

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE NINALA JAYASURYA**

WRIT PETITION (PIL) No.183 of 2019

Dr. Srinivas Guntupalli, S/o Sambasiva Rao,
aged about 40 years Occ:Assistant Professor
General Medicine R/o F4 GRR Block
ASRAM Medical College campus, Malkapuram,
Eluru, West Godavari District 534005

... Petitioner

Versus

1. The State of Andhra Pradesh, through its Principal Secretary, School Education Department, Secretariat Building at Velagapudi, Guntur District.
2. The Union of India, through its Principal Secretary, The Ministry of Human Resource Department.
3. The Commissioner of School Education, Andhra Pradesh, Amaravati.
4. The State Project Director, Sarva Sikha Abhiyan, High School Road, Patamata, Vijayawada.
5. The Director, SCERT, Sri Anjaneya Towers, D.No.7-104, B-Block, 2nd Floor, Vijayawada, Mylavaram Road, A.P.
6. Guntur District Aided Schools Management Association, Rep. by its District Secretary Bhatraju Chittranjan Das, Guntur.
7. Gorremuchu Venkata Narasimha Rao, S.o.Peda Rama Swamy, aged 42 years, R/o.H.No.77-54/1-15, Prakash Nagar, Vijayawada.
8. G.Sudheer Babu, S/o.Solomon, aged 39 years, R/o.6-1/5-21, Vandanam Street, Frizerpet, Chittinagar, Vijayawada.
9. Maddirala Mallikarjuna Rao, S/o.Balakotaiah, aged 48 years, R/o.Ravulakollu village, Ponnaluru Mandal, Prakasam District.

10. G. Madhu Babu, S/o.G.Venkaiah, aged 35 years,
R/o.D.No.5-94, Prathuri village, Tadepalli Mandal,
Polakampadu, Guntur District.
 11. Dalitha Bahujan Front, rep. by its Secretary
Sri M.Bhagya Rao, S/o.Venkateswarlu, aged about
48 years, Office at Arundelpet, 5/3,
Guntur District.
 12. The Adi-Hindu Social Service League, rep. by its
Secretary Shri M.Ajay Gautam, S/o.Shri M.B.Gautam,
Aged about 46 years, Occ: Social Service,
office at Adi-Hindu Bhavan,
near Victory Play Ground, Hyderabad.
 13. Peoples' Education Trust, rep. by its General Secretary
Shri K.Satyanarayana, S/o.late Venkanna, aged about 62
years, office at 105, Suryalok Complex, Gunfoundry,
Abids, Hyderabad.
 14. Dalit Stree Shakthi (NGO) rep. by its Convener
G.Jhansi, D/o.late Abrahama, aged 52 years,
R/o.Plot No.1, Sudha Apartments, 6/13,
Brodipet, Guntur District,
Andhra Pradesh.
- ... Respondents

Counsel for the petitioner	:	Sri Karumanchi Indraneel Babu
Counsel for respondent Nos.1, 3, 4 & 5:		The Advocate General
Counsel for respondent No.2	:	Sri B.Krishna Mohan, ASG
Counsel for respondent No.6	:	Sri N. Subba Rao
Counsel for respondent Nos.7 to 10 & 14:		Sri G.V.Shivaji
Counsel for respondent Nos.11 to 13	:	Sri Dr.S.Chellappa

WRIT PETITION (PIL) No.185 of 2019

Ramabhotla Srinivasa Sudhish, S/o.Narasimha
Sastry, aged about 52 Years, Occ:Social Activist
R/o.H.No.3232 Ravipadu, P.Gannavaram, P.Gannavaram
Mandalam, Patha Gannavaram East Godavari District,
Andhra Pradesh.

... Petitioner

Versus

1. The State of Andhra Pradesh, through its Principal Secretary, School Education Department, Secretariat Building at Velagapudi Guntur District.
2. The Commissioner of School Education, State of A.P., 4th floor, B-Block, VTPS Road, Bhimarajugutta, Ibrahimpatnam, A.P.
3. The State Council of Educational Research & Training, A.P., rep. by its Director, OPP: LB Stadium, E-Gate, Hyderabad.
4. Union of India, rep. by its Secretary, Dept. of School Edn., and Literacy, Ministry of HRD, 124-C, Sastri Bhavan, New Delhi.
5. Guntur District Aided Schools Management Association, Rep. by its District Secretary Bhatraju Chittranjan Das, Guntur.
6. Gorremuchu Venkata Narasimha Rao, S.o.Peda Rama Swamy, aged 42 years, R/o.H.No.77-54/1-15, Prakash Nagar, Vijayawada.
7. G.Sudheer Babu, S/o.Solomon, aged 39 years, R/o.6-1/5-21, Vandanam Street, Frizerpet, Chittinagar, Vijayawada.
8. Maddirala Mallikarjuna Rao, S/o.Balakotaiah, aged 48 years, R/o.Ravulakollu village, Ponnaluru Mandal, Prakasam District.
9. G. Madhu Babu, S/o.G.Venkaiah, aged 35 years, R/o.D.No.5-94, Prathuri village, Tadepalli Mandal, Polakampadu, Guntur District.
10. Budumuru Swetha Bhargavi, W/o.Lakshminarayana, Aged 36 years, R/o.Block No.92, SF-4, YSR Colony, Jakkampudi, Vijayawada Rural, Andhra Pradesh.
11. Dalitha Bahujan Front, rep. by its Secretary Sri M.Bhagya Rao, S/o.Venkateswarlu, aged about 48 years, Office at Arundelpet, 5/3, Guntur District.
12. The Adi-Hindu Social Service League, rep. by its Secretary Shri M.Ajay Gautam, S/o.Shri M.B.Gautam, Aged about 46 years, Occ: Social Service, office at Adi-Hindu Bhavan, near Victory Play Ground, Hyderabad.

13. Peoples' Education Trust, rep. by its General Secretary Shri K.Satyanarayana, S/o.late Venkanna, aged about 62 years, office at 105, Suryalok Complex, Gunfoundry, Abids, Hyderabad.
14. Dalit Stree Shakthi (NGO) rep. by its Convener G.Jhansi, D/o.late Abrahama, aged 52 years, R/o.Plot No.1, Sudha Apartments, 6/13, Brodipet, Guntur District, Andhra Pradesh.
15. Y.Satya Kumar, S/o.Subba Rao, aged 48 years, R/o.9/379, Mondi Rao Street, Proddatur, Kadapa District.
16. Bahujana Teachers Assn., rep. by its President Thota Raja Rao, S/o.Venkatachalam, aged 48 years, Teacher, MPP School, Appannapalli, Mamidikuduru Mandal, E.G. District.
17. Bahujana Teachers Assn., rep. by its Secretary Maddirala Madhava Rao, S/o.late Narasimha Rao, aged 57 years, Occ: Teacher, Mandal Parishat Patasala, Prakasam District. ... Respondents

Counsel for the petitioner	:	Sri Anup Koushik Karavadi
Counsel for respondent Nos.1 to 3	:	The Advocate General
Counsel for respondent No.4	:	Sri B.Krishna Mohan, ASG
Counsel for respondent No.5	:	Sri N.Subba Rao
Counsel for respondent Nos.6 to 9&14:	:	Sri G.V.Shivaji
Counsel for respondent No.10	:	Sri V.Karthik Navayan
Counsel for respondent Nos.11 to 13	:	Dr.S.Chellappa
Counsel for respondent No.15	:	Sri Vedula Venkata Ramana rep.M/s.Bharadwaj Associates
Counsel for respondent Nos.16 & 17	:	Sri Y.Koteswara Rao

COMMON ORDER**Dt: 15.04.2020****Per J.K. Maheshwari, CJ**

Writ Petition (PIL) No.183 of 2019 has been filed assailing G.O.Ms.No.85, School Education (Prog.I) Department, dated 20.11.2019 as well as G.O.Ms.No.81, School Education (Prog.I) Department, dated 05.11.2019, issued on the proposal of the Commissioner of School Education, vide Lr.Rc.No.162/A & I/2014, dated 12.10.2019. The subsequent G.O.Ms.No.85 supersedes the previous G.O.Ms.No.81; therefore, in sum and substance, G.O.Ms.No.85 is under challenge in this petition; the said G.O., is relevant, however, extracted as under:

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

School Education Department – Converting all classes from I to VI in Primary, Upper Primary, High Schools under all managements into English Medium from the academic year 2020-21 and gradually increasing each further class from the Next consequent academic years- Orders- Issued.

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SCHOOL EDUCATION (PROG.I) DEPARTMENT

G.O.Ms.No.85**Dt:20.11.2019****Read the following:-**

1. G.O.Ms.No.76 Education (SE.TRG) Department dt.10.06.2008.
2. G.O.Rt.No.30 Education (Prog.II) Dept, dt.20.01.2010
3. Govt. Memo No. 434390/Prog.I/2017 dt.16.11.2017.
4. G.O.Rt.No.78 Education (Prog.I) Dept, dt.05.10.2017
5. G.O.Ms.No.81 School Education (Prog.I) Department, dt.5/11/2019
6. From the Commissioner of School Education, AP.,
Lr.Rc.No.162/A&I/2014, dt:12.10.2019

&&&

ORDER:

In the reference 6th read above, the Commissioner of School Education has submitted a proposal for converting all Government, MPP Schools and Zilla Parishad schools and all classes into English Medium from Grades I to VIII from academic year 2020-21 and for Grades IX & X from academic year 2021-22.

2. After careful examination of the matter, Government hereby accord permission to the Commissioner of School Education to convert all classes from I to VI in Primary, Upper Primary, High Schools under all managements into English Medium from the academic year 2020-21 and gradually increasing each further class from the Next consequent academic years in superseding the earlier orders issued vide references 1st to 5th read above in the matter. However, the Commissioner of School Education shall take appropriate and adequate efforts to implement Telugu/Urdu as compulsory subject depending on the current medium of instruction in all the Schools compulsorily in line with the Government orders in the matter.

3. The Commissioner of School Education shall ensure the following steps for successful implementation of English Medium schools:-

1. Required teachers should be deployed in the School as per the staffing pattern prescribed by the Government from time to time and as per pupil teacher ratio for single medium.
 2. SCERT shall take necessary action for designing and development of Teacher Hand Books, Training of Teachers in English medium teaching skills and knowledge, Compendium of best classroom practices and other pedagogical material for supporting the teachers to be skilled in English Medium teaching.
 3. Director SCERT in coordination with Commissioner of School Education shall take comprehensive action for online assessment of the current English proficiency levels of the Teachers, design appropriate training programs for enhancing the English Medium teaching skills for the teachers.
 4. Intensive and extensive trainings must be ensured during the current academic year and during the Summer of 2020 for equipping the Teachers to teach in English Medium from academic Year 2020-21 for classes I to VI. Number of trainings shall be given to the Teachers until improving their English Medium Teaching skills in specific subjects and in general.
 5. Action shall be taken for reviving the English Language Teaching Centers & District English Centers (DECs) and re-locating them in District Institutes for Education & Training (DIETs).
 6. Director, Text Book Press, should take action to obtain correct indents and ensure supply of English Medium Text Books to the Schools as per student enrolment for classes I to VI well before the starting of the academic year.
 7. Keeping in view of the conversion of all schools and classes from I to VI into English Medium, requirement of Teachers can be arrived at and proposals should be submitted to Government by the Commissioner School Education.
 8. In future, Teacher recruitments, qualified candidates with the best proficiency in English Medium teaching should be recruited.
4. The Commissioner of School Education, the State Project Director, SSA, the Director, SCERT, and the Director, AP Text Book Press shall take further necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**B.RAJSEKHAR
PRINCIPAL SECRETARY TO GOVERNMENT**

2. By the said G.O., the Government accepted the proposal of the Commissioner, School Education to convert all classes from I to VI in primary, upper primary, high schools under all managements into English medium from the academic year 2020-21 and to gradually increase each class further from the next consequent academic year in supersession of the previous G.Os., referred therein. It is said, Telugu and Urdu shall be a compulsory subject depending on the current medium of instruction in all the schools. The Government sought

compliance from the Commissioner, School Education to deploy the required teachers as per the staffing pattern, maintaining pupil-teacher ratio in the English medium. The State Council for Educational Research and Training (in short '*SCERT*') was directed to take necessary action for designing and developing teacher handbooks, training of teachers in English medium teaching skills and knowledge, compendium of best classroom practices and other pedagogical material for supporting the teachers to be skilled in English Medium teaching. The SCERT in coordination with the Commissioner of School Education is further directed to take up online assessment of the proficiency level of the teachers in English medium and to enhance the skills of the teachers with extensive training programmes by giving repeated trainings. Action shall be taken for reviving the English Language Teaching Centers & District English Centers (DECs) and re-locating them in District Institutes for Education & Training (DIETs). The Director, Text Book Press is directed to take action to obtain correct indents and ensure supply of English Medium Text Books to the Schools as per student enrolment for classes I to VI well before the starting of the academic year. In view of conversion of all the schools, the requirement of the teachers may be informed to the Government through the Commissioner, School Education for their recruitment with the qualified candidates having the best proficiency in English medium teaching. In brief, the said directions are three-fold:

(i) conversion of classes from I to VI in primary, upper primary and high schools under all managements into English medium and gradually increase each further class from next consequent academic year;

(ii) for enhancing the skills of the present deployed teachers, by developing Teachers' Hand Book, Training of Teachers in English medium teaching skills and knowledge, Compendium of best classroom practices and other pedagogical material for supporting the teachers and to submit proposals for recruitment of teachers for filling up of the posts and;

(iii) the Director, Text Book Press to obtain consent, indent and ensure the supply of English medium text books in the next academic year.

