

D. A. V. COLLEGE BATHINDA, ETC.

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v.

STATE OF PUNJAB & ORS.

May 5, 1971

[S. M. SIKRI, C. J., G. K. MITTER, K. S. HEGDE, A. N. GROVER AND
P. JAGANMOHAN REDDY, JJ.]

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Punjabi University Act, 1961 (35 of 1961), s. 4(3)—University making Punjabi the sole medium of instruction and examination—Action ultra vires the power conferred by section—Also infringes rights of religious minority to conserve their script and administer their institutions.

The petitioners are educational institutions founded by the D.A.V. College Trust and Society registered under the Societies Registration Act as an association comprised of *Arya Samajis*. These institutions were, before the reorganisation of the State of Punjab in 1966, affiliated to the Punjab University constituted under the Punjab University Act, 1947. The Punjabi University was constituted in 1961 by the Punjabi University Act (35 of 1961). After the reorganisation, the Punjab Government under s. 5 (1) of the Act specified the areas in which the Punjabi's University exercised its power and notified the date for the purpose of the section. The effect of the notification was that the petitioners were deemed to be associated with and admitted to the privileges of the University and ceased to be associated in any way with the Punjab University. The Central Government notified under s. 72 of the State Reorganisation Act that the Punjab University ceased to function in the areas notified by the Punjab Government. Thereafter, by a circular dated June 15, 1970, the University declared that Punjabi "will be the sole medium of instruction and examination for the pre-university even for science group with effect from the academic session 1970-71". Later, the University by circular dated July 2, 1970 relaxed this directive in some special cases of pre-university students. On October 7, 1970 a further modification was made allowing English as an alternative medium of examination but qualifying in the elementary Punjabi papers would be obligatory in the case of such students offering English medium. In petitions filed under Art. 32 of the Constitution the main contentions urged were that s. 4(2) of the Act did not empower the University to make Punjabi the sole medium of instruction; that if it did the State Legislature had no competence to enact such a provision because that power was vested in the Union Parliament under Entry 66 of List I; and that in any case the circular and the Notification offended the petitioners right to conserve their script and administer their institutions in their own way.

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HELD: (i) The circular of June 15, 1970 as amended by the circulars of July 2, 1970 and October 7, 1970 is invalid and *ultra vires* the powers vested in the University.

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The University by adopting Punjabi as the sole or exclusive medium for the colleges affiliated to the University, notwithstanding the concessions granted, acted in excess of the power conferred on it. Section 4(3) of the Act, by the use of the definite article a prefixed to the word medium, does not require Punjabi to be made the exclusive medium of instruction. This conclusion is further reinforced by the nature of the power which is only "to progressively adopt it as a medium of instruction and examination for as many subjects as possible". [686H-687D]

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- A** *Gujarat University Ahmedabad v. Krishna Ranganath Mudholkar*, [1963] Supp. 1 S.C.R. 112, relied on.

R. Chitralekha v. State of Mysore, [1964] 6 S.C.R. 368, referred to.

- B** (ii) Further, the petitioners are institutions maintained by a religious minority and as such the directive for the exclusive use of the Punjabi language in the *Gurmukhi* script as the medium for instruction and for examination in all colleges directly infringes the petitioners right to Consume their script and administer their institutions. The relaxation made subsequently in the earlier directives of the University makes little difference because, the concession does not benefit students with Hindi as the medium as *Devanagari* as their script. The right of the minorities to establish and administer educational institutions of their choice includes the right to have a choice of the medium of instruction also. This would be the result of reading Art. 30(1) with Art. 29(1). No inconvenience or difficulties, administrative or financial can justify the infringement of guaranteed rights. [683D-F; 684G-H]

State of Bombay v. Bombay Education Society, [1955] 1 S.C.R. 568, referred to.

- D** ORIGINAL JURISDICTION : Writ Petitions Nos. 353 and 354 of 1970.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

- E** *A. K. Sen*, and *Naunit Lal*, for the petitioners (in both the petitions).

M. C. Chagla and *R. N. Sachthey*, for respondent No. 1 (in W. P. No. 353 of 1970).

H. L. Sibbal, Advocate-General, Punjab and *R. N. Sachthey*, for respondent No. 1 (in W. P. No. 354 of 1970).

- F** *V. M. Tarkunde*, *Harbans Singh* and *K. R. Nambiar*, for respondent No. 2 (in W. P. No. 353 of 1970).

Kuldip Singh and *Harbans Singh*, for respondent No. 2 (in W. P. No. 354 of 1970).

