

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 16367/2021

1. School Development Management Committee, Shri Hari Singh Senior Secondary School, Pilwa Panchayat Samiti Dechu, District Jodhpur (Rajasthan) Through Its Member Harish Khatri S/o Phool Chand Khatri, Aged About 40 Years (Rajasthan).
2. Harish Khatri S/o Phool Chand Khatri, Aged About 40 Years, Pilwa Panchayat Samiti Dechu, District Jodhpur (Rajasthan).
3. Kaishi W/o Samda Ram Meghwal, Aged About 44 Years, Pilwa Panchayat Samiti Dechu, District Jodhpur (Rajasthan).

----Petitioners

Versus

1. State Of Rajasthan, Through The Secretary Department Of Education, Government Of Rajasthan, Jaipur
2. Director, Secondary Education, Bikaner.
3. State Education Research And Training Centre, Udaipur Through Its Director.
4. District Education Officer (Secondary), Jodhpur.
5. Principal, Shri Hari Singh Senior Secondary School Pilwa Panchayat Samiti Dechu, District Jodhpur (Rajasthan).

----Respondents

For Petitioner(s) : Mr. Moti Singh

For Respondent(s) : Mr. Pankaj Sharma, AAG with
Mr. Rishi Soni & Mr. Deepak Chandak

JUSTICE DINESH MEHTA

Judgment

Reportable

Reserved on : 09.12.2021

Pronounced on : 04.01.2022

1. The instant writ petition raises rather uncommon but intriguing and intricate questions relating to rights of the children

having their education in a Government school, known as 'Shri Hari Singh Sr. Secondary School', (hereinafter referred to as 'the school') located in Village Pilwa, Panchayat Samiti, Dechu, District Jodhpur.

2. The petitioner No.1 is the School Development Management Committee (hereinafter referred to as 'SDMC') represented by one of its members while petitioner No.2 & 3 (whose wards are studying in the school) are parent-members of the SDMC.

3. It is noteworthy that School Development and Management Committee is a statutory body constituted under section 21 of Right of Children to Free and Compulsory Education Act, 2009 (for short 'the Act of 2009 or the RTE Act'.)

4. The petitioners feel aggrieved of the decision dated 13.09.2021 taken by the State Government and consequential decision/order dated 20.09.2021 of the respondent No.2 by which 'the school' has been converted to an English Medium School - Mahatma Gandhi Government School (English Medium).

5. For the purpose of the adjudication of the questions that have cropped up for consideration, brief narration of the facts is imperative; that the school in the name of Shri Hari Singh Sr. Sec. School, Pilwa has been functioning in village Pilwa since 1980. The school has been catering to the educational needs of about 600 children from all sects including girls residing in such village and nearby villages. The medium of instruction in the school is 'Hindi' since its inception.

6. It will be apposite to give figures of the children taking education in the school which are as infra :-

Category	Boys	Girls
General	62	87
ST	40	29
SC	85	63
OBC	103	117
Minority	8	7
Total	288 (SIC 298)	298 (SIC 303)
Grand Total	601	

7. It is stated by the petitioners that in Panchayat Circle Pilwa, two more Government schools other than the one under consideration, were established by the State Government during the last two decades; one being Girls Primary School which was merged in 2013 and the other school being Government Primary School, too was merged in the present school in 2012-13. Resultantly in the entire panchayat circle, the school in question is the only school which imparts education from class 1st to class 12th being home to 601 students who are taking education/instructions in Hindi.

8. According to the petitioners other schools are situated at a distance of about 6 to 8 kms from the school in question.

9. In the budget of 2021-22, Hon'ble the Chief Minister who is also the Finance Minister of the State, in his speech announced that within a period of two years about 1200 Mahatma Gandhi Government Schools will be opened which would impart education in English in all villages and towns having population of more than 5000.

10. In furtherance of the budget announcement, the SDMC of the school in its meeting, held on 03.04.2021, discussed the desirability of an English medium school in the area and considering the importance and requirement of English medium

school, and resolved that an English medium school be opened in the vacant building of the Government school which has been merged in the school and for the time being, the school be run in two shifts, out of which first shift be for Hindi medium students while second shift be kept for English medium.

11. It was specifically resolved by the SDMC that the existing school of Hindi medium not be closed.

12. It will not be out of place to reproduce the resolutions adopted by the SDMC on 03.04.2021 :-

“प्रस्ताव संख्या 1 – एसडीएमसी सचिव श्री दुर्गालाल शर्मा ने प्रस्ताव रखा कि माननीय मुख्यमंत्री महोदय द्वारा वर्ष 2021–22 की बजट घोषणा संख्या 37 के क्रम में 5000 से अधिक आबादी वाले समस्त गांवों/कस्बों में महात्मा गांधी अंग्रेजी माध्यम विद्यालय स्थापित किये जाने है। इस क्रम में ग्राम पंचायत पीलवा की आबादी 5000 से अधिक है। तथा इस योजना में सूचीबद्ध है अतः इस प्रस्ताव पर सदन में चर्चा की जाये और सुझाव देकर आवश्यक निर्णय लिये जाये –