3. Counsel for the petitioner Sri Karumanchi Indraneel Babu has challenged the said G.O., based on the data available on the website of the Commissioner of School Education, showing the strength of students of primary schools in Telugu medium, English medium, Telugu & English (parallel) compared with the number of students opted for admission in the three categories. It is urged that as per the notification issued by the Government vide G.O.Ms.No.78, dated 05.10.2017 (Reference No.4 in the impugned G.O.), parallel English medium classes are going on. As per the datas at the time of issuance of the impugned notifications, the number of admissions in Telugu medium schools are more than English medium. He relied upon the research regarding the best medium of instruction in primary education since 1953, as per the recommendation of United Nations Educational,

Scientific and Cultural Organisation (in short '*UNESCO*'), based on the survey of Oxford University on children and urged that mother tongue is the best medium of instruction for the children to perform better. It is stated that the UNESCO in 2003 has strongly told in favour of mother tongue for teaching in primary schools to build up the quality education, knowledge and experience, required for overall development.

4. It is further stated that the Delhi Declaration and Framework for Action, Education for All Summit 1993 depicted a conclusion after thorough research that "*where the language of instruction is other than the mother tongue of the learner, it is likely that initial learning will be slower and achievement will be lower*". Referring the recommendations of the Congress Working Committee and the resolution adopted in August, 1949 and also the National Policy of Education, contended that switching the medium of instruction from Telugu to English is contrary to the said policy. It is urged that the impugned G.O., is violative of Article 19 (1) (a) and also against the judgment of the Constitution-Bench of the Hon'ble Supreme Court in the case of **State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools**¹. It is contended that conversion of Telugu medium schools completely into English medium schools do not fall in the restrictions so specified in Clause (2) of Article 19. It is further urged that by the impugned G.O., the schools of all

¹ (2014) 9 SCC 485

managements have been converted into English medium in violation of the right of doing profession and occupation conferred to the private un-aided educational institutions as per Article 19 (1) (g) of the Constitution as well to the linguistic minority groups, contrary to the provisions of Articles 30 and 350-A of the Constitution of India. Further relying upon Article 26 (3) of the Universal Declaration of Human Rights by the United Nations (in short '*UDHR*'), it is urged that the kind of education which is to be given to the children is recognised therein, more so, Article 29 of the Constitution of India restricts the Government from abandoning the mother tongue from the medium of instruction, therefore, the said G.O., violates the Constitutional provisions. It is further urged that the impugned G.O., is contrary to the provisions of the Right of Children to Free and Compulsory Education Act, 2009, (in short '*the RTE Act*') particularly, Section 29 (2) (f) and Rule 23 of the Right of Children to Free and Compulsory Education Rules, 2010 (in short '*the Central Rules*') framed by the Central Government, as such, *ultra vires*. The said action would affect the young minds of the State affecting their overall development and also nullify the rich heritage of the Telugu language. It is said, the action taken by the Government is without any recommendation of academic authority, without application of mind and without any research, reason or rhyme, hence, it is writ large.

5. In the W.P. (PIL) No.185 of 2019, impugned G.O., has been assailed on the premise that the Right to Education is within the

purview of Right to Life and Personal Liberty, in view of the judgment of **Ms.Mohini Jain v. State of Karnataka**² and **Unni Krishnan J.P. v. State of A.P.**³ After the said judgments, Article 21-A was brought in Part III (Fundamental Rights) making it obligatory on the State to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as may by law determine. It is further stated that the RTE Act is applicable in the State of Andhra Pradesh, whereby the education is to be provided to the children in the neighbourhood schools. The State has also promulgated the Andhra Pradesh Right of Children to Free and Compulsory Education Rules, 2010 (in short '*the State Rules*') on 22.02.2011, in exercise of the powers conferred by the RTE Act, to carry out the purpose of the said Act.

6. It is also urged that in the State of Andhra Pradesh, the medium of instruction for the children studying in schools is in the mother tongue i.e., Telugu, and by parallel classes both in English and Telugu as per the choice of the child or parent. The en-bloc change to the medium of instruction only in English is not permissible, in particular, primary, upper primary and high schools, where classes I to VI are converted into English medium from Telugu medium. Such action and issuance of the said G.O., is contrary to the provisions of the RTE Act. It is contended that in view of the judgment of

² 1992 SCR (3) 658

³ (1993) 1 SCC 645

Shri Sitaram Sugar Company v. Union of India & Ors.⁴, if the subordinate legislation is not reasonably related to the purpose of the enabling legislation, it is liable to be struck down. Reliance has also been placed on the judgment of the Supreme Court in the **State of Tamil Nadu and anr. v. P.Krishna Murthy and others**⁵. In reference to Article 13 of the Constitution of India, it is contended that executive instructions issued by the State in contravention to the provisions of the Central legislation are invalid and ultra vires. The State Government by way of executive instructions cannot implement the medium of instruction as English contrary to the Central statute. In reference to Articles 14 and 21-A of the Constitution of India, it is urged that the impugned G.O. is violative of the Constitutional provisions.

7. It is also contended that the issuance of the said executive instructions adversely affect the weaker sections and do not benefit the deprived class. It is said that a child would be better placed in learning if he is taught in mother tongue or as per choice. It is also submitted that Telugu is the official language in the State of Andhra Pradesh which is being spoken closely by 70 million people and having its history and rich heritage, ranking 15 among the world's largest number of speakers. However, eradicating Telugu as the medium of instruction by replacing it by English would affect the growth of the children, thereby affecting heritage of the State. It is further urged that the State

⁴ (1990) 3 SCC 223

⁵ 2006 SCC 517

Government does not have power to issue the impugned G.O., without recommendation of the academic authority, therefore, it may be quashed.

8. Respondent No.1 has filed counter-affidavit on his behalf and on behalf of respondents 3, 4 and 5. Sri S.Sriram, learned Advocate General, inter alia, stated that these petitions have been filed on untenable interpretation of the provision of Section 29 (2) (f) of the RTE Act. He relied upon the judgments of Hon'ble the Supreme Court in the cases reported in *N.K.Chauhan and others v. State of Gujarat and others*⁶, *Osmania University v. V.S.Muthurangam and others*⁷, *Rajender Singh and others v. State of U.P. and others*⁸ and *Iridium Telecom Ltd. v. Motorola Inc.*⁹. In these cases, the term 'as far as practicable' used in the Section, has been interpreted which is directory and discretionary for compliance by the State in the matter of medium of instruction. In the reply, reference has been given to Navodaya Vidyalayas as well as Kendriya Vidhyalaya Schools established in the State of Andhra Pradesh, by the Central Government wherein the medium of instruction is English. It is stated that to ensure the education to weaker sections, not accessible to English medium education in private schools, the decision has been taken to favour them as per the spirit of Article 46 of the Constitution. It is said that the Government has taken action by issuing G.O., on request of the

⁶ (1977) 1 SCC 308

⁷ (1997) 10 SCC 741

⁸ (1998) 7 SCC 654

⁹ (2005) 2 SCC 145

parents' community, as such, it may not be amounting to imposition of medium of instruction by the State. It is contended that from next academic year commencing in June, to the desirous students of Telugu medium, necessary infrastructure and faculty shall be provided at Mandal level in every District and on request being made for, free transport to the children will be provided, if the school is not in the neighbourhood as defined in the RTE Act. It is further contended that on change of the medium of instruction, Telugu/Urdu has been made as one of the compulsory subjects in the curriculum, therefore, apprehension of the petitioner is completely misplaced.

9. It is explained, in furtherance to the parental aspirations to send their children into the English medium schools, first decision was taken by the Government in this regard during the year 2008-09 to start English medium from VI standard in 6500 high schools under the project called SUCCESS. By producing various datas of the schools run by the various managements either in English medium or in Telugu medium and the proposal of students for enrolment in English medium, it is urged that the growing demand is in favour of starting English medium schools in the State. Considering all these factors, the Commissioner of School Education submitted a proposal on 12.10.2019 which was examined by the Government and accordingly the G.O., has rightly been issued on 20.11.2019, converting all classes from I to VI in primary, upper primary and high schools under all managements to English medium from the academic year 2020-21. It

is also stated that the Parents' Committees all over the State have met on 07.01.2020 and, on debating, had taken a post decisional affirmation and communicated their feedback as a part of *Amma Vodi Varothesavam* scheme of the State Government during the period 04.01.2020 and 09.01.2020. The said scheme is intended to provide financial assistance to the mothers belonging to weaker sections, living below poverty line, to the extent of Rs.15,000/-, however, from the said feedback of those women, the conversion of medium of instruction to English has been rightly endorsed. It is admitted that Telugu is a classic language having great history and widely-spoken, however, it is part of curriculum as a compulsory subject in every standard with intent to maintain the glory of the language.

10. The Government has also stated that a bill titled as '*A.P. Education Act 1 of 1982 – (Amendment) Act 2019*' has been introduced in the Assembly on 16.12.2019 to secure legislative amendment to the A.P. Education Act, 1982 (in short '*the 1982 Act*'). After passing by the Assembly, it was sent to the Legislative Council which returned the bill with certain amendments. Subsequently, the Assembly again passed the bill on 23.01.2020, which is pending for assent of the Hon'ble President of India, as required by Article 254(2) of the Constitution. It is stated that education is a subject in the Concurrent List, however, the G.O., is not inconsistent or repugnant with the Central enactment and the same is also based on report of the Committee under the Chairmanship of Mr.N.Balakrishnan

to study and recommend the necessary reforms for strengthening the school education in the State. The State has also appointed a Regulatory and Monitoring Commission under the Chairmanship of Mr. Justice R.Kantha Rao with an objective to maintain the standard of education.

11. The Union of India have filed its reply acknowledging the RTE Act and the Central Rules in the context of Section 29 (2) (f) and Chapter III of the National Curriculum Framework, 2005 (in short '*NCF*'). Sri B. Krishna Mohan, Asst. Solicitor General contended that as per Para 3.1.1 of NCF, which is accepted by all the States, the impugned G.O., is not in accordance with law. The National Policy on Education, 1968 (in short '*NPE, 1968*') has been referred, in the light of Para 4.3 regarding development of the regional languages, whereby it has been emphasized that the instruction of education in primary stage should be in regional language, which is necessary for cultural development in the respective States. Further referring to the recommendations of the Committee constituted by the Ministry of Human Resources Development for the Draft National Education Policy 2019, under the Chairmanship of Dr.K.Kasthuri Rangan and its report dated 31.05.2019 regarding curriculum and pedagogy in schools, it is urged that the recommendation has been made in favour of own language/mother tongue as medium of instruction in the States. It is finally stated that the said draft policy is awaiting approval, subject to filing the objections, but such recommendations are in furtherance to

the previous national policies. The reference to the report of the UNESCO published in 2003 regarding education in a multi-lingual world has also been made, however, on the basis of the said submissions, it is urged that the impugned G.O., is contrary to the provisions of the RTE Act and also against the policies of the Central Government.

12. Learned counsel appearing on behalf respondents 6, 7 to 10 and 14, 11 to 13 in W.P. (PIL) No.183 of 2019 represented through Sri N.Subba Rao, G.V.Shivaji and Dr.S.Chellapa, respectively contended that several representations have been made by the interveners or through their associations to the Minister for School Education, Chief Minister and the authorities for filling up of the vacant posts and because of non-availability of the teachers, pupils have become dropouts. A request has further been made that the medium of instruction in the Govt. schools may be in English in place of Telugu, because pupils belonging to the poor families are not in a position to bear the expenses of the private schools who impart education in English medium, therefore, by the decision of the Government, the poor and needy persons more particularly the class belonging to below poverty line shall be benefited. In the said context, if the medium of instruction has been converted from Telugu to English, it is not contrary to the spirit of the provision of Section 29 (2) of the RTE Act, wherein the word '*as far as practicable*' has been used. Simultaneously, it is not violative of various provisions of the

Constitution of India, in fact, it finds support by Article 46 of the Constitution and beneficial to Scheduled Castes, Scheduled Tribes and to the economically weaker sections. Hence, the decision so taken by the Government issuing G.O.Ms.No.85 dated 20.11.2019 does not warrant any interference in this petition. Learned counsel for respondent Nos.5, 6 to 9 and 14, 10, 11 to 13, 16 and 17 in W.P. (PIL) No.185 of 2019, Sri N. Subba Rao, Sri G.V.Shivaji, Sri V.Karthik Navayan, Dr.S.Chellappa and Sri Y.Koteswara Rao respectively, have made the same submissions as made in W.P. (PIL) No.183 of 2019.