- G** The Judgment of the Court was delivered by

- H** **P. Jaganmohan Reddy, J.**—These two Writ Petitions under Article 32 challenge the vires and constitutionality of Sections 4(2) and 5 of the Punjabi University Act 35 of 1961 as amended (hereinafter called “the University” or “the Act”, as the case may be). It is also prayed that (i) the Notification of the Punjab Government No. 5592-ED-1(2E)/59/12447 dated 13-5-1969 extending the area in which the University shall exercise its powers and (ii) the Circular of the University No. 8617-8661/GS/Misc. dated 15-6-70

as modified by Circular No. 9866-989G/DSG dated 2-7-70 enclosing the decision of the Senate Sub-Committee dated 1-7-70 be quashed as being illegal, unconstitutional and void.

The Petitioners are educational institutions founded by D. A. V. College Trust and Society registered under the Societies Registration Act as an association comprised of Arya Samajis. These Colleges were affiliated to the Punjab University before the reorganisation of the State of Punjab in 1966. The University had been constituted in 1961 and by a Notification dated June 30, 1962, it was given jurisdiction over a radius of 10 miles from the office of the University at Patiala which seat had earlier been notified on 30-4-1962 as a Seat of the University. As the Writ Petitioners were not within the 10 miles radius of the University they continued to be affiliated to the Punjab University. After the reorganisation the Punjab Government by Notification dated 13-5-1969 issued under sub-section (1) of Section 5 of the Act specified the Districts of Patiala, Sangrur, Bhatinda and Rupar as the areas in which the University exercised its power and under sub-section (3) of the said Section, 30th June 1969 was notified as the date for the purpose of the said Section. The effect of this Notification was that the Petitioners were deemed to be associated with and admitted to the privileges of the University and ceased to be associated in any way with or to be admitted to any privileges of the Punjab University. It may also be mentioned that the Central Government by a Notification dated 12-9-1969 in exercise of the powers conferred on it by Section 72 of the Reorganisation Act directed that the Punjab University constituted under the Punjab University Act 1947 shall cease to function and operate in the areas of the very four Districts regarding which the Punjab Government had earlier issued a Notification under Section 5 of the Act.

Thereafter the University by the impugned Circular dated 15-6-1970 issued to all the Principals of the Colleges admitted to the privileges of the University declared that Punjabi "will be the sole medium of instruction and examination for the pre-University even for Science group with effect from the Academic Session 1970-71". Later the University by a letter dated 2-7-1970 informed the Principals that a decision of the Senate Sub-Committee dated 1-7-1970 as enclosed therewith was made giving "relaxation in some special cases of pre-University students seeking admission for the year 1970". This enclosure was in Punjabi, an English translation of which would show that the relaxation was to permit students who had passed their matriculation examination with English as their medium of examination to be taught and to answer examination papers in the English medium at pre-University level 'only so long as the other Universities and School bodies of Punjab

- A** did not adopt Punjabi as their medium of instruction'. On 7-10-70 the University made a further modification and it was decided by the Senate "that English be allowed as an alternative medium of examination for all students for the courses for which the University had adopted the regional language as the medium. It was however understood that qualifying in the elementary Punjabi paper
- B** would, as already decided by the University be obligatory in the case of such students offering English medium as had not studied Punjabi as an elective or optional subject even upto the middle standard". The resolution of 1-7-1970 further decided that students availing themselves of the facilities given thereunder will have to pass a compulsory course in Punjabi of 50 marks of which
- C** a minimum of 25 marks will be required to pass that course.

- It is alleged that as a result of these Notifications and resolutions of the University the Petitioners Colleges have to teach all subjects including Science subjects in Punjabi and their students have to write examinations in the Gurumukhi script except in the cases exempted in the resolution of the Senate sub-Committee dated
- D** 1-7-1970. It was therefore submitted that the Notification dated 15-6-1970 will result in the lowering of educational standards inasmuch as the students who have passed Matriculation examination in Hindi will be handicapped in studying their subjects in Punjabi and writing answers in Gurumukhi script; that the students who have to prepare their subjects and write answers in Punjabi alone
- E** in the University examination will be at a disadvantage in seeking admission to professional Colleges such as the Engineering College, Medical College, Business Management College and other Colleges and in the study of Science subjects; and that the students who passed examination through Punjabi medium will be handicapped in the competitive examinations for the I. A. S., in research work and in various other fields. It is further stated that the
- F** impugned notification has also resulted in lowering the standard in all respects, as there is (i) no coordination for teaching Science subjects and other subjects in higher Classes like B. A. and B.Sc., through the medium of Punjabi, (ii) no corresponding arrangements have been made for answering papers in the examination for admission to the Indian Institute of Technology and All India
- G** Institute of Medical Sciences and other competitive examinations for Central Services. The main contention of the Petitioners however, was that Section 4(2) of the Act does not empower the University to make Punjabi the sole medium of instruction; that it is not within the legislative power of the State under Entry 11 of List II to make Punjabi the sole medium of instruction, which power
- H** in fact vested in the Union Parliament under entry 66 of List I and that consequently the provisions of Section 4(2) and the Notification and the Circulars referred to above are *ultra vires* and unconstitutional. In so far as the medium of instruction in Punjabi with

Gurumukhi as the script is sought to be imposed on the educational institutions established by the Arya Samajis a religious denomination, they also offend Arts. 26(1), 29(1) and 30(1) of the Constitution.