चर्चा – सदन में चर्चा के उपरान्त निम्न बिन्दु निकलकर सामने आये।

- (i) ग्राम पंचायत पीलवा परिक्षेत्र में कोई भी राजकीय निजी विद्यालय अंग्रेजी माध्यम का नहीं है। अतः यह विद्यालय खोला जाना अति आवश्यक है। अंग्रेजी माध्यम विद्यालय के बिना अभिभावकों को बहुत परेशानी हो रही है।
- (ii) यह विद्यालय भविष्य में श्री हरिसिंह राजकीय उच्च माध्यमिक विद्यालय पीलवा को अपठनीय रा०प्रा०वि० (छात्र) पीलवा जो कि पूर्व में बंद हो चुका है तथा जिसका भवन खाली पड़ा है का उपयोग किया जा सकता है। चूंकि यह विद्यालय इसी पी ई ई ओ विद्यालय के भू-अधिकार वाले खसरे एवं स्वामित्व है।
- (iii) ग्राम पंचायत पीलवा के अतिरिक्त हिन्दी माध्यम के विद्यालय का कोई अन्य विकल्प उपलब्ध नहीं है। अतः प्रारम्भिक तौर पर इसी विद्यालय उच्च प्राथमिक स्तर तक दो पारी, विद्यालय में संचालित करने की अनुमति मांगी जाए जिसमें प्रथम पारी में हिन्दी माध्यम व द्वितीय पारी में अंग्रेजी माध्यम की कक्षाएं संचालित हो।

निर्णय – उपरोक्त चर्चा के मुख्य बिन्दुओं को सम्मिलित करते हुए प्रस्ताव बनाकर विभाग के उच्चाधिकारियों को भेजे जाने का निर्णय लिया गया। साथ

ही किसी भी स्थिति में (1-12) हिन्दी माध्यम विद्यालय को बंद नहीं किया जाये।”

13. In the meantime, in furtherance of the budget announcement the State Government vide its order dated 13.09.2021 and consequently, the Director, Secondary Education vide order dated 20.09.2021, permitted/sanctioned conversion of 345 Government Schools to Mahatma Gandhi Government Schools (English medium), which included the name of the present school also.

14. In the wake of conversion of the School to an English Medium School, meeting of the SDMC was convened on 28.09.2021 and the State Government's proposal of converting the school to an English medium school was discussed, whereafter it was resolved that the school as such not be converted to an English medium school because the conversion would adversely affect the future of the students, more particularly the girls.

15. Resolution of the SDMC dated 28.09.2021 reads thus :-

“SDMC बैठक आम सभा

दिनांक 28-09-2021

आज दिनांक 28-09-2021 को SDMC की अति आवश्यक बैठक रखी गई। बैठक का मुख्य विषय महात्मा गांधी अंग्रेजी माध्यम विद्यालय को रा उ मा वि श्री हरिसिंह पीलवा के स्थान पर न खोलकर बंद पड़ी रा प्रा वि (छात्र) पीलवा के भवन में खोली जाये।

प्रस्ताव संख्या 1 – SDMC सदस्य श्री डा० अनिल कुमार ने प्रस्ताव रखा कि गांव अंग्रेजी माध्यम विद्यालय खुलना स्वागत योग्य है। परन्तु श्री हरिसिंह रा उ मा वि पीलवा को ही अंग्रेजी माध्यम में बदलना ठीक नहीं है। वर्तमान इस विद्यालय में 544 छात्र/छात्राएं अध्ययनरत है जो कि गरीब तबके से आते है। और जिनका शैक्षणिक वातावरण हिन्दी माध्यम के योग्य ही है। पूरे ग्राम पंचायत क्षेत्र में हिन्दी माध्यम के अध्ययन का ओर कोई विकल्प उपलब्ध नहीं है। अतः मैं प्रस्ताव रखता हूँ कि इस पर चर्चा की जाये।

चर्चा/विचार विमर्ष – सदन में इस प्रस्ताव पर विचार विमर्ष किया गया और निम्न निर्णय लिए गए।

निर्णय :-

- (i) वर्तमान में हिन्दी माध्यम में संचालित श्री हरिसिंह रा उ मा वि पीलवा (220/92) को यथावत हिन्दी माध्यम रखा जाए।
- (ii) इसी विद्यालय के पश्चिमी में स्थित खसरा नं 571/4 जो 5 बीघा जमीन चारदीवारी युक्त भवन बना हुआ है जो कि पूर्व में रा प्रा वि (छात्र) पीलवा संचालित था। जो बंद हो चुका है। उक्त रा उ मा वि पीलवा के अधीन है। उक्त भवन में प्रस्तावित रा० महात्मा गांधी (अंग्रेजी माध्यम) विद्यालय पीलवा खोला जा सकता है। इसमें अंग्रेजी माध्यम विद्यालय संचालित करने व खोलने में इस विद्यालय की SDMC को कोई आपत्ति नहीं है।
- (iii) अगर इस विद्यालय (राउमावि श्री हरिसिंह पीलवा) हिन्दी माध्यम को बंद किया जाता है तो यह बालिका बहुल होने के कारण छात्राओं के शिक्षण पर प्रतिकूल प्रभाव पड़ेगा।
- (iv) पूर्व में एसडीएमसी कार्यकारिणी बैठक के बैठक क्रमांक 10/ दिनांक 03-04-2021 में उपरोक्त सभी बिन्दुओं पर निर्णय कर अंग्रेजी माध्यम की मांग रखी गयी थी।”

16. In furtherance of the stand so taken by the SDMC, a few representations were sent to the State Government requesting it not to convert the medium of instruction of the school to English. One such representation dated 26.10.2021 signed by various students of the school addressed to the Principal has been placed on record.

17. On finding that representations made by the petitioners are not cutting any ice and the State Government is hell bent upon implementing its decision of conversion of the school to Mahatma Gandhi Government School, the petitioners have knocked at the doors of this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

18. Before advertng to the rival contentions, it would be profitable to wade through the relevant Constitutional and Statutory provisions relating to the issue at hand :-

"Article 21A of the Constitution :- Right to education—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."

"Article 19 of the Constitution :- Protection of certain rights regarding freedom of speech, etc—(1) All citizens shall have the right—
(a) to freedom of speech and expression"

Relevant provisions of Right of Children to Free and Compulsory Education Act, 2009 :-

"2. Definitions—In this Act, unless the context otherwise requires,—

(n) "school" means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority; "

"21. School Management Committee—(1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority,

parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section: Provided also that fifty per cent of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:—

(a) monitor the working of the school;
(b) prepare and recommend school development plan;

(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and

(d) perform such other functions as may be prescribed.