13. While learned senior counsel Sri Vedula Venkatamana, appearing on behalf of M/s.Bharadwaj Associates, for respondent No.15, has argued in support of the petitioners and against the State Government, inter alia, stating that G.O.Ms.No.85 dated 20.11.2019 is contrary to the provisions of Section 29(2) of the RTE Act. It is further contended that as per the provisions of Article 19(1), until the restrictions specified in Article 19(2) are available to the State Government, the liberty of speech and expression cannot be taken away by switching the medium of instruction from Telugu to English compulsorily in providing education to the children from I to VI standards in the State. It is argued that the Right to Education is a part of Life and Liberty in view of the judgment in **Ms.Mohini Jain** and **Unnikrishnan J.P.** supra. Thereafter, the RTE Act is brought and the Constitutional amendment has been made switching the free and compulsory education from Part IV, i.e., Directive Principles of State

Policy to Part III, i.e., Fundamental Rights of the citizens in the Constitution. The impugned G.O. is also contrary to the provisions of the RTE Act and the Central Rules as well as the State Rules made under the RTE Act. Once the legislation issued by the Central Government and the State Government holds the field, without making amendment, issuance of executive instructions inconsistent to the spirit of the Act is arbitrary. Therefore, the G.O., issued by the State Government is illegal and violative of the Constitutional provisions and against the settled legal position. It is further contended that switching over of the medium of instruction from Telugu to English in primary, upper primary and high schools from I to VI standard, superseding all earlier instructions in respect of the schools of all management affects the provisions of Articles 30 and 350-A of the Constitution of India. It is urged that switching over of schools of all management which include the minority and lingual schools is not permissible. In view of the foregoing, it is urged that the petition filed by the petitioner deserves to be allowed.

14. After hearing learned counsel for the petitioners and all the respondents on the facts, the arguments and the backdrop of having medium of instruction in the State of Andhra Pradesh at primary stages of education, the following questions arise for consideration:-

1. *What are the historical inputs prior to independence, regarding medium of instruction for education at primary stage in India?*

2. *What are the views of the renowned persons on development of the mother tongue/vernacular language/Hindi since the time of pre-independence and followed after independence?*
3. *What are the post-independence developments regarding medium of instruction for education in primary stage in India and in the State of Andhra Pradesh?*
4. *What are the Constitutional and legal provisions touching the Right to Education of the children along with the relevant Central and State enactments and Rules?*
5. *Whether G.O.Ms.No.85 dated 20.11.2019 issued by the Govt. of Andhra Pradesh converting medium of instruction to English in primary stages of education is in conformity to the historic backdrop and also in conformity to the provisions of law, and not contrary to the policies of the Central Government?*

Question No.1: *What are the historical inputs prior to independence, regarding medium of instruction for education at primary stage in India?*

15. In pre-British days, Hindus and Muslims were educated through *Pathashala* and *Madarsa* respectively, but the advent of British created a new place of learning i.e. Missionaries. Their policies and measures breached the legacies of traditional schools of learning and this resulted in the need for creating a class of subordinates. To achieve this goal, they instituted number of acts to create an Indian canvas of English colour through the education system. Initially, British East India

Company was not concerned with the development of education system because their prime motive was trading and profit-making. To rule in India, they planned to educate a small section of upper and middle classes to create a class *“Indian in blood and colour but English in taste”* to act as interpreters between the Government and the masses. This was known and called the *‘downward filtration theory’*. As per the history traced from the books, the chronological development of Education during the British Period in India is as below:

(a) 1813 Act & the Education:

- i. Charles Grant and William Wilberforce, who were missionary activists, compelled the East India Company to give up its non-invention policy and make way for spreading education through English in order to teach western literature and preach Christianity. Hence, the British Parliament added a clause in 1813 Charter and allowed the Christian Missionaries to spread their religious ideas in India.
- ii. The Act had its own importance because it was first instance that British East India Company acknowledged for the promotion of education in India.
- iii. With the efforts of Raja Ram Mohan Roy, the Calcutta College was established for imparting Western education. Also three Sanskrit colleges were set up at Calcutta.

(b) General Committee of Public Instruction, 1823:

This committee was formed to look after the development of education in India which was dominated by Orientalists who were great supporters of Oriental learning rather than the Anglican. Hence, they created paramount pressure on the British India Company to promote Western Education. As a result, spread of education in India got discursive between Orientalist-Anglicist and Macaulay's resolution come across with clear picture of British education system.

(c) Lord Macaulay's Education Policy, 1835:

- i. This policy was an attempt to create that system of education which educates only upper strata of society through English.
- ii. English has become court language and Persian was abolished as court language.
- iii. Printing of English books was made free and available at a very low price.
- iv. English education gets more fund when compared to oriental learning.
- v. In 1849, JED Bethune founded Bethune School.
- vi. Agriculture Institute was established at Pusa (Bihar)
- vii. Engineering Institute was established at Roorkee.

(d) Wood's Dispatch, 1854:

- i. It is considered as the "*Magna Carta of English Education in India*" and contained comprehensive plan for spreading education in India.

ii. It states the responsibility of the State for spread of education to the masses.

iii. It recommended the hierarchy education level - at bottom, vernacular primary school; at district, Anglo-vernacular High Schools and affiliated colleges, and affiliated universities of Calcutta, Bombay and Madras Presidency.

iv. Recommended English as a medium of instruction for higher studies and vernacular at school levels.

(e) Hunter Commission (1882-83):

i. It was formed to evaluate the achievements of Wood Dispatch of 1854 under W.W Hunter in 1882.

ii. It underlined the State's role in extension and improvement of primary education and secondary education.

iii. It underlined the transfer of control to district and municipal boards.

iv. It recommended two division of secondary education- Literary up to university; Vocational for commercial career.

(f) Sadler Commission:

i. It was formed to study on the problems Calcutta University and their recommendations were applicable to other universities also.

ii. Their observations were as follows:

I. 12-year school course;

II. 3-years degree after the intermediate stage;

III. Centralised functioning of universities, unitary residential-teaching autonomous body;

IV. Recommended extended facilities for applied scientific and technological education, teacher's training and female education.

16. Hence, we can say that British education system was influenced by the aspiration of Christian Missionaries. It was injected to ensure a cheap supply of educated Indians to increase a number of subordinate posts in administration and in British business concern. That's why, they emphasised English as a medium of instruction in education and also to glorify British conquerors and their administration.

17. The history of education in India also depicts that on 01.01.1847, Jyotirao Phule and Savitribai Phule established schools for education of girls and Shudras. The Governors of East India Company offered some advantages in education for spreading literacy in India based on English medium. In 1853, a Committee was constituted to evaluate the progress of education first time and as per the report of the Committee, focus on vernacular education was emphasized. After the 1857 war, another Committee under the Chairmanship of Sir William Wilson Hunter was established in 1882, in which presentation was given by Jyotirao Phule demanding free and compulsory education as well reservation. The said Commission has given appropriate recommendations for primary education in **local languages** and secondary education in **English language**, but because the primary education was not encouraged upon, however, in the meanwhile, a new era was started in 1870 by Bal Gangadhar Tilak by opening Fergusson

College in Pune, Arya Samajin by opening Dayanand Anglo Vedic College in Lahore, Mrs. Annie Besant by opening the Central Hindu College in Kashi, in which **primary education was imparted in Indian vernacular language** and secondary education in **English language**.

18. Since 1911, Gopal Krishna Gokhale tried to make primary vernacular education free and compulsory, but it could not be implemented due to First World War. Thereafter, Calcutta University Commission was appointed of teachers training colleges who established intermediate, high school and intermediate boards' organization. The establishment of the University of Dhaka, Colleges in Calcutta, Muslim education, Stri-shiksha (women education), commercial and industrial education was done and at that time, Bombay, Bengal, Bihar and Assam began to enact laws in areas like primary vernacular education along with growth in secondary sector. In the meantime, after Non-Cooperation Movement, the progress in National education came in acceleration, in which local languages were given priority.

19. Mahatma Gandhi during 1919-22 has opposed the system of education based on English language with the support of Gokhale and others and explained existing system of education is defective because it is based on foreign culture by exclusion of indigenous culture. It ignores the culture of heart and the hand and confine itself to the head. He said real education is impossible through a foreign medium.

Thereafter, in 1921, mother tongue came to be the medium of instruction in the middle schools and its use was extended to high schools by 1937. The Government of India Act, 1935 was considered to be a prelude to a proposed dominion status for India. On assuming office in 1937, the Ministers themselves busied with educational schemes, wherein vernaculars were recommended to be the natural medium of instruction while recommending English at the secondary stage of education. Some recommendations were made in the Wood Abbot Report (1936-37). In 1937, a plan was prepared which was the frontrunner of the basic education; thereby compulsory education had to be given to children aged between 7 and 11 years in mother tongue including involvement of Indian studies. In 1945, the plan known as '*Nai Talim*' was prepared bringing four sections (1) Pre-basic (2) Basic (3) High basic and (4) Adult education. After the Second World War in 1945, upto the age of 14 years, education was made compulsory for boys and girls as per '*Nai Talim*'.

Question No.2: *What are the views of the renowned persons on development of the mother tongue/vernacular language/Hindi since the time of pre-independence and followed after independence?*

“Education is a powerful tool to unlock the golden door of freedom which can change the world.”

20. Numerous legendary personalities and legal luminaries have expressed their views on the issue of 'Hindi' as National Language and the vernacular or mother tongue is the best language to be used in the

schools. The views of all of them are not possible to be inserted, but views of selective personalities are quoted for guidance. The views of the greatest legend of India **Swami Vivekananda** on mother tongue from the book “*The Complete Works of Swami Vivekananda, 9 vols.*”, the relevant portion of which is as under:

“Though all natural languages are capable of expressing sublime thoughts, modern schools believe that the language one acquires as the mother tongue is the best medium for transmitting information, ideas, and knowledge. The concepts presented in the mother tongue are grasped much easier than any language that one learns later through formal instructions. The mother tongue is to the mind as blood is to the body. Therefore, teaching children in the mother tongue can produce better results. There is enough evidence to show that learning and language are closely related to each other. Every man is capable of receiving knowledge if it is imparted in his own language.”

21. As per him, the mother tongue is the best medium of transformation. The concept can easily be grasped in mother tongue, therefore, teaching children in mother tongue can produce better results. Learning and language are closely related, if knowledge is imparted in own language, a child is easily capable of receiving knowledge. It is expressed that the language accepted by all is the language that lives the longest. In the said context, the quote of **Nelson Mandela** is relevant. It is expressed by him, “*If you talk to a man in a language he understands, that goes to his head and if you talk to him in his language that goes to his heart.*”

22. **Mahatma Gandhi** said that the English language has usurped the dearest place in our hearts. He likened the mother tongue alike to mother and observed, *“We do not have that love for it, as we have for our mother”*. In *Young India 1921*, Gandhiji said *“I must cling to my mother tongue as to my mother’s breast, in spite of its shortcomings. It alone can give me the life-giving milk”* (Harijan, 1946). Citing the example of Russia, which has achieved the scientific progress without the knowledge of English, Gandhiji reiterated, *“It is the mindset that has created the gulf. It is our mental slavery that makes us feel that we cannot do without English. I can never subscribe to that defeatist creed.”* In the speech delivered by Mahatma Gandhi on 20.10.1917 in Second Gujarat Educational Conference, he expressed *“English cannot fulfil all criteria, but Hindi can”*. In his article written in London in 1909 – *Mother Tongue and National Language*, he said that he considered it a matter of shame that those who know English boast of their proficiency in the language than in their own mother-tongue in favour of English. In his opinion, *“Those who have to serve their country and do public work will have to find time for their mother tongue. If English can only be learnt at the expense of the mother tongue, it would be in the interest of the country that one does not learn English at all.”* Gandhiji in his book *The Mind of Mahatma Gandhi* said, *“The baby takes its first lesson from its mother and I, therefore, regard it as a sin against the motherland to inflict upon her children a tongue other than their mother’s for their mental development”*.