A preliminary objection has been urged on behalf of the Respondents that in a Petition under Article 32, only where it is shown that there is a violation of fundamental right that the validity of the legislation or of the legislative competence can be raised and determined, but in these cases as there is no violation of Article 14, 26, 29 and 30 of the Constitution the Petitioners ought not be allowed to challenge the vires of the Act on the ground of the competence of the legislature to enact the impugned law. This question has been dealt with fully in the batch of petitions in which we have just pronounced Judgment, where we had also considered the contentions of the learned Advocate General of Punjab and Shri Tarkunde, the learned Counsel for Respondents 2 in this behalf and hence we do not purpose again to reiterate the reasons in support of the conclusion that a petition under Article 32 in which petitioners make out a *prima facie* case that their fundamental rights are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place. On the other objection that the Arya Samaj is neither a linguistic or religious minority nor is it a religious denomination we held that it was unnecessary to go into the question of whether it is a separate religious denomination for the purpose of Article 26(1) (a) or a linguistic minority for the purposes of Article 30(1) because in our view it would be sufficient for the petitioners if they could establish that they had a distinct script of their own and they were a religious minority, to invoke the protection of Article 29(1) and 30(1). We had in those Writ Petitions held that what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act is a State Act and not in relation to the whole of India. In this view we rejected the several contentions which are also urged in these petitions namely that Hindus being a majority in India are not a religious minority in Punjab and held that the Arya Samajis who are part of the Hindu community in Punjab are a religious minority and that they had a distinct script of their own the Devnagri which entitled them to invoke the guarantees under the aforesaid provisions of the Constitution.

It may be noticed that the petitioners did not complain at the time when the Notification under sub-Section (1) & (3) of Section 5 of the Act was published on the 13th May'69 as a result of which their Colleges became affiliated to the University and ceased to be affiliated to the Punjab University. It is only after one academic

- A** year had gone by that they filed these petitions in September'70. It was earlier pointed out that the Central Government also, had in exercise of the powers under Section 72(1) of the Reorganisation Act given, the necessary directions for the disaffiliation of the Colleges (which included those of the Petitioners) in the area notified by the State Government from the Punjab University. No contention can therefore be urged, as was urged in the cases disposed of earlier, that the State Government has no power to issue a Notification under sub-section (1) & (3) of Section 5 of the Act to disaffiliate the petitioners from the Punjab University in the absence of a direction from the Central Government in that behalf, nor can any question arise in this case that the legislature was not competent to enact Section 5 until other provision was made by the Union Parliament in respect of the functioning and operation of the Punjab University over the areas over which it had prior to the Reorganisation jurisdiction, because the University was constituted prior to the Reorganisation Act by a State Act in which Section 5 had already vested the State Government with powers under sub-section (1) & (3) of Section 5 of the Act. In view of this position the affiliation of the Petitioners with the Punjab University is valid and cannot be challenged.

The main ground of attack by the Petitioners is that Section 4(2) of the Act does not confer a power on the University to make Punjabi the sole medium of instruction and if it does, then the State legislature has no competence to enact such a provision because that power is vested in the Union Parliament under item 66 of List I. In any case the circular and the Notification referred to offend the petitioners right to conserve their script and administer their institutions in their own way.

- F** The University does not deny that it had adopted Punjabi language as the sole medium of instruction and for examinations but it seeks to justify it on the ground that it is the national policy of the Government of India that the energetic development of Indian languages and literature is a *sine qua non* for educational and cultural development. Unless this is done the creative energies of the people will not be released, standards of education will not improve, knowledge will not spread to the people, and the gulf between the intelligentsia and the masses will remain, if not widened further. The observations of the Education Commission in its report for 1964-66 as well as from the Report of the Committee of Members of Parliament on education in 1967 were referred to in support of this policy in furtherance of which the second respondent says that it "adopted a phased programme for switch over from English to Punjabi as sole medium of instruction for pre-University with effect from academic session 1970-71..