Provided that the School Management Committee constituted under sub-section (1) in respect of,—

(a) a school established and administered by minority whether based on religion or language; and

(b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2, shall perform advisory function only."

"22. School Development Plan—(1) Every [School Management Committee, except the School Management Committee in respect of a school established and administered by minority, whether based on religion or language and an aided school as defined in sub-clause (ii) of clause (n) of section 2, constituted] under sub-section (1)

of section 21, shall prepare a School Development Plan, in such manner as may be prescribed.

(2) The School Development Plan so prepared under sub-section (1) shall be the basis for the plans and grants to be made by the appropriate Government or local authority, as the case may be."

"29. Curriculum and evaluation procedure—

(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:—

(a) conformity with the values enshrined in the Constitution;

(b) all round development of the child;

(c) building up child's knowledge, potentiality and talent;

(d) development of physical and mental abilities to the fullest extent; (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;

(f) medium of instructions shall, as far as practicable, be in child's mother tongue;

(g) making the child free of fear, trauma and anxiety and helping the child to express views freely;

(h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same."

Relevant provision of Right to Free and Compulsory Education Rules of 2010 :-

"3. Composition and functions to the School

Management Committee.- (1) A School Management Committee (hereinafter in this rule referred to as the said Committee) shall be constituted in every school, other than an unaided school, within six months of the appointed date, and reconstituted every two years.

(2) Seventy five percent, of the strength of the said Committee shall be from amongst parents or guardians of children.

(3) The remaining twenty five percent, of the strength of the said Committee shall be from amongst the following persons, namely :-

(a) one third members from amongst the elected members of the local authority, to be decided by the local authority;

(b) one third members from amongst teachers from the school, to be decided by the teachers of the school;

(c) one third members from amongst local educationists or children in the School, to be decided by the parents in the said Committee.

(4) To manage its affairs, the said Committee shall elect a chairperson and vice-chairperson from among the parent members; the head teacher of the school, or where the school does not have a head teacher, the senior most teacher of the school, shall be the ex-officio member-convener of the said Committee.

(5) The said Committee shall meet at least once a month, and the minutes and decisions of the meetings shall be properly recorded and made available to the public.

(6) The said Committee shall, in addition to the functions specified in clause (a) to (d) of subsection (2) of section 21, perform the following functions, namely:

(a) communicate in simple and creative ways to the population in the neighbourhood of the school, the rights of the child as enunciated in the Act; as also the duties of the appropriate Government, local authority, school, parent and guardian;

(b) ensure the implementation of clauses (a) and (e) of section 24, and of section 28,

(c) monitor that teachers are not burdened with non academic duties other than those specified in section 27;

(d) ensure the enrolment and continued attendance of all the children from the neighbourhood in the school;

(e) monitor the maintenance of the norms and standards specified in the Schedule;

(f) bring to the notice of the local authority any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per sub-section (2) of section 3;

(g) Identify the needs, prepare a plan, and monitor the implementation of the provisions of Section 4;

(h) monitor the identification and enrolment of, and facilities for education of children with disability, and ensure their participation in, and completion of elementary education;

(i) monitor the implementation of the mid-day meal in the school;

(j) prepare an annual account of receipts and expenditure of the school.

(7) Any money received by the said Committee for the discharge of its functions under this Act, shall be kept in a separate account, to be audited annually.

(8) The accounts referred to in clause (j) to sub-rule (6) and in sub-rule (7) should be signed by the chairperson or vice-chairperson and convenor of

the said Committee and made available to the local authority within one month of their preparation."

Preliminary Objections

19. Mr. Pankaj Sharma, learned Additional Advocate General raised following preliminary objections :-

- “(i) No resolution of the SDMC has been filed;
- (ii) there is no resolution authorising petitioner No.2 to swear the affidavit on behalf of other two petitioners;
- (iii) petition involves disputed question of facts”

20. Learned AAG elaborated the preliminary objections by submitting that the petitioners have not enclosed any resolution adopted by the SDMC for filing the present writ petition and even a resolution authorising to swear affidavit on behalf of the other two petitioners is absent.

21. In the opinion of this Court, the preliminary objection raised by learned AAG may be technically correct but does not render the writ petition to be not maintainable. In view of the fact that writ petition in question is not only filed by the SDMC but also by the petitioner No.2 & 3 in their individual capacity, with an assertion that their wards are studying in the school in question and further because the SDMC comprises of mostly illiterate or less educated parents of the pupils in the schools who are not well conversant with the procedural aspect, both, the first and second, preliminary objections raised by learned AAG are liable to be and are, hereby rejected.

22. Third preliminary objection raised by Mr. Sharma that the petition in hands involves disputed questions of fact, was asserted emphatically but lacked substance as the State has failed to show

any disputed question, which would not be possible to decide/examine on the basis of affidavits.

23. As a matter of fact, the writ petition in hand poses pure and important questions of law and calls upon the Court to examine the decision of the State Government on the anvil of the fundamental rights guaranteed by the Constitution of India and its conflict with the statutory provisions.

24. The third preliminary objection is also liable to be and is hereby repelled.

25. This Court therefore, proceeds to dwell upon the arguments advanced by the petitioners and their corresponding response given by the State.

Contentions/arguments of the petitioners:

26. Mr. Moti Singh, learned counsel for the petitioners, at the outset, submitted that the petitioners are not opposed to English as a medium of instruction while imparting education but they are against the overnight conversion of the school and more so, are aggrieved with the ouster of the existing students from the school due to the overnight conversion of school from Hindi to English medium.

