

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Writ Petition No. 16440 of 2014
and
M.P. No.1 of 2014

Majlis E-Tahaffuz-E-Urdu, Tamil Nadu
A Trust registered under the provisions
of the India Trust Act, 1881,
Represented by its President,
K.Nasarullah,
Son of Late K.Mohammed Ismail Sahib,
146/54, Iqbal Road,
Muslimpur,
Vaniyambadi - 635 751
Vellore District. Petitioner

vs.

1. Commissioner and
Secretary to Government,
Department of Education,
State of Tamil Nadu,
Secretariat, Fort.St.George,
Chennai - 9.
2. The Director of Matriculation Schools,
DPI Compound, College Road,
Chennai - 6.
3. The Director of Government Examinations,
DPI Compound, College Road, Chennai - 6.
4. The Secretary to Government,
Ministry of Minority Affairs,
Paryavara Bhawan,
CGO Complex,
Lodhi Road, New Delhi - 3. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Declaration to declare the provisions of Section 3 of the Tamil Learning Act, 2006, as

published in the Tamil Nadu Gazette on 12.06.2006, as unconstitutional, void and inoperative in so far as it entrenches upon the rights of minorities under Articles 29 and 30(1) of the Constitution of India to establish and administer educational institutions of their choice.

For Petitioner ::: Mr. V.Lakshminarayanan

For Respondents::: Mr. A.L.Somayaji,
1 to 3 Advocate General
Assisted by
Mr.D.Krishnakumar,
Special Govt. Pleader(Education)

For Respondent 4::: Mr.V.P.Sengottuvel,
Central Government Standing Counsel

O R D E R

(The Order of the Court was made by Hon'ble The Chief Justice)

The petitioner, a Trust stated to be established originally in 2011 to promote, propagate and safeguard the Urdu language and its literature in the State of Tamil Nadu, by this writ petition, seeks a Writ to Declare the provisions of Section 3(1) of the Tamil Learning Act, 2006 (for short 'the said Act'), as published in the Gazette on 12.06.2006, as unconstitutional, void and inoperative allegedly on the ground that it entrenches the rights of minorities under Articles 29 and 30(1) of the Constitution of India to establish and administer educational institutions of their choice.

2. The petitioner states that prior to coming into force of the said Act, Urdu was taught as Part-I language in minority institutions, primarily belonging to the Muslim community. But post the said Act coming into force, it is sought to be relegated to the status of an optional language, and thus, unaided minority educational institutions are now called to teach Tamil as a compulsory subject in Part-I.

3. The petitioner concedes that the provisions of the said Act have been upheld by the Division Bench of this Court in K.R.Ramaswamy and others vs. The State of Tamil Nadu [AIR 2008 Madras 25] and the Special Leave Petitions preferred by two writ petitioners i.e., Kanyakumari District Malayala Samajan and Mr.K.R.Ramaswamy, separately against the aforesaid judgment are stated to have been dismissed on 18.02.2008 & 14.07.2008

respectively. However, the plea of the petitioner is that this may not be a good law, in view of the subsequent Constitution Bench judgment of the Hon'ble Supreme Court in State of Karnataka & another vs. Associated Management of Primary & Secondary Schools (Government Recognised Unaided English Medium) & others [2013 (11) SCC 72].

4. The petitioner's case is that in view of the provisions of the said Act, Tamil is included as a compulsory language upto 10th Standard along with English, in Part- I & II, while Part-III deals with other subjects. Part-IV refers to students, who do not have either Tamil or English as their Mother tongue to study their mother tongue as an optional subject. In K.R.Ramaswamy vs. The State of Tamil Nadu (supra), the Division Bench relied upon, inter alia, the Full Bench decision of the Karnataka High Court in General Secretary, Linguistic Minorities Protection Committee and another vs. State of Karnataka and another [AIR 1989 Karnataka 226], while referring to Paragraph-20 of that judgment, to uphold Kannada as a compulsory language for study from the senior primary class and as one of the three languages in the high schools and such a provision would not be violative of Article 29 of the Constitution of India, for it does not in any way interfere with the rights of the minorities to develop their script and language, nor would it violate Article 30 of the Constitution of India as it would be a reasonable regulation and in the interests of minorities, who are permanent residents of this State.

5. In this context, reference has been made to the Constitution Bench judgment of the Hon'ble Supreme Court in State of Karnataka & another vs. Associated Management of Primary & Secondary Schools (Government Recognised Unaided English Medium) & others (supra) to contend that the special status of Articles 29 & 30 of the Constitution of India has been upheld for the purposes of autonomy of minority institutions. Reference has also been made to another judgment of the Constitution Bench of the Supreme Court in D.A.V. College vs. State of Punjab [AIR 1971 SC 1737] wherein the impact of imposition of a particular language on minority institutions as a medium of instructions was examined and it was held that such an endeavour would stifle the language and script of a section of citizens who want to study in that language.