23. **Rabindranath Tagore** in his book *Siksar Herpher* (1299 B.S.) emphasized the need for a system of education conducted in congenial surroundings and in a manner surcharged with the spirit of joy. He argues that the ultimate aim of education should be the all-round development of an individual for harmonious adjustment to reality. It advocated the value and need of the mother tongue in providing all the necessary educational nourishment of the child. In his editorial column “*Sadhana*”, wrote that he was firm on his stand for the place of the mother tongue in education, but nevertheless he insisted that English may be taught as a language and that, from early years, in wise doses, and in the proper sequence, only as a supplement to the mother tongue.

24. In the view of **Dr.Sarvepalli Radhakrishnan**, realising the aim of education is to bring nearer to God. In his aim, one should study the various aspects of education. Through education, he wants to establish a classless society in order to bring equality between man and man. He wants that education should develop universal brotherhood. The most important aim of education is to help us to see the other world, the invisible and intangible world beyond the space and time. Education has to give us a second birth to help us to realise what we have already in us. Education should enable one to imbibe attitude of simple living and high thinking. The true aim of education, according to the Indian sages, is second birth. We are born into the world of nature and necessity; we must be reborn into the world of spirit and freedom. In

silence and meditation, we discover the spirit in us, learn truth and love, acquire grace and strength by which we can implement our ideas.

25. As per above views, the mother tongue is the best medium for transformation. The use of language other than the mother tongue in education is a sin and it affects their mental development. The mother tongue should be the language of education, with learning of English in wise doses. The aim of education is a second birth, however, we should love and acquire grace and strength to implement our ideas.

Question No.3: What are the post-independence developments regarding medium of instruction for education in primary stage in India and in the State of Andhra Pradesh?

26. After Independence of India with effect from 15.08.1947, Hindi has already been established as the National language of India as it was being used for a long time after debating exhaustively. Thereafter, the issue regarding inclusion of vernacular languages in the Constitution and Hindi as National language was discussed in the Constituent Assembly. While accepting Hindi as a National language, vernacular languages have been given due weightage, specifying the place in the VIII Schedule of the Constitution.

27. According to Dr.S.Radhakrishnan, curriculum must be related to life. He has defined his concept of curriculum in his University Commission Report published in 1949. He has suggested the study of three languages like Mother Tongue/Regional Language, Federal Language Hindi and link language English. He has attached

importance to the study of Sanskrit on the logic that the knowledge of Sanskrit is essential to understand indigenous culture and also the noble ideas described in Vedas and Upanishads, the Bhagavad Gita and other scriptures. He stressed the mother tongue as the medium of instruction at lower level and replacement of English from higher classes gradually by mother tongue. He also suggested Religious and Spiritual education, Vocational courses, Women education and mass education in curriculum.

28. For the development of education in India, several Commissions came which are known as the University Education Commission/Radhakrishnan Commission, 1948-49, B.G.Kher Committee on Primary Education, 1951, the Secondary Education Commission 1952-53, Official Language Commission, 1956, University Grants Commission/Kunzuru Committee Report, Education Commission/Kothari Commission 1964-66, Dr.Trigun Sen/Higher Education Committee Report, 1967, the Study Group Reports on the Teaching of English, 1967-71, but the relevance regarding medium of instruction in mother tongue after Independence found reference in the **Report of the States Reorganisation Commission, 1955** particularly, in para 775. In the said para, a resolution adopted at the **Provincial Education Ministers' Conference** held in August, 1949 approved by the Government of India, was referred to which had been a guiding factor to the State Governments in making arrangements for education of their school-going children whose mother tongue is different from

the regional language, however, the said resolution is relevant, which is reproduced as thus:

“775. It may be recalled that the right of each language group to have education in the mother-tongue in public schools at the primary school stage has been recognised by the Congress Working Committee in its resolutions adopted in August, 1949, and May, 1953. The right has also been recognised in principle by the State Governments as well as the Government of India. This is clear from the resolution adopted at the Provincial Education Minister’s Conference held in August, 1949, which has been approved by the Government of India, and now serves as a guide to the State Governments in making arrangements for the education of their school-going children whose mother-tongue is different from the regional language. This resolution states:

‘The medium of instruction and examination in the junior basic stage must be the mother-tongue of the child and, where the mother-tongue is different from the regional or State language, arrangements must be made for instruction in the mother-tongue by appointing at least one teacher, provided there are not less than 40 pupils speaking the language in the whole school or 10 such pupils in a class. The mother-tongue will be the language declared by the parent or guardian to be the mother-tongue. The regional or State language, where it is different from the mother-tongue, should be introduced not earlier than Class III and not later than the end of the junior basic stages. In order to facilitate the switching-over to the regional language as medium in the secondary stage, children should be given the option of answering questions in their mother-tongue, for the first two years after the junior basic stage’.”

29. The First National Policy on Education (in short ‘NPE’) was brought in 1968, in which the Government of India has resolved to promote the development of education in the country as per the principles laid down therein. The first principle was of the free and compulsory education, the second was regarding status, emoluments and education of teachers, the third was of the development of

language. In the development of language, on the issue of regional language, it is said 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 masses will remain, if not widen further. In the NPE, it was recognized that the regional languages are already in use as media of education at the primary and secondary stages, even urgent steps should be taken to adopt it as media of education at the university stage. The NPE, 1968 has introduced three-language formula at the secondary stage as propagated by Dr.S.Radhakrishnan. It includes the study of a modern Indian language, preferably one of the Southern languages apart from Hindi and English in the Hindi-Speaking States and of Hindi along with the regional language and English in the Non-Hindi-Speaking States. Other areas were also emphasized regarding promotion of Hindi and knowledge of Sanskrit along with an international language. The other issues of the NPE are not of any relevance in the facts of the present case, however, they are not being referred. The three language formula so carved out had not been duly implemented in all the States, but where it was implemented, results were good. Except the State of Tamil Nadu, all other South Indian states have enthusiastically implemented the three-language formula. It

was found that this formula is a good policy statement as it promotes multilingualism among the people.

30. In the UNESCO Guidelines on language and education, Clause-I of Principle-I relates to, how mother tongue is essential for initial medium of instruction and literacy and should be extended to as late a stage in education as possible. The relevant guidelines are as under:

“(I) Mother tongue instruction is essential for initial instruction and literacy and should be extended to as late a stage in education as possible:

‘every pupil should begin his [or her] formal education in his [or her] mother tongue;

adult illiterates should make their first steps to literacy through their mother tongue, passing on to a second language if they desire and are able;

if a given locality has a variety of languages, ways and means should be sought to arrange instruction groups by mother tongue;

if mixed groups are unavoidable, instruction should be in the language which gives the least hardship to the bulk of the pupils, and special help should be given to those who do not speak the language of instruction.”

31. The National Curriculum Framework, 2005 (in short ‘NCF’) further recognises the three language formula to address the challenges and opportunities of the linguistic situation in India. It was observed, such a strategy should really serve as a launching pad for learning more languages. It needs to be followed by them in letter and spirit. However, the relevant NCF guidelines are extracted as under:

“3.1.1 Language Education:

- Language teaching needs to be multilingual not only in terms of the number of languages offered to children but also in terms of evolving strategies that would use the multilingual classroom as a resource;
- Home language(s) of children, as defined above in 3.1, should be the medium of learning in schools.
- If a school does not have provisions for teaching in the child's home language(s) at the higher levels, primary school education must still be covered through the home language(s). It is imperative that we honour the child's home language(s). According to Article 350A of our Constitution, 'It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups'.
- Children will receive multilingual education from the outset. The three-language formula needs to be implemented in its spirit, promoting multilingual communicative abilities for a multilingual country.
- In the non-Hindi-speaking states, children learn Hindi. In the case of Hindi speaking states, children learn a language not spoken in their area. Sanskrit may also be studied as a Modern Indian Language (MIL) in addition to these languages.
- At later stages, study of classical and foreign languages may be introduced.”

Thus, home language of children as defined in chapter 3.1 of NCF is known as mother tongue and it should be the medium of learning in the school.

32. As per above discussion, in post-independence era, First National Policy on Education was brought in 1968 which was acknowledged in the subsequent years and stages in 1986 and 1992. According to it, the mother tongue is being recognized as appropriate language for education, in the schools of the children. In June 2017,

the Ministry of Human Resources formulated a Committee for Draft National Education policy under the Chairmanship of Dr.K.Kasthuri Rangan, which has submitted its report on 31.05.2019. Chapter IV relates to curriculum and pedagogy in schools. Clause 4.5 of the Policy deals education in the local language/mother tongue; multilingualism and the power of language. The said Clause 4.5 is relevant, however, reproduced as under:

“4.5.1. Home language/mother tongue as medium of instruction:

When possible, the medium of instruction - at least until Grade 5 but preferably till at least Grade 8 - will be the home language/mother tongue/local language. Thereafter, the home/local language shall continue to be taught as a language wherever possible. High quality textbooks, including in science, will be made available in home languages as is needed and feasible, e.g. via the Indian Translation and Interpretation Mission (see P4.8.4) or its State counterparts. In cases where such textbook material is not available, the language of transaction between teachers and students will still remain the home language when possible, even if textbooks are, e.g. in the State/regional language. The school education system will make its best effort to use the regionally preponderant home language as the medium of instruction. However, the system should also make full efforts to establish an adequate number of schools having medium of instruction catering to significant linguistic minorities in that region.”

33. Indeed, on the draft policy, objections are invited by the Ministry of Human Resources to convert it into a policy and final decision is awaited; but looking to the importance of the mother tongue and the principle of unity in diversity of languages in India, it is prevalent since pre and post-independence under the recommendations of educationists

of nation and NCERT. In all the policies and views, the mother tongue has been recognized as a language for the education in the schools to the child, for his/her betterment.

34. In 2007, the National Commission for Religious and Linguistic Minorities was established, which submitted its report through Chief Justice Ranganath Mishra, again recognising the three-language formula, because it develops the National integration. It brings minority groups in the mainstream of National life and also develops the cultural/ traditional heritage of the country. It recommends that multilingualism should be additive in nature and not at the cost of their native languages. It cannot be lost sight that education is a tool for transformation of culture, accumulated knowledge and experiences of a society through a medium of language. The three-language formula led to communal riots and created threats to national integration in India, however, Kothari Commission rectified the said inequalities in the said formula, proposing a new formula called Modified Three Language Formula, i.e. mother tongue or regional languages, Indian official language or assisted language (Hindi or English), any Indian or foreign modern language.

35. In the said backdrop and in the context of the present case, it is essential to discuss the significance of Telugu language. The historic development of Telugu language and Telugu literature dates back to 11th Century A.D., where we find the Telugu script taking shape to the untrained eye, seems to have clear affinity to the modern characters and

Nannaiah, who is the first poet of the Telugu language wrote in these characters. Telugu is the most widely spoken language amongst those using **Brahmi script**, which comprises of South Indian languages, i.e. Tamil, Telugu, Malayalam, Kannada, Tulu and others such as Sinhala (spoken in Sri Lanka) and languages spoken in South East Asia such as Burmese, Thai and Cambodia. In terms of population, Telugu ranks second to Hindi among the Indian languages. According to the census of 1981, Telugu is spoken by over 60 million people in Andhra Pradesh. Being a mellifluous language, it is called by its admirers as the '**Italian of the East**'. The British linguist Halden proved that Telugu language is suitable for teaching sciences in India. Mr.J.A. Yates, Officer of Visakha, Godavari District School Examinations, first time studied the process of Telugu language teaching in 1906 and he observed the difference between the spoken and written forms of Telugu language in his essay '**Reminiscences**' as "*I could see no reason for teaching them a language they would never hear from man of higher castes, literate or illiterate was not possible. I asked to find a cultivated current Telugu*". In the subsequent years, **Gidugu Rama Murthy Pantulu** who led the *Vyavarihaka Bhashodyamam*, united all the Telugu language teachers at Visakha District to seek support to develop spoken form of language for teaching and publish in the textbooks. In 1926, *Andhra Viswhakula Parishad* was established and issued guidelines for the language to be followed for publishing the textbooks as well as process of teaching. *Navya Sahitya Parishad* was

formed in 1936 which was running a periodical called '*Pratibha*' and encouraged in creating free verses of literacy writings. In 1966, Telugu became the official language of the State and in 1974 correspondence in Telugu was made at the Taluk level which gradually extended to Heads of Departments and administration.

36. On consideration of the footsteps previously taken for development of mother tongue in the State of Andhra Pradesh, steps had been taken by forming a Committee for development of Telugu language under the President-ship of Mr.JPL Gwynn on 28.12.1966. The report was submitted to the Government on 29.03.1967 accepting the view of Mr.Dr.Krishnamurthi on the need to adopt a modern standard Telugu style for all text books and records, requesting to take immediate action on Lakshmi Kantham Committee's Report. Such report emphasizes that Telugu should be the authority to give guidance in future on the form of modern standard and Telugu to be adopted in the text books. It was also felt that the responsibility for writing nationalized textbooks in Telugu and getting them published may be handed over to the Andhra Pradesh State Textbook Press. In 1969, Telugu as the medium of instruction was introduced on a large scale in higher education. The Andhra Pradesh Government founded an official organization called as '*Adhikara Basha Sangam, Telugu Academy*' (a statutory body) in 1969. As per the recommendation, in higher education also, medium of instruction was recognized as Telugu from 1970 and accordingly not only in primary education but in higher

education, Telugu has been made applicable in the State of Andhra Pradesh.