27. He submitted that petitioners are mindful of the resolution adopted by the SDMC, which welcomes the establishment of English medium school in the village, but the same was always coupled with a caveat that such school be established by construction/renovation of nearby vacant building and till such a time, the present infrastructure of the school be used in such a manner that the English medium school be run in second shift, without disturbing the academic activities of the existing students, who are studying in Hindi medium.

28. He referred to the operational guidelines issued by the Rajasthan Council of Secondary Education while establishing "Swami Vivekanand Rajkiya Model School" and pointed out that these guidelines provided creation of infrastructure for establishment of Swami Vivekanand Model School for English medium, for which the State had provided a separate budget of about 3 crores and such schools were opened ensuring medium of instruction to be English. He highlighted that even such schools were opened for class 9th and upwards and not for students at elementary level.

29. It was argued that if the respondents are of the view that more English medium schools are to be opened, then the State is required to allocate funds and create new infrastructure including new buildings and classrooms before opening the schools but in any case, the conversion of the existing Hindi medium schools into English medium schools is arbitrary exercise of the purported powers of the State Government.

30. He submitted that right of education up to elementary level is a fundamental right guaranteed by the Constitution under Article 21A of the Constitution of India and therefore, the State's action of converting the school in question to Hindi medium school is violative of fundamental rights of the children of the school.

31. While pointing out that the school comprises of various children below 14 years, he argued that consequent to the impugned decision of the State, the students of the school are compelled to take admission in other schools that too in the midst of their academic session. Such action/order of the State Government is violative of the rights of the petitioners and

students/parents guaranteed under Article 21A of the Constitution of India.

32. Adverting to the provisions of section 29 of the Act of 2009, particularly clause (f) of sub-section 2, learned counsel argued that medium of instruction is required to be in child's mother tongue, which in the present case is Hindi.

33. He elaborated his arguments by informing that the Central Government has enacted the Act of 2009 in order to give shape to the fundamental rights of the children below 14 years of age and since the Central Legislation i.e., the Act of 2009 enjoins upon the State to lay down curriculum and evaluation process ensuring that the medium of instruction as far as practicable be in mother tongue, State's decision of converting the medium of instruction of the school in question to English is violative of section 29 (2)(f) of the Act of 2009 and the decision of the State Government dated 13.09.2021 therefore deserves to be quashed and declared as such.

34. Learned counsel invited Court's attention towards National Education Policy 2020, particularly, clause 4.9, 4.10 and 4.13 and pointed out that the National Education Policy 2020 in unambiguous terms prescribes that home/local language or the second Indian language will be enhanced and therefore, the present decision to convert the school in question to an English medium school is contrary to National Education Policy, 2020 as well.

35. He submitted that the medium of instruction is undeniably a part of curriculum to be decided by the SDMC and therefore impugned decision of forcing the medium of instruction to be English to the students of the school is not only arbitrary but also

contrary to the provisions contained in section 29 of the Act of 2009.

36. Learned counsel relied upon judgment of *Hon'ble the Supreme Court dated 06.05.2014, rendered in the case of **State of Karnataka & Anr. Vs. Associated Management of English Medium Primary and Secondary Schools & Ors.*** reported in **(2014) 9 SCC 485** and submitted that in the instant case, the state is doing exactly opposite of what the State of Karnataka had done.

37. It was also argued that the state cannot promote English (as a language or medium of instruction) because English is not a part of any recognised language enlisted in Schedule VIII of the Constitution of India.

38. He further submitted that as per the constitutional mandate, particularly, Part XVII, official language is Hindi. Further, for an initial period of 15 years from the commencement of the Constitution, English was to be used as official language and thereafter Hindi was required to be used as the official language.

Response/submissions of the state:

39. Mr. Pankaj Sharma, AAG, defending the decision of the State, submitted that the Government has undertaken requisite exercise in this regard and upon realising that the people of the state are desirous of having more English medium schools, the state in public interest has decided to convert various schools to Mahatma Gandhi English Medium Schools. He argued that the policy of the State cannot be said to be arbitrary and violative of constitutional provisions inasmuch as enough safeguards have been provided and that the students who do not want medium of instruction to

be English, will be given admission in any of the nearby Hindi medium schools.

40. Inviting Court's attention towards communication dated 04.12.2021, written by none other than the Principal of the School, learned counsel submitted that there are as many as 9 Government schools within the vicinity of 5 kms of the school in question imparting education in Hindi and therefore petitioners' stance that their fundamental rights have been violated, is baseless.

41. He submitted that before taking a final call on converting the present school to an English medium school, an assessment exercise was undertaken and report obtained. He further submitted that an enquiry was got conducted in relation to the resolutions purportedly adopted by the SDMC and the same have been found to be irregularly adopted.

42. It was also emphatically submitted that there are 13 well maintained classrooms and separate toilets for boys and girls and therefore the building of Shri Hari Singh Sr. Sec. School, Pilwa was found most suitable and it was thus, decided to convert the school into an English medium school.

43. It was also argued by Mr. Sharma, "if the petition is considered in individual capacity of petitioner No.2 & 3, then, it is to be noted that two wards of petitioner No.2 are above 14 years of age and out of two wards of petitioner No.3, only one child is below 14 years of age. Hence, for purported rights of one child, the decision of the State Government taken in the interest of the entire village cannot be examined/challenged".

44. Learned counsel submitted that the establishment of school including conversion of schools to an English medium is a part of

policy decision within the domain of the State which better be left to the discretion of the state and experts of the area and no interference in the policy matters be made.

45. Learned AAG also relied upon judgment of Hon'ble the Supreme Court in the case of ***State of Karnataka & Anr. Vs. Associated Management of English Medium Primary & Secondary Schools & Ors.*** reported in **(2014) 9 SCC 485** and submitted that the said case (relied upon by the petitioners) is rather in favour of the State.