6. In the aforesaid context, it may be observed that the Government of India, Ministry of Minority Affairs/fourth respondent has filed its counter affidavit along with the typed set of documents pointing out that the issue was raised by the Assistant Commissioner for Linguistic Minorities in India qua

G.O.Ms.No.88, School Education (U2) dated 19.06.2006 of the State Government seeking to have Tamil as a subject for Classes 1 to 10 in all Schools in Tamil Nadu including minority schools. Relying on Article 350-A of the Constitution, it is further stated in the counter affidavit that it is for the State Government to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. Besides, it is stated that Article 350-B of the Constitution provides for appointment of a Special Officer for linguistic minorities who will investigate the matters relating to the safeguards provided for them under the Constitution. According to the fourth respondent, the issue relating to the enactment of Tamil learning Act, 2006 in Tamil Nadu has been entrusted to the Special Officer under Article 350-B, who has been following up the same for remedial measures. It is also seen from the counter affidavit that the Assistant Commissioner for Linguistic Minorities, Southern Zone, has taken up the issue in the instant case regarding introduction of Tamil from Class-I.

7. In the reports given by the said Commissioner, it was opined that the inclusion of minorities in Part-IV should be reviewed by the State of Tamil Nadu for inclusion of the minority language marks in the mark sheet so that the focus from teaching the language is not deviated from. The reports of the recommendations of the Commissioner for linguistic minorities were pressed into service by the fourth respondent. In this regard, it would be relevant to reproduce the 50th report of the Commissioner for Linguistic Minorities found in clause 36.19:-

- "a.
- b.
- c.
- d. The State Government is advised to implement the Three Language Formula to enable the linguistic minority students to learn their languages a view to encourage multilingualism and national integration. It has been informed that the linguistic students who wish to learn their mother-tongue have to learn it as an additional language. However, this would discourage the learning of the mother-tongue and erode the claim of provision of facility for learning the minority languages in the

future.

- e. The State Government while has given detailed account about the facilities for learning the minority languages has not accounted for the detailed arrangements for training of minority language teachers in the State. The State Government therefore needs to furnish the details how the demand for linguistic minority teachers is met in the State for the benefit of the linguistic minorities."

Further, Clauses 36.20, 37.22, and 37.24 read as follows:-

36.20 "The Government of Tamil Nadu is urged to take note of the points mentioned above and initiate necessary remedial measures to ensure that the Scheme of Safeguards for the linguistic minorities is implemented effectively and efficiently in the State.

37.22 National Committee for Minority Education:

The Commissioner for Linguistic Minorities in India has all along been reiterating the importance of protection, promotion and development of the minority languages in his reports. It is further reiterated that the Ministry of Human Resource Development (MHRD) is required to take initiatives to evolve appropriate policies and programmes aimed at protection, promotion and development of the minority languages in the country. The National Committee for Minority Education, under the Ministry has to play an important role in achieving this for the benefit of the linguistic minorities also, especially provision for facility for instruction in mother-tongue as envisaged under Article 350 A of the Constitution. Therefore, the Ministry of HRD is urged to take necessary steps to ensure that the States / UTs are providing the facility for instruction in mother-tongue to children belonging to the linguistic minority groups in their territory.

37.24 Three Language Formula:

It has been observed that the learning of the State Official Language has been made compulsory in the schools by several

States / UTs. In view of the Constitutional Safeguards enshrined under Article 29, 30 and 350 A, it is the duty of every State / UT to protect the rights of the linguistic minorities and to provide facility for instruction in their mother-tongue at the primary stage of education within their territory. The Commissioner for Linguistic Minorities in India, therefore, recommends to the MHRD to interact with all the States / UTs to review their Education Policy and provide a level playing field for the minority languages and to ensure protection of rights of the linguistic minority groups in their States / UTs."

Thus, it is clear that the 50th report of the Commissioner for Linguistic Minorities has specifically recommended the Ministry of Human Resources Development to interact with all States and UTs to review their education policy and ensure protection of rights of linguistic minority groups in States / UTs.

8. The office memorandum dated 21.8.2014 was issued by the Ministry of Minority Affairs calling for Action Taken Report. This was also in the context of the requirements of all schools affiliated to CBSE to record in the admission form of the students, the mother tongue of the child, the first language preferred and the optional language, as also the requirement stipulated under Section 29(2)(f) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 to provide for medium of instructions to the students practicably in the child's mother tongue.

9. In pursuant to the responses received, the Ministry of Human Resources Development has instructed all the schools affiliated to the Central Board of Secondary Education by its letter dated 25.9.2014, to record the details of the mother tongue of the child, preference of first language and optional language in the admission form itself so as to ensure that the children belonging to linguistic minority groups are at the reach of the facility for instruction in their mother tongue at the primary stage of education. It is also stated in the comments passed by the Ministry of Human Resources Development that the Government is actively considering bringing out a new policy on education and that during the formulation stage, it will consult all stakeholders including linguistic minorities.

10. No doubt, the minorities have unfettered freedom to open and run the educational institutions of their choice. Since the challenge in the instant Writ Petition is by the linguistic minority institutions, the State Government ought to have included independent minority educationists / intellectuals, Muslim in the given case, while reviewing the educational policy to avoid any further controversy in this regard.