Question No.4: *What are the Constitutional and legal provisions touching the Right to Education of the children along with the relevant Central and State enactments and Rules?*

37. As per Article 19 of the Constitution of India, all the citizens have right of freedom to speech and expression. As per Article 19 (1) (a), all the citizens have the right to freedom of speech and expression and vide clause (g), to practise any profession, or to carry on any occupation, trade or business. For the purpose of clause (a) of Article 19 (1), the reasonable restrictions may be imposed as specified in Article 19 (2), making law by the State, in the interest of Sovereignty and Integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Thus, the citizen is having a right of freedom of speech and expression subject to the restrictions contemplated in Article 19(2). It is required to be examined whether in the facts of the case, restrictions specified above are evoked by the State at the time of issuance of G.O. In the backdrop of the pre and post-independence development of mother tongue on the point of education of the citizens as discussed above, it can safely be accepted that medium of instruction in which the citizen can be educated is the integral part of the Right to Freedom of Speech and expression. After the education, the citizen may be in a position to express their views freely in a language in which he was educated.

In view of the foregoing, the right to freedom of speech and expression is protected and conferred to a citizen, which includes the right to opt the medium of instruction in the mother tongue or in any of the languages specified in the schedule of the Constitution of India, subjected to restrictions enumerated in Clause (2) of Article 19. Therefore, it can be concluded that, option to choose medium of instruction in school education, is a right guaranteed under Article 19 (1) (a) of the Constitution subject to the exceptions carved out by Article 19 (2) of the Constitution.

38. So far as Article 19 (1) (g) is concerned, the citizen may practise any profession or to carry any occupation, trade or business subject to making any law by State or any existing law; if he is practising any profession, occupation, trade and business which is against the interest of general public, in such contingency, reasonable restriction may be imposed. Simultaneously, it would not prevent the State to prescribe any professional or technical qualification necessary to practise any profession, occupation, trade and business or to make law with respect to a Corporation owned by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise as per Article 19 (6) of the Constitution. In the judgment of **T.M.A. Pai Foundation & ors. v. State of Karnataka & ors.**¹⁰, the Apex Court has considered the said issue and held that running an educational institution is occupation under Article 19 (1) (g) and the

¹⁰ AIR 2003 SC 355

restrictions can only be imposed as specified in Article 19 (6) of the Constitution. The Court observed that education is per se regarded as activity, that is of charity in nature, in view of the judgment of the Supreme Court in the case of **The State of Bombay v. RMD Chamarbaugwala**¹¹. The Court said, the education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt whether education is a profession or not, it does appear that education will fall within the meaning of the expression 'occupation'. The establishment and running of educational institutions where large number of persons are employed as teachers, administrative staff and discharging their duties and activities to impart knowledge to the students, it may be regarded as 'occupation' even if there is no element of profit generation. Thus, the educational institutions run by citizens have right to practice profession, or to do any occupation under Article 19 (1) (g). Any of the restrictions imposed contrary to Article 19 (6) to run the school by a citizen or a person would amount to violation to practice any profession or occupation by them. Therefore, the restrictions, imposed by the G.O., on all the managements would cover the educational institution run by the private linguistic minority management and such an act may fall, to affect the running of the institution, in violation of Article 19 (1) (g) of the Constitution.

¹¹ AIR 1957 SC 699

39. Article 21 of the Constitution of India specifies that no person shall be deprived of his life or personal liberty except according to procedure established by law. The right of life and personal liberty, includes the Right to Education as held by Hon'ble the Supreme Court in **Ms.Mohini Jain v. State of Karnataka**¹². In the said case, the Court held as under:

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

40. Hon'ble the Supreme Court in the case of **Unni Krishnan J.P.** supra discussing on Right to Education, held as under:

"The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.' Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the

¹² 1992 SCR (3) 658

age of fourteen years.' Article 46 commands that 'the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.' Education means knowledge and Knowledge itself is power.' As rightly observed by Johan Adams, 'the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country' (Dissertation on canon and feudal law, 1765). It is this concern which seems to underlie Article 46. It is the tyrants and bad rulers who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said: 'Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction.' (Rauschning, The voice of destruction: Hider speaks). A true democracy is one where education is universal where people understand what is good for them and nation and know how to govern themselves. The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education understood in the context of Articles 45 and 41, means. (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14years, his right to education is circumscribed by the limits of the economic capacity of the State and its development We may deal with both these limbs separately."

41. It is relevant to note that the Apex Court in the case of **Mohini Jain** and **Unni Krishnan J.P.**, supra, recognise the importance of education and the Right to Education is included in Right to live and Personal Liberty. Though at the relevant point of time, right to free and compulsory education was not included in Part III (Fundamental

Rights), but it was in the Part IV (Directive Principles of State Policy) of the Constitution of India. After these judgments, the amendment was proposed in 2002 for insertion of Article 21-A in Part – III of the Constitution of India. Thereafter, the Right to Education was included in Fundamental Rights under Article 21-A deleting it from Directive Principles of State Policy with effect from 01.04.2010, casting responsibility on the State Government to provide free and compulsory education to all children of the age 6 to 14 years in such a manner, as the State may, by law determine. Hence, it can safely be concluded that right to education is a part of live and liberty, extending free and compulsory education of children upto the age of 6 to 14 years unless the State may, by law, determine otherwise.

42. The education is a subject in Concurrent List III at Item No.25 of Schedule-VII of the Constitution, viz., *Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of Labour*. The Central Government as well the State Government are having right to enact the law on the said subject. In the said context, Central Government enacted Act No.35 of 2009 known as RTE Act which came into force with effect from 01.04.2010, and also framed the Central Rules which came into force on 09.04.2010. The State Government has enacted Act by Act No.1 of 1982 known as 1982 Act, which came into force with effect from 18.07.1982 and also formulated the State Rules which came into force on 22.02.2011.

43. Section 2(f) of the RTE Act defines '*elementary education*', which includes the education from first class to eighth class. As per Section 3, every child from the age of six to fourteen years including a child defined in clause (d) or (e) of Section 2 shall have the right to free and compulsory education in a neighbourhood school till completion of his or her elementary education. Chapter III deals with the *Duties of appropriate Government, local authority and parents*. Section 7 of the RTE Act specifies the appropriate Government and the local authority, who shall establish a school within such area or limits of neighbourhood as may be prescribed within a period of three years from the date of commencement of the RTE Act. The said section further makes it clear how the financial burden can be shared between the Central and State Governments, but the cost and planning to make a provision was a function of the Central Government. As per Section 7(6), it is the duty of the Central Government to develop a framework of national curriculum with the help of the academic authority as specified under Section 29.

44. Section 8 of the said Chapter casts certain duties on the appropriate Government. Clause (b) thereof makes it clear that it is the duty of the appropriate Government to make available a school in a neighbourhood as specified in Section 6. In addition thereto, providing the infrastructure regarding school building, teaching staff, learning equipments and other things so specified in clauses (d) to (i) of Section 8 are the responsibility of the appropriate Government.

Altogether, similar duty has been cast on the local authorities at par to the appropriate Government if the school and college is run by the authority. As per Section 10, it has been clarified that the parents and the guardian are having a duty to admit their wards to elementary education in the neighbourhood school. Thus, as per scheme of the RTE Act, it is clear that the parent or a guardian is required to admit a child in a neighbourhood school, which is established by the appropriate Government or local authority as the case may be as specified in Section 6 in terms of the duties so casted by Sections 8 and 9 of the RTE Act. The Central Government in exercise of the power under Section 38 of the RTE Act has framed the Central Rules. Rule 6 specifies neighbourhood schools, by which the schools of Classes I to V and the schools of Classes VI to VIII must be within the walking distance of one and three kilometres respectively.

45. In exercise of power under Section 38, the State of Andhra Pradesh has also formulated the rules, which, as specified earlier, are known as the State Rules notified on 22.02.2011 vide G.O.Ms.No.14. Rule 3(18) & Rule 5 of the State Rules specify the norms regarding neighbourhood school which are similar and in consonance to Rule 6 of the Central Rules. It is appropriate to mention here that imposition of restriction on choice of the parent not getting admission in the neighbourhood schools came up for consideration in the case of **Forum for Promotion of Quality Education for All and**

Ors. v. Delhi Development Authority and Ors.¹³. The Delhi High Court observed that the restriction so imposed by the Government does not fall within the purview of the restriction as specified in Article 19 (2) of the Constitution of India, however, the right conferred to the petitioner in Article 19 (1) (a) within the Freedom of Speech and Expression cannot be taken away, putting a restriction for taking admission only in neighbourhood schools. The Court held the argument of the respondents was not even tenable as it was in public interest.

46. Section 29 of the RTE Act falls in Chapter V which relates to curriculum and evaluation of elementary education. In the facts, the said section is relevant, however, for ready reference, it is reproduced as thus:

“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;

¹³ 2017 SCC Online Del. 6966

(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.”

47. As per the scheme of the RTE Act, the curriculum and evaluation procedure for elementary education shall be laid down by the academic authority specified by the appropriate Government, by notification, but the function of the State Government and the local authority is to establish the school in neighbourhood and to provide infrastructure, teaching staff, learning equipment and other things. The academic authority has not been defined in the RTE Act, but it is defined in the Central Rules. Rule 8 conferred power to the Central Government to notify the academic authority within the time so specified for development of the framework of national curriculum. Simultaneously, in consultation with the State Governments and the academic authorities, the Central Government is required to prepare the schemes to provide training to the teachers in pre-service and in-service teachers of the schools so specified in sub-sections (i) to (iii) of Clause (n) of the RTE Act, including monitoring mechanism and standards of such training. Rule 23 of the Central Rules confers similar power on the academic authority in discharge of the academic responsibility as specified by laying down curriculum and evaluation procedure. While

laying down curriculum and evaluation procedure as specified in Section 29 of the RTE Act, the academic authority shall look into the norms specified in Section 29 (2) (a) to (h) that includes the all-round development of the child-building, child's knowledge, potentiality and talent, development of physical and mental ability to the fullest extent, the medium of instruction shall be in the child's mother tongue as far as practicable, thereby to make the child free of fear, trauma and anxiety and helping the child to express the views freely and in conformity to the values enshrined in the Constitution, however, these are integral requirements necessary and fundamental for all-round development of the child. In addition thereto, for the purpose of evaluation procedure of elementary education and training of the teachers, the academic authority is required to make out the standards for the subjects specified in Rule 23 (2) (a) to (d) of the Central Rules.

48. It is also relevant to note here that in the State of Andhra Pradesh, Act 1 of 1982 was brought after the assent of the President of India on 27.01.1982. Undisputedly, the said 1982 Act is in force. Section 7 of Chapter III of the said Act deals with 'School Education'. As per Section 1 of the 1982 Act, the Government shall endeavour to provide free and compulsory education for all children until the age of 14 years and also provide medical inspection and care of children in pre-primary and primary schools. Section 7(3) deals with the stage of primary education, by which the children completing the age of 6 years but not completing 14 years of age, shall be imparted education; the

curriculum and *instruction* of education shall be such, as may be specified by the competent authority to achieve among other following specified object. Section 7(3) and 7 (4) are relevant for the case, however, reproduced for ready reference as thus:

“Section 7. School Education:

(1) x x x

(2) x x x

(3) At the stage of primary education, the children completing the age of six years but not completing the age of fourteen years shall be imparted education and the curriculum and instruction of education shall be such as may be specified by the competent authority so as to achieve among others, the following specified objectives, namely :

(a) irrelapsable literacy in the mother tongue including skills of articulation;

(b) basic numeracy skills and necessary knowledge of child's physical and social environment;

(c) proficiency in socially useful productive work”

(4)(a) The main objective of secondary education shall be to impart such general education as may be prescribed to each pupil so as to make him for higher academic studies or for job-oriented vocational courses, by the time he completed his secondary education”.

(b) The general education so imparted shall among others, include -

(i) the development of linguistic skills and literary appreciation in the mother tongue or regional language, as the case may be;

(ii) the attainment of prescribed standards of proficiency, in Hindi and English;

(iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences to pursue further courses of study;

(iv) the study of social sciences with special reference to history, geography and civics so as to achieve the minimum necessary knowledge by the pupil in regard to his State, Country and the World;

(v) the introduction of [socially useful productive work] as an integral part of the curriculum;

(vi) the training in sports, games and other physical exercises and other arts;

(vii) the imparting of knowledge in basic agricultural science and irrigation methods;

(viii) the introduction of Intermediate courses ;

(ix) the teaching of morals;

(c) The Government may, -

(i) accept and implement progressively at the secondary stage, the principle of subject specialisation by the teacher ;

(ii) take all steps necessary to secure the qualitative strengthening of secondary education and for that purpose, make every effort to bring the physical standards of existing schools to optimum levels.”