46. It was argued by Mr. Sharma that arguments advanced by learned counsel for the petitioners that English Medium Schools cannot be opened at all, are not available to them, if the resolution adopted by the SDMC is taken into account. He flagged that the SDMC itself had no in-principle objection regarding the opening/establishment of the English medium school but its concern was only that the existing students of the school not be disturbed.

47. Learned counsel further argued that true it is, that right of primary education has been guaranteed by Article 21A of the Constitution of India, but the same is not an absolute right. Imparting education in English can by no stretch of imagination be said to be violation of right guaranteed under Article 21A of the Constitution of India.

48. In rejoinder, Mr. Moti Singh submitted that if the State really wants to bring in more English medium schools or Mahatma Gandhi Schools, it is incumbent upon it to create infrastructure and provide for budget as had been done in the operational guidelines of 2014-15, in which a decision to establish Swami Vivekanand Government Model School was taken by the State

Government, however by setting apart separate budget for the same.

49. He submitted that even in Swami Vivekanand Model Schools, medium of instruction up till 8th standard has been kept as Hindi, and English has been kept as a medium of instruction, only for the students of classes 9th and above.

50. It has been the contention of learned counsel for the petitioners that English as a medium of instruction for children below 14 years of age, cannot be forced.

51. Based on the arguments of the rival counsel and upon appraisal of the factual matrix of the case, the following four questions have emerged for consideration :-

(i) Whether Article 21A of the Constitution of India which guarantees a right to education, also guarantees right to receive education in mother tongue or home language?

(ii) Whether right to get education in mother tongue or Hindi is a fundamental right?

(iii) Whether the consent of School Development Management Committee (SDMC) is necessary before converting a Hindi medium school to an English medium school?

(iv) Whether the policy decision of the State converting the school in question to Mahatma Gandhi English Medium School is in conflict with the provisions of section 20, 21, 22 and 29(2)(f) of the Act of 2009?

(v) Who is competent to change the medium of instruction of a school?

52. It would be better to deliberate upon each question one by one.

(i) Whether Article 21A of the Constitution of India which guarantees a right to education, also guarantees right to receive education in mother tongue or home language?

(a) Crux of argument of learned counsel for the petitioners was that, if Article 21A of the Constitution of India is read conjointly with section 29(2)(f) of the Act of 2009, the right to education enshrined under Article 21A of the Constitution of India, includes the right to get education in mother tongue or home language, while learned Additional Advocate General was opposed to such contention of the petitioners.

(b) A look at Article 21A of the Constitution of India reveals that it enjoins upon the State to provide free and compulsory education to all children between the age of 6 to 14 years, but then, such right is not an absolute right, as its expanse has been hedged by the expression "in such manner as the State may, by law determine".

(c) Since, Article 21A of the Constitution is tethered with the words "in such manner, as the State, may, by law determine", according to this Court the State may by law provide the medium and manner to provide such free education, which in a given case can be Hindi, English or even regional dialect - the mother tongue of the child. No child or parent can claim it as a matter of right, that he/his ward should be instructed in a particular language or the mother tongue only, on the basis of what has been guaranteed under Article 21A of the Constitution.

(d) My aforesaid view finds strength from the judgment of Hon'ble the Supreme Court, rendered in the case of State of Karnataka (supra), particularly para No. 44 thereof, which is reproduced hereinfra:

"44. 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. v. State of A.P.*, 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 21-A 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 Article 21 and 21-A of the Constitution, therefore, a child has a fundamental right to claim from the State free education up to the age of 14 years. The language of Article 21-A 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 21-A 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 21-A 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 Article 21 and 21-A of the Constitution."

(ii) Whether right to get education in mother tongue or Hindi is a fundamental right?

(a) The right to get education in a particular language, in the opinion of this Court, is relatable to Article 19(1)(a) of the Constitution - "freedom of speech and expression". A child or on his behalf, his parent(s) have the right to choose the language in which his/their child should be imparted education. The right to have education in mother tongue or in a particular medium is guaranteed by Article 19(1)(a) of the Constitution of India, as has been held by Hon'ble the Supreme Court in para No.45 of the judgment in the case of State of Karnataka (supra). Relevant part thereof is extracted below :-

"45. Our answer to Question (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 21-A of the Constitution."

(b) A question may then arise, that such right too is subject to reasonable restriction, as per clause (2) of Article 19 of the Constitution of India and if that be so then the State can prescribe a medium of instruction considering the overall development of the child and Socio-economic factors.

(c) It is to be noted that in the present case, State's decision, which is purely administrative in nature, cannot firstly be said to be a law and that apart, it cannot be said to be a reasonable restriction for the purposes mentioned in clause (2) of Article 19 of the Constitution. Because clause (2) postulates that restriction can be imposed for the purpose of and 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, deformation or incitement to an offence.

(d) Since, fundamental right guaranteed under Article 19(1)(a) is only subject to reasonable restriction by law to be enacted, by the State, in the opinion of this Court, the instant decision taken or the State's policy decision, cannot whittle down the fundamental right of a child to be taught in a particular medium, which is assured rather protected by Article 19(1)(a) of the Constitution of India.

(iii) Whether the State's policy decision of converting the school in question to Mahatma Gandhi English Medium School is in conflict with the provisions of section 20, 21, 22 and 29(2)(f) of the Act of 2009?

(a). Section 21 of the Act of 2009 provides for constitution of School Management Committee comprising of representatives of the local authority, parents/guardians of the children and teachers. Such committee has been authorised to perform various functions including monitoring the working of the school and prepare and recommend school development plan.

