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USHA MEHTA AND ORS.

v.

STATE OF MAHARASHTRA AND ORS.

MAY 5, 2004

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[RAJENDRA BABU, CJ., DR. AR. LAKSHMANAN
AND G.P. MATHUR, JJ.]

C

Constitution of India, 1950—Article 29 & 30—Educational rights of the linguistic minority—Educational policy of the State of Maharashtra—Imposition of the regional Marathi language as a compulsory study in schools run by linguistic minorities—Held, not violative of the linguistic minority rights guaranteed under Articles 29 and 30 or any other provisions of the Constitution.

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Maharashtra State Government took a policy decision to make study of Marathi language compulsory throughout the schools in that State. As a result, the English Medium Schools run by Gujarati linguistic minorities were compelled to teach four languages (Hindi, English, Marathi and mother tongue-Gujarati) as against the accepted

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‘three-language formula’.

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According to the Petitioners, imposition of compulsory Marathi language is in violation of the fundamental right of the linguistic minority to establish an educational institution of ‘their choice’ under Article 30(1) of the Constitution; that the ‘choice’ is meant to achieve not only the purpose of conserving the minority’s mother tongue, language etc. but also giving their children a good general education; that the minority, in furtherance of their fundamental right under Article 29(1) read with Article 30(1) of the Constitution has a choice to teach the other subjects (Maths, Science etc.) through such medium—

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as commends to it and correspondingly a ‘negative choice’ not to teach such subjects in any such medium that does not commend to its perception of good general education; that not even national or public interest or any State necessity can justify or legitimize any encroachment on the fundamental rights of a minority guaranteed under Article

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30(1); that the impugned education policy of the State of Maharashtra

discriminates against the students belonging to linguistic minority, is arbitrary and discriminatory and therefore liable to be struck down. A

Dismissing the Petitions and the connected Appeals, the Court

HELD : 1.1. The impugned policy decision cannot be held violative of the linguistic minority rights guaranteed under Articles 29 and 30 or any other provisions of the Constitution. [237-D] B

1.2. The right of minorities to establish and administer educational institutions of 'their choice' under Article 30(1) read with Article 29(1) would include the right to have choice of medium of instruction. But this exercise of 'choice of instructive language in schools by the linguistic minorities is subject to the reasonable regulation imposed by the concerned State. The State can impose reasonable regulation on the institutions covering Article 30 for protecting the larger interest of the State and the nation. [234-H; 235-A, E-F] C D

In Rev. Sidhajibhai Sabhai v. State of Bombay, [1963] 3 SCR 837; *St. Stephen's College v. University of Delhi*, [1992] 1 SCC 558; *TMA Pai Foundation v. State of Karnataka*, [2002] 8 SCC 481, relied on.

2. The impugned policy decision of the State of Maharashtra was taken by keeping the larger interest of the State, because the official and common business is carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easily carrying out the day-to-day affairs of the people living in the State of Maharashtra and also for proper carrying out of daily administration. Hence the regulation imposed by the State of Maharashtra upon the linguistic minorities to teach its regional language is a reasonable one. [235-C, D] E F

DAV college, Bhatinda v. State of Punjab, [1971] 2 SCC 261 and *DAV College v. State of Punjab*, [1971] 2 SCC 269, referred to. G

3. A particular State can validly take a policy decision to compulsorily teach its regional language. The impugned decision taken by the Government of Maharashtra is within the regulatory ambit of Article 30. It is a reasonable one, which is conducive to the needs and larger interest of State. [235-F, G] H

A *English Medium Students' Parents Association v. State of Karnataka and Others*, [1994] 1 SCC 550, relied on.

B 4. It is difficult to accept the proposition advanced by the
 C Petitioners that minority character would only be protected by learning
 D Gujarati as a First or Second language. There is enough opportunity,
 in the impugned school syllabi, for students in English medium school
 run by Gujarati minority group to offer Gujarati language as a
 composite subject. Students who want to learn Gujarati language can
 certainly learn it even according to the present scheme in English
 medium schools. It is also open to the Gujarati minority community
 to run exclusive Gujarati medium schools subject to the regulation of
 teaching Marathi language. But it won't be in the fitness of things to
 establish English medium schools and asking for not teaching the
 regional Marathi language. It is difficult to read Articles 29 and 30 in
 such a way that it contains the negative right to exclude the learning
 of regional language. *Ipsa facto* it is not possible to accept the
 proposition that the people living in a particular State cannot be asked
 to study the regional language. While living in a different State, it is
 only appropriate for the linguistic minority to learn the regional
 language. [235-G, H; 236-A-B]