As per the said provisions of the 1982 Act, the irrelapsable literacy in the mother tongue including the skills of articulation, necessary knowledge of social environment and proficiency in socially useful productive work have been specified, for achieving the real object of education. As per Section 7(4), the object to provide secondary education is to impart such general education as may be prescribed to these people so as to make them fit either for higher academic studies or for job-oriented vocational courses by the time the child completes his secondary education. As prescribed, the general education shall include the development of linguistic skills and literacy, appreciation in the mother tongue or regional language. Thus, it is apparent that as per Section 7(3) and Section 7(4) (i) and (ii) of the 1982 Act, the education is required to be imparted as per the curriculum and in the instruction of education so specified under the

said enactment itself including irrelapsable literacy in the mother tongue and essentially required to be provided by the State.

49. As per Rule 3(26) of the State Rules, the '*Academic Authority*' has been defined, which is known as '*State Council for Education, Research and Training, Hyderabad, Andhra Pradesh*' (in short '*SCERT*'). As per Rule 3(27), '*Implementing Authority*' of the Act has also been defined, which means the State Project Director, Sarva Siksha Abhiyan and it includes the Commissioner and Director of School Education, Andhra Pradesh. In the State of Andhra Pradesh, Rajiv Vidya Mission Sarva Siksha Abhiyan is functioning, however, its Director is the State Project Director of Sarva Siksha Abhiyan. Rule 25 specifies the academic authority to lay down the curriculum and evaluation procedure. As per the said Rule, SCERT shall be the academic authority, who shall after holding consultation with Rajiv Vidya Mission, i.e., the Director of Sarva Siksha Abhiyan, shall specify the said curriculum, framework and the evaluation mechanism along with continuous comprehensive evaluation for the children in the school. Thus, it is clear that SCERT is the academic authority for the State, who, after consultation with the implementing authority, shall formulate the appropriate syllabus, textbooks and other learning material; develop in-service teacher training design and prepare guidelines for putting into practice continuous and comprehensive evaluation; develop performance indicators for the individuals and institutions along with the accountability criteria towards children

training levels with periodic performance of the individual students and institutions and to undertake research and study process on policies and programmes, curriculum and learning outcome of the children. Therefore, it is clear that the preparation of the curriculum is a function of the SCERT with the consultation of the Rajiv Vidya Mission as per the norms decided by NCERT to achieve the object as specified in clauses (a) to (h) of Section 29(2) of the RTE Act. Thus, the children are required to be provided the free and compulsory education as per the curriculum, evaluation procedure and medium of instruction laid by the competent authority, so as to achieve the specified objectives.

50. As the State Government alone was not having power for changing the medium of instruction in the schools at primary stage, looking to the provisions of Section 7(3) and 7 (4) of the 1982 Act, however, the Government proposed amendments by L.A.Bill.No.62 of 2019, in particular, after Section 7(3) (c), Section 7(4) (i) (ii) and Section 99. The proposed amendments of the said Sections are reproduced as under:

After Section 7(3) (c), it is proposed to insert:

“improve proficiency in English by converting Government schools into English Medium schools”

It is also proposed to amend Section 7(4)(b)(ii) as under:

“the attainment of prescribed standards of proficiency in Hindi.”

After Sub Section 4 (b) (ii), the following was proposed to be inserted:

“improve proficiency in English by introducing English as medium of instruction in government schools.”

It is proposed to replace Section 99, Sub Section (xviii) as:

“the standards of education and courses of study in educational qualifications, including instruction in English medium”.

Section 99 of the 1982 Act confers power to the Government to make Rules, as specified in Sub-Rule (xviii) of the State Rules, including subject “standards of education and course of study in educational institutions”. By adding the word “including instructions in English medium” and by modifications as stated above, power of rule-making has been sought in Section 99 of the 1982 Act. In view of the foregoing, this Court can safely observe that on the date of the issuance of the impugned G.O., the source of power of the State Government to convert the medium of instruction from Telugu to English in Classes I to VI in the schools of all managements has not been expressly given to the Government, but it was the power of the competent authority defined in Section 2 (12) of the 1982 Act. The State Government now proposed amendment in the 1982 Act by a Bill dated 16.12.2019 subsequent to the date issuance of the G.O. It is also not in dispute that the said Bill has not yet received the assent of the Hon’ble President of India, hence, not made part of the 1982 Act.

51. Undisputedly, education is a matter of Concurrent List, however, without previous assent of the Hon’ble President of India on the subject matter, contrary to the provisions of the RTE Act, the issue

of repugnancy is relevant. As per Article 254 (1) of the Constitution of India, if any provision made by the Legislature of a State is repugnant to any provision made by the Parliament, to which Parliament is competent to enact with respect to one of the matters enumerated in the Concurrent List, the law made by the Parliament, whether passed before or after the law made by the Legislature of such State, the existing law shall prevail and the law made by the Legislature of State shall to the extent be repugnant. Clause (2) of Article 254 further makes it clear that in respect of the matter enumerated in the Concurrent List if any Act is made by the Legislature containing a provision repugnant to the provisions of the earlier law made by the Parliament or any other law in existence relating to the said subject matter, until the assent of the President is received, the Central law shall prevail. In this regard, guidance can be taken from the judgment of **Hoechst Pharmaceuticals Ltd. v. State of Bihar & Ors.**¹⁴. Following the said judgment, Hon'ble the Supreme Court in the case of **Rajiv Sarin & Anr. v. State of Uttarakhand & Ors.**¹⁵ clarified the requirement on the issue of repugnancy as specified in Article 254 of the Constitution of India. The Court said that in relation to the matters enumerated in the Concurrent List, so as to invoke Article 254, first, there shall be a provision of law in the Central Act as well as the State Act on the same matter; the second is, Hon'ble the President's assent is

¹⁴ (1983) 4 SCC 45¹⁵ (2011) 8 SCC 708

non-existent to the provisions of the State law. The test for determining the same is to find out the dominant intentions of both the legislations and whether such dominant intentions are alike or different. In case, such dominant intentions are different, then, without assent, the State Act would be repugnant. In the facts of the present case, as per Section 29 (2) (a) to (h) of the RTE Act, the medium of instruction shall be in mother tongue “*as far as practicable*”. While, by the proposed amendment, after Section 7(3) (c), Section 7(4)(b)(ii) and Section 99 of the 1982 Act, for proficiency in English, English is proposed as medium of instruction in Government schools and to make Rules in this regard, the power is sought for in the Act, proposing the amendment. Thus, the dominant intention of the proposed amendment in the 1982 Act is clearly different from the RTE Act and by this time, the assent of the Hon’ble President of India is awaited.

52. In view of the discussion made in paragraphs 46 to 51, it is clear that the academic authority of the Centre (NCERT) as specified in the RTE Act and the Central Rules and the competent authority of the State as specified in the 1982 Act and the academic authority (SCERT) specified in the State Rules shall prescribe the curriculum observing the norms of Section 29(2) (a) to (h) of the RTE Act and Section 7(3) (a) to (c) and 7(4) (b) (i) and (ii) of the 1982 Act. The medium of instruction and curriculum is required to be decided by the competent authority as per the norms of the NCERT or the SCERT, as the case may be. The

State Government is well aware that as per the provisions of the 1982 Act, they do not have power to change the medium of instruction, therefore, they proposed the amendment in the 1982 Act in Section 7 (3) and (4) and also in Section 99, by insertion of the power to change the medium of instruction into English. Thus, knowing well all these facts, issuance of the impugned G.O., on 20.11.2019 even prior to the assent on the proposed amendment, converting the medium of instruction from Telugu to English, cannot be recognised under law.

53. In addition to the provisions of the Constitution of India, the RTE Act, the Central Rules, the 1982 Act and the State Rules, UDHR, to which India is a signatory, may have its significance. According to Article 26, all the citizens have the right to education which shall be free and compulsory at least upto the fundamental stages. The professional and higher education shall be equally accessible to all on the basis of merit. Emphasizing the importance of education, it is mentioned that it is essential for development of the human personality and to the strengthening of respect for human rights and fundamental freedoms, by which understanding, tolerance and friendship among all nationals, racial or religious groups and the activities of the United Nations for the maintenance of peace can be achieved. As per Clause (3), it is specifically stated that parents have a right to choose the kind of education that shall be given to their children. Therefore, keeping in view UDHR and the provisions of the Constitution of India and the aforesaid Central and State enactments, it is the duty of the State to

provide free and compulsory education to the children and while providing the said education, there should be all-round development of the child, knowledge, building up child's knowledge, potentiality and talent, development of physical and mental abilities to the fullest extent, discovery and exploration in a child friendly and child-centered manner, making the child free of fear, trauma and anxiety and helping the child to express the views freely by a medium of instruction as far as practicable in his mother tongue.

54. Section 21 of the RTE Act refers the constitution of the School Management Committee. The said Committee is nothing except to glorify the representation of parents. As per the said provision, except for un-aided school, School Management Committees shall be constituted in the schools defined in Section 2 (n) (i) to (iii), and such Committee shall comprise of elected representatives of the local authorities, parents or guardian and children as per the reservation specified in the said Section. The said Committee shall monitor the working of the school to prepare and recommend School Development Plan and monitor the utilisation of the grants received and such other functions so prescribed. As per Rule 4 of the Central Rules, the School Management Committee has to prepare a School Development Plan at least three months before the end of the financial year. The norms so specified for School Development Plan are specified in Rule 4 (3) (a) to (d). As per the State Rules, the composition of the Committee has been specified in Rule 19 (2) (a) & (b) (i) to (iii), (c) (i) to (vi), (3), (4)

and (5). As per Rule 19(6), the School Management Committee shall discharge the functions enunciated in Clauses (a) to (d) of sub-section (2) of Section 21 of the RTE Act as aforementioned and in addition as per Rule 19 of the State Rules, which is reproduced as thus:

“Rule 19: School Management Committee:

(1) x x x

(2) x x x

(3) x x x

(4) x x x

(5) x x x

(6) The School Management Committee shall, in addition to the functions specified in clauses (a) to (d) of sub-section (2) of section 21, perform the following functions:

(a) Arrange to demonstrate learning outcomes of the children in the areas of reading, writing, simple arithmetic and comprehension, picking the children at random from each class and shall also pay attention to student absenteeism and teacher absenteeism and take steps to reduce the absenteeism of children in particular

(b) Arrange to maintain a list of all children in the neighbourhood who are in the age group of 6-14 years and shall take effective steps to enroll the out of school children

(c) Ensure the implementation of clauses (a) and (e) of section 24 and section 28,

(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 prescribed in the Schedule;

(f) Bring to the notice of the local authority any deviation from the norms and standards relating to 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, enrolment and facilities for learning by disabled children, and ensure their participation 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 shall be credited to the bank account of the School Management committee. The account shall be the joint account of the chairman and the convener of the committee. The account will be made available for audit whenever required. At the end of each year utilization certificate shall be submitted to the authority releasing the grants.

(8) The committee shall also get the accounts audited by either a chartered accountant or a local fund auditor or an auditor from the cooperative department.”

On perusal of the aforesaid, it can safely be observed that what may be the medium of instruction in the schools run by the State Government and the local authority is not the function so specified to the School Management Committee or to the Parents’ Association by the Central or the State Rules. Thus, change of medium of instruction relying upon the resolution of the Parents’ Association or as per the aspiration of the parents, is not specified in the Acts and the Rules.