(b) The Central Government has promulgated Rules of 2010 in exercise of its powers under section 38 of the Act and similarly the State of Rajasthan has promulgated Rajasthan Right of Children to Free and Compulsory Education Rules, 2011 (for short 'Rules of 2011'), vide notification dated 29.03.2011.

(c) According to section 21 and 22 of the Act of 2009 and Rule 4 & 5 of the Rules of 2011, School Management Committee is required to prepare a school development plan which shall contain details of class-wise enrollments each year, requirement of

number of additional teachers, requirement of additional infrastructure etc. Such development plan is required to be a three-year plan comprising of three annual sub-plans.

(d) Rule 3 of the Rules of 2011 requires the School Management Committee to ensure enrollment and continued attendance of all the children from the neighbourhood of the school.

(e) By reading the provisions of the Act of 2009 and Rules of 2011, which were heavily relied upon by Mr. Moti Singh, this Court is unable to conclude that prescription of medium of instruction is a decision to be taken by the School Management Committee, as a part of school development plan. Preparing a school development plan cannot be misconstrued to mean the prescription of syllabus and medium of instructions. It has to be done by the experts in the field of education/child education.

(iv) Whether the consent of School Development Management Committee (SDMC) is necessary before converting a Hindi medium school to an English medium school?

(a) In the meeting held on 03.04.2021, the SDMC had unequivocally objected to conversion of the entire school to an English medium school and the same was duly reiterated in its subsequent meeting held on 28.09.2021.

(b) Sub-section (2) of section 21 of the Act of 2009, in no ambiguous terms, prescribes that the school management committee shall monitor the working of the school; prepare and recommend the school development plan.

(c) In the opinion of this Court, the functions to be discharged by the School Development Management Committee under clause

(a) and (b) of section 21 (2) of the Act of 2009 do not include the decision to be taken with respect to language or medium in which the students of the school shall be taught. The medium of instruction is to be determined by the Appropriate Authority or Rajasthan School Education Council.

(d) Upon a close and conjoint reading of section 21 and 22 of the Act of 2009 and Rule 3 and 22 of the Rules of 2011, this Court is of the firm opinion that it is not within the domain of the SDMC to decide as to what language pupil of the school will be instructed in.

(e) It is noteworthy that as per the provisions of the Act of 2009 and Rules of 2010 framed thereunder, 75% of the strength of the Committee is to be from amongst the parent or guardian of the children.

(f) Rules of 2011 as framed by the State of Rajasthan are slightly different so far as constitution of school management committee is concerned. Rule 3(2) thereof provides that parent/guardian of every child studying in the School will be member of the committee. Rule 3 specifies various functions to be discharged by such committee. Reproduction of Rule 3 of the Rules of 2011 is also imperative, which is hereby done:-

"3. Composition and functions of the School Management Committee. - (1) A School Management Committee (hereinafter in this Part referred to as the said Committee) shall be constituted in every School, other than an unaided School and reconstituted every two years, as per the directions issued by the State Government/Local Authority from time to time.

(2) *The said Committee shall have the following members -*

(a) Parent / Guardian of every child studying in the School;

(b) all the teachers working in the School;

(c) the person elected from the ward of the local authority in which the school is located; and

(d) all other elected members of the local authority residing in the village/ward in which the school is located.

(3) The Chairperson, Vice-Chairperson and Member-Secretary of the Executive Committee shall be the Chairperson, Vice-Chairperson and Member-Secretary, respectively of the said Committee.

(4) The said Committee shall meet at least once in every three months, and the minutes and decisions of the meetings shall be properly recorded and made available to the public.

(5) The said Committee shall, in addition to the functions specified in clause (a) to (d) of sub-section (2) of section 21, perform the following functions, namely:-

(a) communicate in simple and creative ways to the population in the neighbourhood of the school, the rights of the child as enunciated in the Act and also the duties of the State Government, local authority, School, parent and guardian;

(b) ensure the implementation of clause (a) and (e) of sub-section (1) of section 24 and section 28;

(c) monitor the compliance of the section 27;

(d) ensure the enrolment and continued attendance of all the children from the neighbourhood in the school;

(e) monitor the maintenance of the norms and standards specified in the Schedule;

(f) bring to the notice of the local authority any deviation from the rights of the child, in particular mental and physical harassment of children, denial of admission, and timely provision of free entitlements as per sub-section (2) of section 3;

(g) identify the needs, prepare a plan, and monitor the implementation of the provisions of section 4;

(h) monitor the identification and enrolment of, and facilities for education of children with disability, and ensure their participation in and completion of elementary education;

(i) monitor the implementation of the mid-day meal in the school; and

(j) prepare an annual account of receipts and expenditure of the school.

(6) Any money received by the said Committee for the discharge of its functions under the Act, shall be kept in a separate account, to be audited annually.

(7) The accounts referred to in clause (j) to sub-rule (5) and in sub-rule (6) shall be signed by the Chairperson or Vice-chairperson and Member-Secretary of the said Committee and made available to the local authority within one month of their preparation."

(g) In the case impugned administrative decision of the State is upheld, without the wishes and consent of the SDMC, the school cannot be abruptly converted to an English medium school. Changing the medium of instruction of the school in any case, cannot be done in the manner that has been done by the State in the present case.

(h) Changing the medium of instruction of a school which houses 601 rural students, out of which 303 are girls and a major part of them hail from lower strata, including SC, ST, OBC and minorities cannot be countenanced by this Court. Scooping out 601 students with one stroke of pen in a bargain of an assurance of being accommodated in nearby schools is violative of their Constitutional rights. The same is likely to affect their emotional quotient as well. Because, for children, their school is not only a structure made of stones, cement and concrete – it is a second home or sort of a temple, where they flock to learn; to play and to grow. Their bonding, resulting from the togetherness, helps them to grow as a society and a community.