E 5. The resistance to learn the regional language will lead to
 alienation from mainstream of life resulting in linguistic fragmentation
 within the State, which is an anathema to national integration. The
 learning of different languages will definitely bridge the cultural
 barriers and will positively contribute to the cultural integration of the
 F country. The impugned policy decision is in the paramount interest of
 the students who are living in the State of Maharashtra and also in the
 larger interest of the country. Therefore, it cannot be ruled that the
 impugned policy will result in destroying the minority character of the
 Gujarati community in Maharashtra. [236-C-E]

G 6. The right of minority to establish and maintain educational
 institutions of their choice is a necessary concomitant to the right to
 conserve its distinctive language, script or culture. But this right is
 subject to Article 29(2). So if the petitioners are allowed to exclude
 H teaching of Marathi in their schools, then the right of a student whose

mother tongue is Marathi will be denied opportunity to learn his A
 mother tongue and regional language as well as right to admission to
 a chosen school in the State of his origin for his non-proximity to
 Gujarati language. [236-G, H]

The State of Bombay v. Bombay Education Society and Others, B
 [1955] 1 SCR 568, referred to.

7. The impugned circular wherein the compulsory imposition of
 Marathi language was made on all non-Marathi medium schools
 directed the authorities to start teaching Marathi language from Class C
 V onwards. Hence the children at the tender age are not burdened to
 learn an additional language. They could very well learn in their
 mother tongue. According to the accepted 'three-language formula'
 the new language could only be taught from class V. On this count also
 the impugned policy cannot be found fault with. The Bombay city/
 region is now within the territorial limits of State of Maharashtra and, D
 therefore, it is not necessary to look into this matter from the
 perspective of original State of Bombay when the State and city of
 Bombay was treated as a bilingual nor advert to reorganization details
 for number of Gujarati speaking population in that region. [237-A-C]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 132 of E
 1995.

Under Article 32 of the Constitution of India.

WITH F

C.A. Nos. 1695/97, 8214 of 1995.

Sunil Gupta, N.N. Goswami, Jatin Zaveri, Harish J. Jhaveri, Uday G
 Umesh Lalit, Vijay Panjwani, R.B. Masodkar, S.S. Shinde, Mukesh K.
 Giri, Ms. Niranjana Singh, Ms. Anil Katiyar, B. Krishna Prasad, P.H.
 Parekh, E.R. Kumar, Lalit Chauhan, Ms. Ranjita Rohatgi and Rajiv Nanda
 for the appearing parties.

The Judgment of the Court was delivered by H

A RAJENDRA BABU, C.J. :

WRIT PETITION (CIVIL) NO. 132 OF 1995

B This petition stems from a policy decision made by Maharashtra State Government whereby Marathi language study was made compulsory throughout the schools in that State. As a result, the English Medium Schools run by Gujarati linguistic minorities were compelled to teach four languages (Hindi, English, Marathi and mother tongue-Gujarati) as against the accepted 'three-language formula'. Constitutional validity of the imposition of Marathi language as a compulsory study in schools run by linguistic minorities is the main matter for judgment in this case.

D Petitioner's case is that the imposition of compulsory Marathi is in violation of the fundamental right of the linguistic minority to establish an educational institution of 'their choice' under Article 30(1) of the Constitution; that the 'choice' is meant to achieve not only the purpose of conserving the minority's mother tongue, language etc. but also giving their children a *good general education*; that the minority, in furtherance of their fundamental right under Article 29(1) read with Article 30(1) of the Constitution has a choice to teach the other subjects (Maths, Science etc.) through such medium-mother tongue, Hindi or English—as commends to it and correspondingly a 'negative choice' not to teach such subjects in any such medium that does not commend to its perception of *good general education*; that the imposition of regional language is violative of the minority right to conserve its own language, script and culture and it has no constitutional duty or obligation to learn or promote the regional language; that the minority has a right and 'choice' to avoid the regional language if it feels that the same might conflict with their 'conservation' of mother tongue and / or promotion or learning of Hindi and English by its students; that the only power of State *vis-à-vis* a minority educational institution is to make reasonable regulations to prevent its maladministration; that not even national or public interest or any State necessity can justify or legitimize any encroachment on the fundamental rights of a minority guaranteed under Article 30(1); that in the matter of syllabi meant for an educational institution belonging to a linguistic minority, the State may have a power to make regulations for determining the Standards of education in so far as both the languages and the other general subjects