55. In view of the foregoing discussion, Question No.4 is answered accordingly.

Question No.5: *Whether G.O.Ms.No.85 dated 20.11.2019 issued by the Govt. of Andhra Pradesh converting medium of instruction to English in primary stages of education is in conformity to the historic backdrop and also in conformity to the provisions of law, and not contrary to the policies of the Central Government?*

56. In the present case, G.O.Ms.No.81, School Education (Prog.I) Department, dated 05.11.2019, by which the proposal of the Commissioner of School Education, Andhra Pradesh vide Lr.Rc.No.162/A & I/2014, dt:12.10.2019, proposing to convert the medium of instruction of all classes from I to VIII in primary, upper primary, high schools into English medium from the academic year 2020-21 was accepted by the State Government. In supersession of the said G.O., and the others G.Os., i.e., G.O.Ms.No.76 dated 10.06.2008, G.O.Rt.No.30 dated 21.01.2010, G.O.Ms.No.78 dated 05.10.2017 and Govt. Memo dated 16.11.2017, the impugned G.O.Ms.No.85 dated 20.11.2019 has been issued, to which the quashment has been prayed for. Though G.O.Ms.85 dated 20.11.2019 has been issued in supersession of the above referred G.Os., however, it would be appropriate to refer the relevance of all the said G.Os. G.O.Ms.No.76 dated 10.06.2008 was issued in the erstwhile State of Andhra Pradesh for starting of parallel English medium sections from Class VI in High Schools. The same was implemented in 6500 notified schools of the erstwhile State of Andhra Pradesh as per the list enclosed to the G.O. The G.O.Rt.No.30 dated 20.01.2010 was also issued in the erstwhile State of Andhra Pradesh for changing of CBSE syllabus in the above-referred 6500 schools in which medium of instruction as English was introduced parallel to Telugu medium vide G.O.Ms.No.76 dated 10.06.2008. The Government Memo No.4390/Prog.I/2017 dated 16.11.2017 was issued in which the State Government has delegated

powers to the Commissioner of School Education, Andhra Pradesh, to open parallel English medium sections in the existing High Schools for classes VI to X. As per G.O.Ms.No.78 dated 05.10.2017 (wrongly mentioned in the references as G.O.Rt.No.78 dated 05.10.2017), English medium parallel sections were opened in all model primary schools and other primary schools by opening from class I from academic year 2018-19 and gradually increasing each further class upto class V from the next academic years. In supersession of the above G.Os., the Government vide G.O.Ms.No.81 dated 05.11.2019, issued orders to convert all Government, MPP & ZP Schools and all classes into English medium from classes I to VIII from the academic year 2020-21, for class IX from the academic year 2021-22 and for class X from the academic year 2022-23. By the impugned G.O.Ms.No.85 dated 20.11.2019, a decision has been taken for conversion of all classes from I to VI in primary, upper primary and high schools under all managements into English medium and gradually increase each further class from next consequent academic year; for enhancing the skills of the present deployed teachers, by developing Teachers' Hand Book, Training of Teachers in English medium teaching skills and knowledge, Compendium of best classroom practices and other pedagogical material for supporting the teachers and to submit proposals for recruitment of teachers for filling up of the posts and also instructed the Director, Text Book Press to obtain consent, indent and ensure the supply of English medium text books in the next academic

year. Its validity is assailed relying upon the datas available on the Government website, that a number of parents are not opting for the English medium schools. However, en-bloc conversion into English medium in the primary schools of all managements is violative of the fundamental right guaranteed under Article 19(1)(a), 19(1)(g), 21 and 21-A of the Constitution. The restriction imposed to impart education in English medium, falls within the purview of violation of fundamental right of speech and expression and right to life, which cannot be taken away or restricted without having any reasonable restrictions specified in Articles 19(2) and 19(6) without following the procedure established by law. Therefore, the right to practice profession and occupation conferred by Constitution cannot be taken away by the State Government in view of the impugned G.O.

57. The challenge is also made in the context of the provisions of Article 30(1) as well Article 350-A, inter alia, stating that the right to establish and run educational institutions cannot be taken away on the basis of religion or language. It is said that as per Article 350-A of the Constitution, the right to run the linguistic minority educational institution in mother tongue has been protected, while the impugned G.O. takes away the said right which cannot be allowed to stand.

58. It is further argued that G.O.Ms.No.85, dated 20.11.2019, is contrary to the **Report of the States Reorganisation Commission, 1955**, particularly para 775. In the said para, a resolution adopted at the **Provincial Education Ministers' Conference** held in August, 1949

was approved by the Government of India, however it is guiding factor to the State Governments to make arrangements for education of their school-going children whose mother tongue is different from the regional language. The en-bloc change of medium of instruction from mother tongue to English at primary stage is contrary to the National Education Policy 1968 and also against Article 26 of UDHR to which India is a signatory. A challenge is also made that the said G.O. is contrary to the provisions of section 29 of the RTE Act, the Central Rules, the 1982 Act and the State Rules. It is said that the amendment proposed in the 1982 Act by L.A.Bill No.62 of 2019 dated 16.12.2019 is contrary to the provisions of the RTE Act. It is said the impugned G.O., was issued on 20.11.2019 prior to the proposal of the said Bill dated 16.12.2019 and without receiving the assent from the Hon'ble the President of India. The said Bill and proposed amendment is repugnant to the provisions of the Central Act. The reliance is placed by the petitioners on the judgments of **Shri Sitaram Sugar Company** and **P.Krishna Murthy** supra. It has been finally urged that any contrary executive instructions issued by the State Government are void, therefore, the said G.O. is liable to be quashed.

59. The State Government refuting the said arguments urged that the interpretation of Section 29(2) of the RTE Act, as made is erroneous, for the reason that, as per Section 29(2), the curriculum should be in mother tongue "as far as practicable". Therefore, the word "as far as practicable" used is of significant importance conferring discretion on

the State, to impart education in English medium at primary stage for the benefit to the poor in the society. Further, it is said, the parental aspirations are tending towards English medium at primary stage of education. On the basis of the proposals submitted by the Parents' Associations in "*Amma Vodi Varothesavam*" scheme of the Government, and it is concurred by passing the Resolution dated 07.01.2020. It is said, the issuance of the G.O. by the State Government is well within its competence and do not affect any right of the citizens. It is also stated that Government is ready to open one school in Telugu medium at each Mandal level and if requested transport facilities may be made available to the children. It is further contended that, on change of the medium of instruction, Telugu/Urdu has been made a compulsory subject in the curriculum. The Government in its reply has also submitted the datas to show the demand of English medium is more, therefore, the conversion of the medium of instruction has rightly been endorsed. In addition, the said G.O., is based on the Report of the N.Balakrishnan Committee set up to recommend the necessary reforms for strengthening the school education. The State has also appointed a Regulatory and Monitoring Commission under the Chairmanship of Justice R.Kantha Rao with an objective to maintain the standard of education, therefore, the G.O, so issued is not liable to be interfered with.

60. It is contended that, in the 1982 Act, amendment has been introduced which is passed by the Assembly, but on account of the

proposal so made by the Legislative Council, it could not be accepted and on subsequent passing in the Assembly, it has been sent for the assent of Hon'ble the President, whereby the power has been given to the State Government to decide the medium of instruction; therefore, in expectation of the assent of the Hon'ble President of India, the G.O. has been issued by the State Government, which is well within the welfare of the State, therefore, interference in the said G.O., is not warranted.

61. The Central Government, through the Asst. Solicitor General has assisted the Court and submitted that G.O.Ms.No.85 dated 20.11.2019 so issued by the State Government is contrary to the spirit of Section 29 (2) (f) of the RTE Act, clause 3.1.1 of the NCF, the National Education Policy 1968 and recommendations of the UNESCO. Further, in view of the draft recommendations of the National Education Policy 2019, the G.O., so issued is not in conformity to the same.

62. The counsel appearing on behalf of the interveners have made their contentions similar to that of the learned Advocate General. Further, adding that the G.O., has rightly been issued by the State Government accepting the representations submitted by the interveners or their Associations, it is stated that the said G.O., is beneficial to the poor sections in particularly, SCs. and STs., to which support by Article 46 of the Constitution has been specified. Therefore, opposing the prayer made by the petitioners and supporting the stand of the State

Government, it is represented that interference may not be made in these PILs., filed seeking quashment of the impugned G.Os.

63. Sri Vedula Venkata Ramana, learned senior counsel appearing on behalf of one of the interveners – respondent No.15 in W.P. (PIL) No.185 of 2019, has taken the stand similar to that of the petitioners seeking quashment of the impugned G.Os., which are contrary to the provisions of the Constitution, the RTE Act, the 1982 Act, the Central Rules and the State Rules. It is said that the G.O., departed the basic intention to provide education to the citizens of the State of Andhra Pradesh and therefore it cannot be allowed to stand. It is further said that it would affect the heritage and culture of Telugu language, in the State, therefore also, it cannot be allowed to stand.

64. In the light of the arguments advanced by the respective Advocates in the factual matrix, statutory and legal position noted and discussed above, the validity of the impugned G.O., is analyzed with reference to the provisions of RTE Act. As per Section 29 of the RTE Act, the academic authority specified by the appropriate Government by way of notification shall lay down the curriculum and evaluation procedure. The said authority while deciding the curriculum is required to act in conformity to the values enshrined in the Constitution for all-round development of the child, building of knowledge, potentiality and talent, development of physical and mental abilities to the fullest extent, discovery and exploration in a child friendly and child-centered manner, making the child free of fear, trauma and

anxiety and helping the child to express the views freely by a medium of instruction as far as practicable in his mother tongue. On perusal of G.O.Ms.No.85, dated 20.11.2019, it does not reflect that any consultation is made by Government with academic authority, implementing authority i.e., the Director, Sarva Shiksha Abhiyan, which, in the State of Andhra Pradesh, called as Rajiv Vidya Mission. The counter-affidavit filed by the respondents is also silent on the issue. The recommendations if any made by the academic authority assigning the reason showing any justification for conversion of medium of instruction to English at primary stage are not brought on record. In view of the detailed discussion made in paragraphs 47 and 48, in our view, without any recommendation of academic authority on the aforesaid issues, abruptly making a change in medium of instruction, converting all classes from I to VI in primary, upper primary of all managements violates the provision of Section 29 (2) (f) of the RTE Act.

65. Undisputedly, by the impugned G.O., the medium of instruction in primary and upper primary schools have been changed from the mother tongue Telugu to English medium in all the schools run by all managements. The expression what is the meaning of ‘mother tongue’ has been considered and answered by Hon’ble Supreme Court in the Constitution Bench judgment in the case of **State of Karnataka v. Associated Management of English Medium Primary & Secondary**

Schools supra. The Apex court, taking aid of Article 350-A of the Constitution of India has held as under:

“33. Mother tongue in the context of the Constitution would, therefore, mean the language of the linguistic minority in a State and it is the parent or the guardian of the child who will decide what the mother tongue of child is. The Constitution nowhere provides that mother tongue is the language which the child is comfortable with, and while this meaning of “mother tongue” may be a possible meaning of the “expression”, this is not the meaning of mother tongue in Article 350-A of the Constitution or in any other provision of the Constitution and hence we cannot either expand the power of the State or restrict a fundamental right by saying that mother tongue is the language which the child is comfortable with. We accordingly answer Question (i)”.

66. It is not in dispute that in the State of Andhra Pradesh, people are having their mother tongue ‘Telugu’ and for the purpose of the children of the State of Andhra Pradesh at primary stage, the medium of instruction of education is Telugu as prescribed by Section 29(2) of the RTE Act and Sections 7 (3) and (4) of the 1982 Act. But, in the above judgment, the Court has considered the issue that the student or a parent may have right to choose the medium of instruction at primary stage. While answering the said issue, in the light of the provisions of Article 19(1)(a) and 19(2) of the Constitution of India, the Court held that the freedom or choice in the matter of speech and expression is absolutely necessary for an individual to develop his personality in his own way, therefore, the Constitution mandated a guarantee, giving a fundamental right of the freedom of speech and expression to the citizen. The Court relied upon the judgment of Hon’ble the Supreme

Court in **Romesh Thappar v. State of Madras**¹⁶, in which it held as thus:

“Turning now to the merits, there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. “Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value”.

Perusal of the aforesaid made clear that it includes the freedom of propagation of ideas which is ensured by the freedom of circulation.

67. Further relying on the case of **Sakal Papers and others v. the Union of India**¹⁷, the Apex Court held as under:

“Bearing this principle in mind it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under clause (2) of Article 19”.

Thus, it is clear that the right to publish and circulated one's ideas and views falls within the purview of freedom of speech and expression. Legitimacy of the restriction is only to the extent as specified in Article 19(2) of the Constitution of India.

68. The Apex Court further relied upon a Constitution-Bench judgment in **Bennett Coleman Co. v. Union of India**¹⁸, in which it is held thus:

¹⁶ AIR 1950 SC 124

¹⁷ AIR 1962 SC 305

¹⁸ (1972) 2 SCC 788

“45. It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express.”

The right of a citizen to speak, publish and express his views includes the right of citizen to read.

69. In the case of **Secretary, Ministry of Information & Broadcasting, Govt. of India and others v. Cricket Association of Bengal and others**¹⁹, Hon’ble the Supreme Court observed that Article 19 (1) (a) of the Constitution not only include the right to impart information, but also right to receive information. In the majority view, on behalf of the Bench, Justice P.B. Sawant observed that right to freedom of speech and expression also includes the right to inform, to entertain and also the right to be educated, informed and entertained.

70. Thus, considering those judgments, Hon’ble the Apex Court in the case of **State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools** supra, in paragraphs 40 and 41, held as under:

40. In line with the earlier decisions of this Court, we are of the view that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution includes the freedom of a child to be educated at the primary stage of school in a language of the choice of the child and the State cannot impose controls on such choice just because it thinks that it will be more beneficial for the child if he is taught in the primary stage of school in his

¹⁹ (1995) 2 SCC 161

mother tongue. We, therefore, hold that a child or on his behalf his parent or guardian, has a right to freedom of choice with regard to the medium of instruction in which he would like to be educated at the primary stage in school. We cannot accept the submission of the learned Advocate General that the right to freedom of speech and expression in Article 19(1)(a) of the Constitution does not include the right of a child or on his behalf his parent or guardian, to choose the medium of instruction at the stage of primary school.