(i) In the opinion of this Court, the State should not undermine the sanctity or ignore the powers of the School Development Management Committee, which is a creature of the statute, particularly section 21 of the Act of 2009 and Rule 3 of the Rules of 2011. Merely because the State has taken a stand that in view of the demand of more English medium schools, one English medium school in all villages having the population of more than 5000 should be established, the opinion of the SDMC cannot be given a go bye – altogether. The argument that there is no requirement of consent of the SDMC, for the school in question, as it is founded; funded; maintained and controlled by the State, cannot be accepted.

(j) Notwithstanding the above, as the SDMC of the school in question has not objected to the very establishment of the English medium school, and its stand has been, that the present Hindi medium school be continued, despite being persuaded, this Court

is not inclined to hold that no English medium school shall function in the building in question.

(k) The decision of the State dated 20.09.2021 of converting the school per-se to Mahatma Gandhi English Medium School is, as per this Court violative of not only Fundamental rights enshrined under Article 19(1)(a) of the Constitution of India, but also violative of Article 14 of the Constitution of India, as such decision is not based on any research, study or intelligible criteria and because the same is contrary to section 29 (1) & 2(f) and dehors of the powers of the State.

(l) The impugned decision is, in ignorance if not derogation of the powers of the Academic Authority and the resolution of the SDMC, which, in no uncertain terms, has resolved that the existing Hindi medium school not be closed and if necessary, infrastructure of the school be used in functioning of the English medium school in the second shift, without disturbing the existing students of Hindi medium.

(m) The respondents have not placed any material to show that any study of pros and cons was made about the feasibility or otherwise of establishing the English medium school in the other building or by constructing a new building or using any abandoned building. No material has been placed to show why this particular school has been chosen to be converted to English medium school, which in a small town of 5000 is catering to the needs of large number of students (about 600 in number).

(n) This Court, therefore, is of the opinion that the decision of the State Government of converting present school out of 344 schools to English medium schools by a single stroke of pen, is

arbitrary and contrary to the provisions of the Act of 2009 and the Rules of 2011.

(o) The defence, which the State has taken that the children of this school will be accommodated in nearby schools, cannot be accepted as a valid justification for uprooting 601 saplings (students) from the present school to be implanted in nearby schools, even if they are within the vicinity of 2 kms. Such action in no case can be taken in the middle of academic session 2011-22. The State's decision dated 13.09.2021 and 20.09.2021 is arbitrary and deserves to be quashed however, such adjudication is however confined to the present school, for the reason, already set out hereinabove.

(v) Who can decide or change the medium of instruction in elementary level schools?

(a) It is noteworthy that Section 29 of the RTE Act specifically provides that curriculum and evaluation procedure shall be laid down by the Academic Authority. Rule 22 of the Rajasthan Right of Children to Free and Compulsory Education Rules, 2011, which have been framed in exercise of powers available to the State under section 38 of the RTE Act is the relevant provision, which provides for and speaks of an Academic Authority. It is the Academic Authority, which is the competent authority to lay down the curriculum, which inherently includes medium of instruction. Reproduction of Rule 22 of the Rules of 2011 will not be out of context, hence it is being done:

"Curriculum and Completion of Elementary Education

22. Academic Authority.— (1) *The State Institute of Educational Research and Training shall be the Academic Authority for the purposes of section 29.*

(2) *While laying down the curriculum and evaluation procedure, the Academic Authority shall, -*

(a) *formulate the relevant and age appropriate syllabus and text books and other learning material;*

(b) *develop in-service teacher training design; and*
[***]

[(c) *prepare class-wise, subject-wise learning outcomes for all elementary classes; and*

(d) *prepare guidelines for putting into practice continuous and comprehensive evaluation, to achieve the defined learning outcomes.]*

(3) *The academic authority shall design and implement a process of holistic school quality assessment on a regular basis."*

(b) Since, medium of instruction is to be determined by the Academic Authority, which in the State of Rajasthan is Rajasthan School Education Council, the School Management Committee, in the opinion of this Court, cannot decide the medium of instruction may it be Hindi or English.

53. Next arises the question, what should be medium of instruction? Section 29(2)(f) of the Act of 2009 and the National Education Policy, 2020 prescribes that the medium of education or instruction till elementary level shall be in mother tongue. This Court has no hesitation in holding that the same cannot be changed to English medium at least by an administrative decision like the one taken on 13.09.2021 or 20.09.2021. If it were to be done, it could be done by appropriate legislation to be brought by

the State Legislature and not even by the Academic Authority. The conversion of the school in question to English medium is, therefore, clearly contrary to the provisions of section 21, 22, 29(1) and 29(2)(f) of the RTE Act.

54. Before reaching the final conclusion, it would be fitting to refer to a recent Division Bench Judgment of Andhra Pradesh High Court, rendered on 15.04.2020 in the case of **Dr. Srinivas Guntupalli Vs. The State of Andhra Pradesh & Ors.**; Writ Petition (PIL) No.183/2019. The precise case therein was that by a Government notification dated 20.11.2019, it was provided that all Government schools from Grade - I to VIII for the academic session 2020-21 and Grade - IX & X for the academic session 2021-2022 shall be converted to English medium schools. When said decision came to judicial scrutiny, the Andhra Pradesh High Court quashed the Government notification holding, inter-alia, that the same is violative of Article 21A and 19(1)(g) of the Constitution of India, apart from being in contravention of provisions of section 29(2) of the Right to Education Act, 2009 and section 7(3) and 7(4) of the Act of Andhra Pradesh Right to Education Act, 1982.

