruction for imparting education to the children in the school.

39. It is, however, well settled that all educational institutions can be subject to regulations by the State for inter alia maintenance of proper academic standards. While discussing the right to establish and administer an educational institution under Article 19(1)(g) of the Constitution, Kirpal C.J., speaking for the majority of Judges in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), held:

> "The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management……" Again, in the majority judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra), Kirpal C.J. while discussing the right of a minority educational institution protected under Article 30(1) of the Constitution;
>
> "……It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition.
>
> But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives – that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions……" Thus, whether it is a private unaided institution enjoying the right under Article 19(1)(g) of the Constitution or whether it is a private institution enjoying the special protection of a minority institution under Article 30(1) of the Constitution, the State has the power to adopt regulatory measures which must satisfy the test of reasonableness. Moreover, the State may exercise this regulatory power either by making a law or by issuing an executive order.

40. The learned Advocate General for the State of Karnataka relied on the judgment of this Court in Gujarat University & Anr. v. Shri Krishna Ranganath Mudholkar & Ors. (supra) to submit that this power to prescribe regulations for maintaining the standards of education would include the power to prescribe the medium of instruction. We quote the relevant portion of the decision of the Constitution Bench of this Court in Gujarat University & Anr. v. Shri Krishna Ranganath Mudholkar & Ors. (supra) on which he has placed reliance:

> "23.....The power to legislate in respect of primary or secondary education is exclusively vested in the States by item No.II of List II, and power to legislate on medium of instruction in institutions of primary or secondary education must therefore rest with the State Legislatures. Power to legislate in respect of medium of instruction is, however, not distinct legislative head; it resides with the State Legislatures in which the power to legislate on education is vested, unless it is taken away by necessary intendment to the contrary. Under items 63 to 65 the power to legislate in respect of medium of instruction having regard to the width of those items, must be deemed to vest in the Union. Power to legislate in respect of medium of instruction, in so far it has a direct bearing and impact upon the legislative head of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 List I to be vested in the Union." From the aforesaid quotation, we find that the Constitution Bench has held that under the scheme of distribution of legislative powers between the States and the Union, the power to legislate in respect of primary or secondary education is exclusively vested in the States and has further held that in exercise of this power the State can prescribe the medium of instruction. The Constitution Bench, however, has not held that this power of the State to prescribe the medium of instruction in primary or secondary schools can be exercised in contravention of the rights guaranteed under Article 19(1)(a) and 19(1)(g) of the Constitution. The Constitution Bench has only held that if the medium of instruction has a direct bearing or impact on the determination of standards in institutions of higher education, the legislative power can be exercised by the Union to prescribe a medium of instruction. For example, prescribing English as a medium of instruction in subjects of higher education for which only English books are available and which can only be properly taught in English may have a direct bearing and impact on the determination of standards of education.

Prescribing the medium of instruction in schools to be mother tongue in the primary school stage in classes I to IV has, however, no direct bearing and impact on the determination of standards of education, and will affect the fundamental rights under Articles 19(1)(a) and 19(1)(g) of the Constitution.

41. We may now consider the decision of the Division Bench of this Court in English Medium Students Parents Association v. State of Karnataka & Ors. (supra) on which reliance has been placed by the State of Karnataka. In paragraph 20 at page 560 of the aforesaid decision as reported in the SCC, this Court has held that all educational experts are uniformly of the opinion that pupils should

begin their schooling through the medium of their mother tongue and the reason for this opinion is that if the tender minds of the children are subject to an alien medium, the learning process becomes unnatural and inflicts a cruel strain on the children which makes the entire learning process mechanical, artificial and torturous but if the basic knowledge is imparted through mother tongue, the young child will be able to garner knowledge easily. In paragraph 17 at page 559 of the aforesaid judgment, the Division Bench of this Court has also given the reasons why it did not find the impugned Government order to be ultra vires Articles 14, 29(1) and 30(1) of the Constitution. These reasons are quoted hereinbelow:

> "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 issue 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 Ist standard .... subject to study' the following para shall be substituted:
>
> 'From Ist 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 Ist 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 option subject for non-Kannada speaking students. It is to be taught on voluntary basis there being no examination at the end of the year in Kannada language....." Thus, the reasons given by the Division Bench of this Court to uphold the Government order of the State of Karnataka dated 19.06.1989 are that the Government had issued a corrigendum on 22.06.1989 and a reading of the Government order after the corrigendum would show that there was no element of compulsion at the primary stage any longer that the medium of instruction from I standard to IV standard would be in mother tongue. The decision of this Court in English Medium Students Parents Association v.