11. The State Government in its counter affidavit has stated that representations were received from Linguistic Minorities qua G.O.Ms.No.44, School Education Department dated 28.02.2011 and the Government thus took a decision that the linguistic minorities can study their mother tongue additionally and minimum marks need not be secured for pass in that language. It is further stated that though the Act was enacted in the year 2006, the G.O. prescribing minimum marks for the linguistic minority language came to be passed only in the year 2011 in which case, it cannot be alleged by the petitioner, after a lapse of three years, that the students are facing the problem of learning three languages. According to the second respondent, since the said G.O. was passed only pursuant to the representations received on behalf of the linguistic minorities, the same cannot be termed as arbitrary.

12. The State also proceeds to state that once the minorities decide to impart secular education to the general public, they are bound to abide by all the rules and regulations framed by the State as applicable to non-minority institutions and as such, according to the authorities, the question of infringement of their fundamental rights will not arise. The further stand of the State is that even in respect of religious and linguistic minorities, right to education which is a fundamental right, will not include right to a particular language under Part - I according to their choice.

13. In the course of arguments before us, it was not disputed by the learned counsel for the petitioner that the medium of instruction continues to be Urdu and all the other subjects like Physics, Chemistry, Maths etc., listed in Part-III continue to be taught in Urdu. Thus, the judgments referred to by the learned counsel for the petitioner in the petition have really no application in the present case, inasmuch as the right of minorities to teach in their own language has not been curtailed in any manner. It is also once again not disputed that Urdu is being taught as a language and the marks scored in the said subject are also added and hence, the grievance of non-focus of Urdu does not exist. The only plea appears to be

that when Tamil is being taught as a compulsory language in Part-I, and Urdu as an optional subject, Urdu should be the main language with Tamil being an optional one. The aforesaid plea is an unnecessary plea of words being resorted to by the learned counsel for the petitioner, since it is now provided that marks scored in Urdu are being counted to keep focus on the subject. It is also true that Tamil is required to be learnt even by students of minority institutions and the provisions of the said Act in that behalf have been upheld by the Division Bench of this Court, and the Special Leave Petitions preferred against the same stand rejected.

14. Learned counsel for the petitioner sought to read in extenso from the judgment of the Hon'ble Supreme Court in State of Karnataka & another vs. Associated Management of Primary & Secondary Schools (Government Recognised Unaided English Medium) & others (supra). We pointed out to the learned counsel that the emphasis in paragraph-13 is clearly on permitting medium of instruction to be the same language as the language of the minority community to comply with the mandate of Articles 29(1) and 30(1) of the Constitution of India. That really has no applicability in the present case, as the medium of instruction continues to be Urdu. In this behalf, reference has also been made to Article 350-A of the Constitution of India by stating that the right of instructions in the mother tongue has been recognised based on the language declared by the parent or guardian to be the mother tongue. If individual students seek exemption on certain grounds, that has also been provided for by this Court vide order dated 23.11.2015 in W.P. No. 18845 of 2014, etc. batch, by way of directing the competent authority to deal with such applications within a period of six weeks from the date of order keeping in mind the fact that the examination is scheduled in March 2016. In the said order, this Court has also granted liberty to students who intend to apply for exemption either by themselves or through their parents or institutions.

15. Introduction of provincial language is a matter of formulation of policy by the State educational authorities. While fundamental right under Article 19(1)(g) is subject to the reasonable restrictions that could be imposed by the State by virtue of the power under Article 19(6), the fundamental right under Articles 29 and 30(1) is subject to the power of the State Government to make regulations to regulate the administration of the institutions.

16. The right guaranteed to religious and linguistic minorities by Article 30(1) is two fold namely, (i) to establish and (ii) to administer educational institutions of their choice. The administration of the educational institutions has certain limitation as it is subject to regulation by the State. The

Hon'ble Supreme Court has, in a catena of decisions, ruled that High Courts cannot interfere in the Government's policy decisions since the scope of judicial review is limited in questioning such decisions.

17. One cannot dispute the proposition that policy decision alone can decide which policy should be adopted after considering all points from different angles and hence, there can be no second opinion that maintaining policy decisions must be left to the Government.

18. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is de hors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy."

19. It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. Under Article 162 of the Constitution, the State Government has executive powers co-extensive with its legislative powers. As such, the State undoubtedly has powers to prescribe any course of study which is in the interest of excellence in education. This power would certainly include the power to prescribe language or languages, as course of study in the educational institutions.

20. A reading of the provisions of the Act and the various Government orders and Circulars would show that the medium of instruction would be in mother tongue. The scheme in question, contemplates that Tamil, being provincial language, is made compulsory paper for the students from standard I commencing from the Academic Year 2006-2007 in a phased manner so that the children are not over burdened and could learn the language at ease.

Conclusion:

We are, thus, of the view that the challenge as placed by the petitioner is misplaced. The writ petition deserves to be dismissed and it is accordingly dismissed. No costs. Consequently, miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. Commissioner and Secretary to Government,
Department of Education,
State of Tamil Nadu,
Secretariat, Fort.St.George,
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Paryavara Bhawan,
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Lodhi Road,
New Delhi - 3

+ 1 cc to Mr.Government Pleader SR.67238

KJI (CO)
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W.P. No. 16440 of 2014

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