It is therefore clear that when the University issued the Circular of 15-6-70 it intended to make Punjabi the exclusive medium of instruction as well as for examination. The use of the word 'sole' in the circular would mean and imply that it is 'exclusive'. In relation to the examination the medium being Punjabi would mean that the script to be used is exclusively Gurumukhi. Now the directive for the exclusive use of the language and script as the medium of instruction and for examination in all Colleges affects the petitioners Colleges which as we said are institutions maintained by a religious minority and directly infringes their right to conserve their script and administer their institutions. The relaxation made subsequently in the earlier directives of the University makes little difference because in order to be allowed to take English as an alternative medium of examination it is obligatory for a student to have passed the Matriculation examination with English as the medium of instruction and that unless he has studied Punjabi as an elective or optional subject even upto the middle standard he is required to qualify in the elementary Punjabi paper. This concession however does not benefit students with Hindi as their medium and with Devnagri as their script because for them Punjabi medium is obligatory in the pre-University courses. If as is contended that teaching in the regional language, which means in the mother tongue, accelerates the pace of educational and cultural development and makes for improvement and excellence of educational standards this criteria is equally applicable to the religious or linguistic minorities or to any other Section of the citizens who have a distinct language, script and culture and whose right to conserve them, and to administer their institutions are guaranteed under Article 29(1) and 30(1) of the Constitution. The right of the minorities to establish and administer educational institutions of their choice would include the right to have a choice of the medium of instruction also which would be the result of reading Article 30(1) with Article 29(1). But if the University compulsorily affiliates such Colleges and prescribes the medium of instruction and examination to be in a language which is not their mother tongue or requires examination to be taken in a script which is not their own, then it interferes with their fundamental rights. It is true as is contended by the learned advocate for the second, Respondent, no linguistic minority can claim that the University shall conduct its examinations in the language or script which the minority institutions have a right to adopt but in such a case it must not force those institutions to compulsorily affiliate themselves and impose on them a medium of instruction and script not their own.

This Court had in the *State of Bombay v. Bombay Education Society & Ors.* ⁽¹⁾ while dealing with a circular issued by the State

(1) [1955] 1 S. C. R. 568.

A of Bombay prohibiting the admission to a class where English is used as the medium of instruction, of any pupil who is not an Anglo-Indian and citizens of non-Asiatic descent, held that the State had not the power to prohibit contrary to the rights guaranteed under Article 29(2) the admission of students to Anglo Indian Schools whose mother tongue was not English. Das J. as he then
B was delivering the unanimous Judgment of the Court observed at page 586.—

‘Where however, a minority like the Anglo-Indian Community, which is based, *inter alia*, on religion and language, has the fundamental right to conserve its language, script and culture under Art. 29(1) and has the right
C to establish and administer educational institutions of their choice under Art. 30(1) surely then there must be implicit in such fundamental right the right to impart instruction in their own institutions to the children of their own community in their own language. To hold
D otherwise will be to deprive Article 29(1) and Article 30(1) of the greater part of their contents”.

The State must therefore harmonise its power to prescribe the medium of instruction with the rights of the religious or linguistic minority or any section of the citizens to have the medium of instruction and script of their own choice by either providing also for instruction in the media of these minorities or if there are other Universities which allow such Colleges to be affiliated where the medium of instruction is that which is adopted by the minority institutions, to allow them the choice to be affiliated to them.
E When the country has been reorganised and formed into linguistic States it may be the natural outcome of that policy to allow Colleges established by linguistic and religious minorities giving instructions in the medium of language adopted by the Universities in other States to affiliate to them or if it wants Colleges including the minority institutions to be affiliated to it, to make provision for allowing instruction to be given and examination to be
F conducted in the media and script of the minorities when it imposes a regional language as the medium of instruction for the University. No inconvenience or difficulties, administrative or financial can justify the infringement of the guaranteed rights. It is also worthy of note that no State has the legislative competence to prescribe any particular medium of instruction in respect of higher education or research and scientific or technical instructions,
G if it interferes with the Power of the Parliament under item 66 of List I to coordinate and determine the standards in such institutions.
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In the *Gujarat University Ahmedabad v. Krishna Ranganath Mudholkar* ⁽¹⁾ the Respondent whose medium of instruction in the first year Arts Class in St. Xavier's College affiliated to the Gujarat University, was English was refused admission to Intermediate Arts courses to study for the examination through the English medium in view of the provisions of the University and certain statutes framed by the Senate which were subsequently amended. One of the provisions challenged was Section 4(27), which empowered the University "to promote the development of the study of Gujarati and Hindi in Devnagri script or both as a medium of instruction and examination". Prior to the amendment the proviso permitted that English may continue to be the medium of instruction and examination for a period not exceeding ten years but in 1961 it was amended and certain other periods were fixed and power given to implement the provisions. The details of the amendment are not relevant for our purpose. The High Court of Gujarat issued Writs not to enforce the provisions of Sections 4(27) and the other provisions which were challenged. In appeal two questions were urged before this Court : (1) whether the University had the power under the Act to prescribe Gujarati or Hindi or both as exclusive medium or media or instruction and examination and (2) whether legislation authorising the University to impose such media was constitutionally valid in view of entry 66 of List I of the VII Schedule. It was held by the majority, Subba Rao, J., as he then was dissenting, that (1) neither under the Gujarat University Act as originally enacted nor as amended in 1961 was the University empowered to impose Gujarati or Hindi as the exclusive medium of instruction. That this was the intention, was clear because of the use of the indefinite article 'a' immediately preceding the medium of instruction while in the proviso in relation to English being continued the definite article 'the' preceded the medium of instruction to make that the exclusive medium for the periods specified. (2) While item 11 of List II and item 66 of List I may overlap recourse must be had to a harmonious construction and where they overlapped, Union legislation must prevail over the State legislature, and since medium of instruction is not an item in the legislative list it necessarily falls within item 11 of List II as also within items 63 to 65 of List I. It was also of the view that insofar as it is a necessary incident of the power under item 66 it must be deemed to be excluded from item 11 of List II.