State of Karnataka & Ors. (supra), is, therefore, not an authority for the proposition that prescription of mother tongue in classes I to IV in the primary school can be compelled by the State as a regulatory measure for maintaining the standards of education.

42. We are of the considered opinion that though the experts may be uniform in their opinion that children studying in classes I to IV in the primary school can learn better if they are taught in their mother tongue, the State cannot stipulate as a condition for recognition that the medium of instruction for children studying in classes I to IV in minority schools protected under Articles 29(1)

and 30(1) of the Constitution and in private unaided schools enjoying the right to carry on any occupation under Article 19(1)(g) of the Constitution would be the mother tongue of the children as such stipulation. We accordingly answer question No.(iii) referred to us and hold that the imposition of mother tongue affects the fundamental rights under Articles 19, 29 and 30 of the Constitution.

43. Question No.(iv): Whether the Government recognized schools are inclusive of both government-aided schools and private & unaided schools?" In Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. (supra), Jeevan Reddy J. writing the judgment for himself and for Pandian J. has held in paragraph 204 at page 753 that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation and that recognition and affiliation are essential for meaningful exercise of the right to establish and administer educational institutions. In this judgment, the two Judges of this Court have also held that recognition may be granted either by the Government or by any other authority or body empowered to accord recognition and affiliation may be granted by the academic body empowered to grant affiliation. In this judgment, the two Judges of this Court have further held that it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates but the educational institution has no right to insist that the certificates or degrees awarded by such institution should be recognized by the State and therefore the institution has to seek such recognition or affiliation from the appropriate agency. In the aforesaid case of Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. (supra), S. Mohan J. in his concurring judgment has also observed in paragraph 76 at page 693 that recognition is for the purpose of conforming to the standards laid down by the State and affiliation is with regard to the syllabi and the courses of study and unless and until they are in accordance with the prescription of the affiliating body, certificates cannot be conferred and hence the educational institution is obliged to follow the syllabi and the course of the study. These views expressed by the three Judges in the Constitution Bench judgment of this Court in Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. (supra) have not been departed from in the majority judgment in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors. (supra). Kirpal C.J. writing the judgment in T.M.A. Pai Foundation (supra) on behalf of the majority Judges has held that the fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. From the aforesaid discussion of the law as developed by this Court, it is clear that all schools, whether they are established by the Government or whether they are aided by the Government or whether they are not aided by the Government, require recognition to be granted in accordance of the provisions of the appropriate Act or Government order. Accordingly, Government recognized schools will not only include government aided schools but also unaided schools which have been granted recognition.

44. Question No.(v): whether the State can by virtue of Article 350-A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools ?

We have extracted Article 350A of the Constitution above and we have noticed that in this Article it is provided that 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. We have already held that a linguistic minority under Article 30(1) of the Constitution has the right to choose the medium of instruction in which education will be imparted in the primary stages of the school which it has established. Article 350A therefore cannot be interpreted to empower the State to compel a linguistic minority to choose its mother tongue only as a medium of instruction in a primary school established by it in violation of this fundamental right under Article 30(1). We accordingly hold that State has no power under Article 350A of the Constitution to compel the linguistic minorities to choose their mother tongue only as a medium of instruction in primary schools.

45. In view of our answers to the questions referred to us, we dismiss Civil Appeal Nos.5166-5190 of 2013, 5191-5199 of 2013, the Civil Appeal arising out of S.L.P. (C) No.32858 of 2013 and Writ Petition (C) No.290 of 2009. There shall be no order as to costs.

.....CJI.

(R.M. Lodha) .....J.

(A. K. Patnaik) .....J.

(Sudhansu Jyoti Mukhopadhaya) .....J.

(Dipak Misra) .....J.

(Fakkir Mohamed Ibrahim Kalifulla) New Delhi, May 06, 2014.