55. The Division Bench of Andhra Pradesh headed by Hon'ble the Chief Justice (as he then was) has held thus:

"92. In the light of the above discussion, looking to the history of pre-independence and post-independence and as per the recommendations of the Report of the States Reorganisation Commission, 1955 and the National Policy on Education Act, 1968 and various other Reports, it is unequivocally recognised that medium of instruction in the schools, particularly, upto to standards I to VIII must be in

mother tongue. The effect of the National Policy on Education, 1968 and other Reports cannot be whittled down by way of issuing G.O., by the State Government, contrary to the spirit of the RTE Act and also to the provisions of the Constitution and also by the judgments of the Hon'ble Supreme Court. Therefore, the decision of the Government, converting the medium of instruction from Telugu to English medium from Standards I to VI or I to VIII as the case may be, en-bloc, is against the National Policy, on Education Act, 1968 and various other reports, therefore, it cannot be accepted, hence, the impugned G.O, is deserves to be set aside.

93. In view of the discussion so made herein above, the inescapable conclusion which can be arrived is that G.O.Ms. No.85, dated 20.11.2019, is against the spirit of the various Constitutional provisions and the amendment so proposed by the State Government is repugnant and without its assent, it cannot confer any power to the State Government to issue the said G.O.

94. In the result, the W.P. (PILs.) are allowed setting aside G.O.Ms. No.81, School Education (Prog.I) Department, dated 05.11.2019 and G.O.Ms.No.85, School Education (Prog.I) Department, dated 20.11.2019. In the facts and circumstances of the case, the parties are directed to bear their own costs. As a sequel, all pending miscellaneous applications stand closed."

Conclusion :

56. As an outcome of discussion foregoing, this Court is of the considered opinion that changing mode of instruction to English or imparting education in English per-se is not violative of fundamental rights guaranteed to the children or to their parents

under Article 21A of the Constitution of India. Because Article 21A only assures right of a child below 14 years to have access to free and compulsory education, whereas the manner has been left at the discretion of the State to be determined by law.

57. But, at the same time, it can also not be ruled that right to have education in a particular medium or in a language in which the child has been brought up is not covered by any of the fundamental rights.

58. Article 19(1)(a) of the Constitution of India is the fountain head, being repository of the right to freedom of speech and expression from where flows such right. Article 19(1)(a) has wide ambit and it includes within its fold, right to have education in a particular medium.

59. The right of having elementary education in mother tongue is also a statutory right conferred by section 29 (2)(f) of the Act of 2009, according to which medium of instruction, as far as practicable, is required to be in child's mother tongue.

60. The power to frame laws in the subject of education falls in the Entry No.25 of concurrent list (list 3rd) of the VII Schedule. And since the Act of 2009 occupies the field which unequivocally prescribes that medium of instructions in elementary education as far as practicable, be in mother tongue/home language of the child, any law made or framed by the State but for the assent of the President would be repugnant by virtue of Article 254 of the Constitution.

61. In the opinion of this Court, English, as a medium of instruction cannot be thrust upon a child even by a legislation enacted by the State Government, much less by a policy decision.

62. Be that as it may. Since the petitioner No.1 – SDMC of which petitioner No.2 & 3 are members, has itself decided to have a school of English medium, impugned decision of the State at the instance of the present petitioners cannot be quashed, more particularly, because the decision of the State or its policy as such are not under challenge.

63. In line with the mandate of section 29 (2)(f), the Central Government has framed National Policy, 2020, according to clause 4.9 thereof, the medium of instructions are required to be in home language.

64. The rights of the petitioners and the pupil of the school to have instructions in Hindi that are protected under Article 19(1)(a) of the Constitution of India and such rights can be diluted only by way of a legislation enacted in the contingencies mentioned in clause (2) of Article 19. In absence of any valid legislation brought by the State of Rajasthan, this Court is of the view that such right cannot be abrogated or taken away.

65. The impugned decision dated 20.09.2021 seeking to convert the school in question to a Hindi medium school with immediate effect (session 2021-22) is fortiori, violative of Article 19(1)(a) and 14 of the Constitution of India. The same is hereby quashed qua Shri Hari Singh Sr. Secondary School.

66. Now, moving on to the statutory rights of the petitioners and other children having education in the school.

67. Indisputably, the School Development Management Committee is a statutory body, constituted under the provisions of section 21 of the Act of 2009 and Rule 3 of the Rules of 2011. Section 21(2) and 22 of the Act of 2009 enjoins upon the committee to monitor the working of the school and

prepare/recommend school development plan. In the opinion of this Court, the State's administrative decision and action of forcing English as a mode or medium of instruction is violative of section 21 and 22 of the Act of 2009, particularly, in the face of resolutions dated 03.04.2021 and 28.09.2021 adopted by the SDMC.

68. Though this Court is of the view that the State's decision dated 20.09.2021 (in absence of decision of the Academic Authority) is contrary to Education Policy, 2020 and the provisions of section 29(1) and 29(2)(f) of the Right to Education Act and Rules framed thereunder, but since the policy decision itself is not under challenge and the petitioners themselves had in-principle welcomed or accepted the establishment of English medium school, it is hereby directed that in case, for the ensuing session i.e., 2022-23, the State wishes or proposes to convert the school in question to Mahatma Gandhi English Medium School, it shall convene a meeting of the School Development Management Committee constituted under Rule 3 of the Rules of 2011 in presence of the Sub Divisional Magistrate/Tehsildar and a nominee of District Education Officer concerned. Notice of the meeting with the proposed agenda will be circulated well in advance.

69. If the School Development Management Committee by majority of the members present, resolves that the school in question be converted to an English medium school, then only, the State's decision to convert the school in question to a Mahatma Gandhi English Medium School shall be given effect to. Else, the school will not be converted to an English medium school.

70. Writ petition stands allowed in the above terms.

71. Stay application and all other interlocutory applications stand disposed of.

(DINESH MEHTA),J

s-134-Amar & ArunV/-

RAJASTHAN HIGH COURT



सत्यमेव जयते