In the result disagreeing with the Gujarat High Court that Act 4 of 1961 insofar as it amended the proviso to Section 4 (27) is invalid because it was beyond the competence of the State legislature, the order of the High Court relating to the invalidity

(1) [1963] 1 Supp. S. C. R. 112.

- A of the statutes insofar as they purported to impose Gujarati and Hindi or both an exclusive medium or media of instruction and the Circulars enforcing those statutes was confirmed.

B In *Chitralekha v. State of Mysore* ⁽¹⁾ also it was held that entries 65 and 66 of List I give the Union power to secure that the standard of research etc. is not lowered at the hands of any State or States to the detriment of national progress and the power of the State legislature must be so exercised as not to directly encroach upon the power of the Union under that entry. Subba Rao, J., as he then was speaking for the majority referring to the Gujarat case with reference to a passage extracted from page 139 of the report, observed at page 379 :

- C "This and similar other passages indicate that if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions reserved to the Union, the State law may be bad".
- D

- E No doubt in the Judgment of the majority in the Gujarat case there are certain observations which might appear to suggest that the legislative power under item 66, List I and item 11, List II may be dependent on certain variable factors which however they said were being made on certain abstract considerations placed before them. That this was so was further emphasised when it was observed at page 143 :

- F "We have no specific statute the validity of which, apart from the one which we will presently mention, is challenged".

- G In any case the actual decision in the case turned on the interpretation of Section 4(27) of the Gujarat University Act, and as we have earlier noticed it was held disagreeing with the High Court that the University was not vested with the power to prescribe Gujarati or Hindi as the exclusive medium and the provision which attempted to do so were struck down as invalid. The decision however did not express any opinion on the alleged infringement of the fundamental rights of the petitioners under Article 29 (1) and 30 (1) of the Constitution.

- H Applying the decision to facts of this case there is no difficulty in holding that Section 4 (3) of the Act which is in similar terms to Section 4 (27) of the Gujarat Act, by the use of the indefinite Article a prefixed to the word medium, does not require

(1) [1964] 6 S. C. R. 368.

Punjabi to be made the exclusive medium of instruction. This conclusion is further reinforced by the nature of the power which is only "to progressively adopt it as a medium of instruction and examination for as many subjects as possible". The University by adopting Punjabi as the sole or exclusive medium for the Colleges affiliated to the University, notwithstanding the concessions granted, acted in excess of the power conferred on it. While the University can prescribe Punjabi as a medium of instruction it cannot prescribe it as the exclusive medium nor compel affiliated Colleges established and administered by linguistic or religious minorities or by a Section of the citizens who wish to conserve their language script and culture, to teach in Punjabi or take examination in that language with Gurmukhi script. The University Act having compulsorily affiliated these Colleges must of necessity cater to their needs and allow them to administer their institutions in their own way and impart instructions in the medium and write examination in their own script. In this view the petitions are allowed with costs. The impugned Circulars of 15-6-1970 as amended by Circular of 2-7-1970 in terms of the resolution of the Senate Sub-Committee of 1-7-1970 and that of 7-10-1970 are struck down as being invalid and *ultra vires* of the powers vested in the University. Costs one hearing fee.

K. B. N.

Petitions allowed.