are concerned, but the State does not have the power to interfere with the language or languages that a linguistic minority has chosen to conserve, learn, teach and promote either as languages themselves or as the medium for other general subjects; that under the impugned syllabus circulated by the Board, the pattern of language studies is radically altered so as to impose Marathi as a compulsory subject upon non-Marathi speaking students studying in English medium schools and in the process, the study and imparting education in the mother tongue is effectively sacrificed; that the students studying in recognized English medium schools shall not be deprived of their right to take a paper of 100 marks in their mother tongue and of studying national language (Hindi); that the imposition of Marathi as a compulsory language is also violative of Article 19(1)(a) as well as of Articles 19(1)(e), (g) and 21 of the Constitution and is also contrary to the constitutional scheme and rights envisaged in the various provisions of Part XVII and Articles 120 and 210 of the Constitution; that the impugned educational policy also prevents them from performing the fundamental duties under Article 51A of the Constitution in general and clauses (c), (e), (f), (h), and (j), thereof, in particular; that the impugned policy fails to take into account the linguistic structure and cosmopolitan character of Bombay region of Maharashtra state, which for historical reasons stands on a different footing; that the impugned education policy of the State of Maharashtra discriminates against the students belonging to linguistic minority and is arbitrary and discriminatory; that therefore it is prayed before us to strike down the impugned decision.

The State of Maharashtra maintained the stand that the imposition of Marathi language or asking the schools to follow particular syllabi is a matter of State policy; that this position is settled by this Court in *English Medium Students' Parents Association v. State of Karnataka and Others*, [1994] 1 SCC 550; that the considered policy decision of the State is based on the recommendations of the Education Commission, the National Education Policy, the expert opinion of several educationalists and the need to spread its regional language; that the Writ Petitioners had not considered the necessity of teaching Marathi language from the perspective of the need of the whole State of Maharashtra; that the imposition of Marathi language is not against the fundamental rights of the citizens, on the contrary the larger welfare of student community has been kept as the paramount consideration; that there is no bar to establish a non-Marathi regional

A language medium school in Maharashtra but Marathi language has also to be taught in such schools; that all the States have switched over to making their regional language as the compulsory language of study since 1968; that the education policies of 1968 and 1986 has been instrumental in the process of national integration and the students belonging to different linguistic minority groups will be better equipped to get themselves assimilated in the culture and life of people of Maharashtra; that the mother tongue of more than 80% students, whose mother tongue is not English and studying in English medium schools is Marathi; that the State has a right to determine the policies which help in the development of regional language; that the students whose mother tongue is not Marathi in English medium schools have the facility of studying their mother tongue as a composite subject of 50 marks; that as per the revised pattern of study of languages in English medium schools the students are required to study three languages- English and Marathi, and the third language either as full paper or in composite patters (Hindi 100 marks, or Hindi + one of the modern Indian language taught in the State, or Hindi + one classical language taught in the State); that therefore they submitted that the policy decision taken by the State to make Marathi language a compulsory subject is not violative of Articles 29 or 30 or any other provisions of the Constitution and prayed to dismiss the Petition.

E The deliberation in this case centers on the extent of protection of linguistic minority's educational rights guaranteed under Articles 29 and 30, and the permissible limit of State interference therein. Before going into the larger question, it has to be noted that State of Maharashtra has not prevented the Gujarati linguistic minority from teaching Gujarati language in their schools. On the other hand they took a policy decision to make Marathi language a compulsory module on school syllabi. Thus, the question for decision is—can a State impose the teaching of its regional language upon the linguistic minorities as a matter of policy?

G This Court in several cases elaborately considered the limit of minority rights under Article 30. Though Article 30 is couched in unrestricted terms, this Court pointed out the limits of reasonable regulations that could be imposed by the State. In *Rev. Sidhajibhai Sabhai v. State of Bombay*, (1963) 3 SCR 837, while interpreting Article 30, it was observed

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“...regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed...”

Pertaining to the regulations that could be imposed under Article 30, it was further observed therein:

“...such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it...”

In *St. Stephan's College v. University of Delhi*, [1992] 1 SCC 558 it was held that:

“...so long as the basic right of minorities to manage educational institution is not taken away, the state is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the rights of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1)”...

Quoting *Rev. Sidhajibhai Sabhai* with approval, this Court later in *TMA Pai Foundation v. State of Karnataka*, [2002] 8 SCC 481 held:

“...the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in *Sidhajibhai Sabhai* case it was laid down that regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such limitation must necessarily be read into Article 30. The right under Article 30(1)

A cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that the government regulations cannot destroy the minority character of institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above law...”

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C “...regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between two objectives—that of ensuring the standard of excellence of the institution, and that of preserving the rights of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This in our view, is the correct approach to the problem...”

D In *TMA Pai*, this Court concluded the position regarding the minority rights under Article 30 as under :

E “...The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1)...”

F “In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do...”

H In the light of the above-discussed cases, it is clear that the State can impose reasonable regulations on the institutions covering Article 30 for

protecting the larger interest of the State and the nation. The 'choice' that could be exercised by the minority community or group is subject to such reasonable regulations imposed by the State. While imposing regulations, the State shall be cautious not to destroy the minority character of institutions. It is not the case of Petitioners herein that the Respondents prevented them from teaching Gujarati language. On the other hand they are only challenging the compulsory imposition of Marathi language for students and asking for a right 'not to learn' Marathi language while living in the State of Maharashtra. The regulation in this case imposed by the State of Maharashtra upon the linguistic minority right is to make Marathi language a compulsory course in school syllabi. The issue for resolution here is to find whether this action is reasonable or not. The impugned policy decision was taken by keeping the larger interest of the State, because the official and common business is carried on in that State in Marathi language. A proper understanding of Marathi language is necessary for easily carrying out the day-to-day affairs of the people living in the State of Maharashtra and also for proper carrying out of daily administration. Hence the regulation imposed by the State of Maharashtra upon the linguistic minorities to teach its regional language is only a reasonable one. This Court ruled that the right of minorities to establish and administer educational institutions of 'their choice' under Article 30(1) read with Article 29(1) would include the right to have choice of medium instruction. (See generally the Constitution Bench decisions in *DAV College, Bhatinda v. State of Punjab*, [1971] 2 SCC 261 and *DAV College v. State of Punjab*, [1971] 2 SCC 269. But this exercise of 'choice' of instructive language in schools by the linguistic minorities is subject to the reasonable regulation imposed by the concerned State. A particular State can validly take a policy decision to compulsorily teach its regional language. (See also *English Medium Students' Parents Association* case — Cited supra). In our opinion, the impugned decision taken by the Government of Maharashtra is within the regulatory ambit of Article 30. It is a reasonable one, which is conducive to the needs and larger interest of State.

It is difficult to accept the proposition advanced by the Petitioners that minority character would only be protected by learning Gujarati as a First or Second language. There is enough opportunity, in the impugned school syllabi, for students in English medium school run by Gujarati minority group to offer Gujarati language as a composite subject. Students

A who want to learn Gujarati language can certainly learn it even according to the present scheme in English medium schools. It is also open to the Gujarati minority community to run exclusive Gujarat medium schools subject to the regulation of teaching Marathi language. But it won't be in the fitness of things to establish English medium schools and asking for not teaching the regional Marathi language. *It is difficult to read Articles 29 and 30 in such a way that it contains the negative right to exclude the learning of regional language. Ipso facto* it is not possible to accept the proposition that the people living in a particular State cannot be asked to study the regional language. While living in a different State, it is only appropriate for the linguistic minority to learn the regional language. In our view the resistance to learn the regional language will lead to alienation from mainstream of life resulting in linguistic fragmentation within the State, which is an anathema to national integration. The learning of different languages will definitely bridge the cultural barriers and will positively contribute to the cultural integration of the country. In our view, the impugned-policy decision is in the paramount interest of the students who are living in the State of Maharashtra and also in the larger interest of the country. Therefore, we cannot rule that the impugned policy will result in destroying the minority character of the Gujarati community in Maharashtra.

E We may also notice one other aspect of the matter. In *The State of Bombay v. Bombay Education Society and Others*, [1955] 1 SCR 568 the position was settled that the language of Article 29(2) is wide and unqualified so as to cover both majority and minority group within its ambit. In *Bombay Education Society*, the impugned order denied admission to all pupils whose mother tongue was not English in English medium schools. Because the right to admission into an educational institution is a right that an individual citizen has, as a citizen and not as a member of any community or class of citizens. The right of minority to establish and maintain educational institutions of their choice is a necessary concomitant to the right to conserve its distinctive language, script or culture. But this right is subject to Article 29(2). So if we allow the Petitioners to exclude the teaching of Marathi in their schools, then the right of a student whose mother tongue is Marathi will be denied opportunity to learn his mother tongue and regional language as well as right to admission to a chosen school in the State of his origin for his non-proximity to Gujarat language.

The impugned circular wherein the compulsory imposition of Marathi language was made on all non-Marathi medium schools directed the authorities to start teaching Marathi language from Class V onwards. Hence the children at the tender age are not burdened to learn an additional language. They could very well learn in their mother tongue. According to the accepted 'three-language formula' the new language could only be taught from class V. On this count also the impugned policy cannot be found fault with. The Bombay city / region is now within the territorial limits of State of Maharashtra therefore, it is not necessary to look into this matter from the perspective of original State of Bombay when the State and city of Bombay was treated as a bilingual nor advert to reorganization details or number of Gujarati speaking population in that region.

For the foregoing reasons we hold that the impugned policy decision is not violative of the linguistic minority rights guaranteed under Articles 29 and 30 or any other provisions of the Constitution. Hence, this petition stands dismissed.

C.A. No. 1695/1997 and C.A. 8214/1995

In the light of the decision we have reached in W.P. No. 132 of 1995 and for the reasons set forth therein, C.A. No. 1695/1997 and C.A. 8214/1995 shall stand dismissed.

B.B.B.

Petition/Appeals dismissed.