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

71. In view of the above, it is luculent that a child or on his behalf his parent or guardian, has a right to freedom of choice with regard to the medium of instruction in which he would like to be educated at primary stage in the school. The Apex Court, discarding the stand of the Government, in the said case, clarified that the expression freedom

of speech shall include the right to choose medium of instruction at the primary stage of education. The Court further clarified that the reasonable restriction means the restriction prescribed in Article 19(2) of the Constitution, but it would not include the restrictions on the freedom of speech and expression, which will be harmful for the development of the personality of the individual citizen. In the said context, in paragraph 42, the Court held as thus:

“42. Therefore, once we come to the conclusion that the freedom of speech and expression will include the right of a child to be educated in the medium of instruction of his choice, the only permissible limits of this right will be those covered under clause (2) of Article 19 of the Constitution and we cannot exclude such right of a child from the right to freedom of speech and expression only for the reason that the State will have no power to impose reasonable restrictions on this right of the child for purposes other than those mentioned in Article 19(2) of the Constitution.”

Thus, it can safely be concluded that the stand of the State Government that medium of instruction English is in the benefit of the citizens, being more beneficial in the place of mother tongue at the primary stage of education is absolutely contrary to the law laid down by the Apex Court supra. In fact, en-bloc change of the medium of instruction to “English” in place of mother tongue “Telugu” in the State of Andhra Pradesh, by the stroke of pen taking away the right of the citizen for making choice of medium of instruction of education, affects Article 19 (1) (a) of the Constitution of India. The defence taken by the State Government in their counter-affidavit do not come

within the purview of reasonable restrictions, specified under Article 19(2) of the Constitution. In addition, while dealing Question No.4, this point is dealt with in detail in paragraph 37, however, reference to it may also be taken.

72. At this stage, advertent to the judgments so relied by the learned Advocate General, interpreting the term “*as far as practicable*” used in Section 29 (2) (f) of the RTE Act, with respect to medium of instructions, urged that such term, confers discretion and it is not mandatory that the medium of instruction should only be in mother tongue. In support of the said contention, reliance was placed on the judgment in *N.K.Chauhan and others* supra. In the said judgment, the Apex Court interpreted the word “*as far as practicable*” means not interfering with the right which fulfils the interest of administration, but flexible provision clothing Government with the powers to meet special situations where the normal process of the Government resolution cannot flow smooth. Reliance has further been placed on the judgment in *Osmania University* supra, wherein, in the context of the age of teaching and non-teaching category staff in the University, the word “as far as possible” used in Section 38 (1) of Osmania University Act has been interpreted and it was held that the said Act recognises flexibility in determining conditions of service. Reliance has also been placed on the judgment in *Rajender Singh* supra, inter alia, stating that the word “*as far as practicable*” used in the enactment is not prohibitory in nature and confers discretion vested in the prescribed

authority. Further, relying on the judgment in *Iridium Telecom Ltd* supra, it is contended that the word “*as far as practicable*” indicates mere directory.

73. It is settled principle of the interpretation of statutes that the statute ought to be interpreted in the context of the object in which the provision of law was brought. The provision of Section 29 has been brought in the RTE Act in the context of the curriculum and evaluation procedure which is to be done by the academic authority taking into consideration Section 29 (2) (a) to (h) of the RTE Act. In the said context, it is used that the medium of instruction shall as far as practicable be in the child’s mother tongue. In the context of the Report of the States Reorganisation Commission, 1955, the National Policy on Education, 1968, recommendations of UNESCO in 2003 and the National Curriculum Framework, 2005, it is clear that the medium of instruction in primary stages of education shall be in the mother tongue. In view of the interpretation made by Hon’ble the Supreme Court in **State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools** supra, in the context of Article 19 (1) of the Constitution of India, the freedom or choice of medium of instruction is impliedly within the freedom of speech and expression of a citizen. Therefore, in the said context, if we interpret the word “*as far as practicable*” used in Section 29 (2) of the RTE Act, for the purpose of medium of instruction, it gives the meaning that it should not be less interchangeable; meaning thereby, the medium of

instruction, i.e., Telugu, continuing from decades in the State of Andhra Pradesh, shall not be changed by stroke of a pen interpreting Section 29(2) of the RTE Act in favour of the State Government. Therefore, the reliance placed on the said judgments as regards interpretation of the word “*as far as practicable*” is discretionary may be just, but it is not of any help to the State Government in the facts and circumstances of the case.

74. As mentioned earlier, by G.O.Ms.No.85, dated 20.11.2019, classes from I to VI in all primary, upper primary and high schools have been converted into English medium for all managements, from Telugu medium. The term ‘School’ has been defined in Section 2(n) of the RTE Act, which includes the school run by private management recognised by the Government. As per Article 19(1) (g) of the Constitution, the citizen shall have the right to practice any profession or to carry on any occupation, trade or business, unless it is contrary to Article 19(6) of the Constitution. Nothing has been brought on record to demonstrate how the schools of all managements can be converted into English medium. In the absence of having any ingredients of Article 19(6) of the Constitution either in the G.O., or in the counter-affidavit, conversion of the medium of instruction from Telugu to English medium en-bloc, restraining to run such institutions, affects the fundamental right of the person running such institution and against the true spirit of the Constitutional provisions and also in view of the discussion made in paragraph 38 above.

75. In the light of the judgment of Hon'ble Supreme Court in **Mohini Jain** and **Unnikrishnan J.P.** supra, it is the trite law that right to life and personal liberty includes the right to education. As mentioned earlier, at the time of the said judgments, free and compulsory education was a part of the Directive Principles of State Policy specified under Article 45 of the Constitution. Recognising the importance of the said right, now it is made part of the fundamental rights introducing Article 21-A of the Constitution by 86th Constitutional amendment with effect from 01.04.2010. As per Article 21-A of the Constitution, the children/citizen of the country has a right to free and compulsory education from the age 6 to 14 years in such a manner as the State, may by law, determine. As per Section 7(3) of the 1982 Act, it is clear that, at the stage of primary education, the children in between 6 to 14 years shall be imparted education and curriculum and *instruction* of education shall be such as may be prescribed by the competent authority, defined in Section 2(12) of the 1982 Act, to achieve the objective including irrelapsable literacy in mother tongue including skills of articulation knowledge of social environment and proficiency in socially useful productive work. As per Section 7(4) (a) of the 1982 Act, it is clear that the main objective of the secondary education shall be to impart such general education to make the said pupil fit either for higher academic studies or for oriented vocational courses by the time he completes his secondary education; in clause (b), while interpreting 'general education', it is clarified that it would

include the development of linguistic skills and literary appreciation in mother tongue or regional language as the case may be. Thus, in furtherance of Article 21-A, the State, by law, has determined irrelapsable literacy in the mother tongue including the skills of articulation, necessary knowledge of social environment and proficiency in socially useful productive work to the citizens. It is not brought on record, the State, determined something else by law other than the above-referred. Therefore, looking to the provisions enumerated in the 1982 Act and the language of Article 21-A of the Constitution, the impugned G.O., issued by the State Government is not in tune with the provisions of Section 7(3) and (4) of the 1982 Act.

76. Further, in view of the judgment of the Supreme Court in **State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools** supra, the Apex Court observed that the freedom of speech and expression is necessary for an individual to develop his personality. In the case of **Ms.Mohini Jain** and **Unnikrishnan J.P.** supra, the Apex Court, while referring Articles 41 and 45 of the Constitution of India, held that an individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. The UDHR emphasized that *“education shall be directed to the full development of human personality”*. Thus, freedom or choice in the matter of speech and expression by way of education are essential for the development of the personality of a citizen.

77. The expression ‘personality’ has been defined in **Merriam Webster Dictionary** as *“the complex of characteristics that distinguishes an individual or a nation or a group; a set of distinctive traits and characteristics.”* According to **Robert Park** and **Earnest Burgess**, *“personality is the sum and organization of those traits which determine the role of the individual in the group”*. According to **Linton**, *“personality embraces the total organized aggregate of psychological processes and the status pertaining to the individual”*. According to **Lundberg**, the term *“personality refers to the habits, attitudes and other social traits”*. As per **P. Ramanatha Aiyar’s THE LAW LEXICON**, the word ‘personality’ is defined as *“Personality does not only mean physical appearance or bodily appearance of a person but it means the sum total of traits of his behaviour including mental and psychological traits.”* In Indian psychological thought the term ‘personality’ has not been used in strict sense, instead the concept of **Swabhaava** referred in scriptures, covers all aspects of personality. Swabhaava is the essential quality. It is that speed of spirit which manifests itself as the essential quality in all becoming.

78. In the above context, what are the insights to build the personality of a man is necessary to understand. In the ancient Indian model of **“Personality”**, given in the Upanishads, it consists of the ‘five’ sheaths. They are ‘Annamaya’ (food sheath), ‘Pranamaya’ (vital air sheath), ‘Manomaya’ (mental sheath), ‘Vijnanamaya’ (intellectual sheath), and ‘Anandamaya’ (bliss sheath). ‘Annamaya’; a segment of

human system is nourished by ‘anna’, that is, food. ‘Pranamaya’ is that segment which is nourished by ‘prana’, that is, ‘bioenergy’. **‘Manomaya’ is the segment nourished by ‘education’.** ‘Vijnanamaya’ is nourished by ‘ego’ and ‘Anandamaya’ is the segment nourished by ‘emotions’. The development of personality is based on various factors, which cannot be looked in isolation. The group and culture are the early environmental factors that influence the later behaviour of the living. The family and social setting during the early stages of education are the important factors influencing the initial form of personality. Whatever the child learns, it lasts for a long time. Later, it is the peer group of primary affiliations at work, social activities which shape the personality of an individual.

79. Sri Aurobindo emphasized on simultaneous activity of the concentric system and a vertical system. The concentric system is like a series of rings or sheaths. The outermost circle is comprised of awareness of physical body, awareness of vital (pranic) body or sheath, and awareness of mental sheath. These three types of consciousness are interconnected. The inner circle is composed of inner mind which is in touch with the universal mind or Supreme Energy. The innermost core is called as Psychic being which is a spark of the Divine (Supreme Energy) present in all of us and in everything. It is also called as Atman. The vertical system is like a staircase consisting of various levels, planes of consciousness ranging from the lowest – the inconscient to the highest. The expression ‘personality’ has a wider

connotation which not only refers the physical appearance of a person but also the psychological attributes of a person. The term 'personality' is used in a number of ways including the apparent features of a person. However, psychologists use it to refer to the characteristic pattern of thinking, feeling and acting. Characteristic pattern means the consistent and distinctive ways in which ideas, feelings and actions are organized. The enduring pattern expressed by the person in various situations is the hallmark of personality. It refers to the total of ways in which an individual reacts and interacts with others.

80. Thus, the education of a child must be such which may be beneficial for his/her all-round development to build up the child's personality, which includes potentiality, talent and knowledge and the physical and mental abilities. It can be possible in a child-friendly and child-centered environment; thereby the said child must be free from fear, trauma and anxiety. However, in over-all development of the child, medium of instruction in which he was brought up and educated plays a vital role. The mother tongue plays a huge role in the development of personal, social and cultural identity; more so, the first language often enables a deeper understanding of themselves and their place within the society along with increased sense of well-being and confidence. As per Section 29(2) of the RTE Act as well as Section 7(3) & (4) of the 1982 Act, it is specified that the curriculum and the medium of instruction must be in mother tongue or irrelapsable literacy

in mother tongue. Thus, by education, personality of a child develops and the said education, if imparted in mother tongue, it makes the child educated in an atmosphere free from fear; thereby, he may be in a position to express his views freely.

81. However, keeping aside the notable key factors, the State of Andhra Pradesh by L.A.Bill No.62 of 2019 proposed amendment in 1982 Act, as referred in paragraph 50 above. By the said amendment, after Section 7(3) (c), it is proposed that the Government school may be directed to be converted into English medium for improving the efficiency and the same is in Section 7 (4) (ii) introducing English as medium of instruction in Government schools. Section 99 of the 1982 Act confers power to the Government to make Rules and as per Sub-Rule (1) (xviii) of Section 99, the power to make the Rules to the State Government were “standards of education and course of study in educational institutions”, however, in the proposed amendment, adding the word “including instructions in English medium” at last, power to change the medium of instruction by the State Government is sought for. As per Section 7(3), for imparting education from the age 6 to 14 years, the curriculum and *instructions* specified by the competent authority must be to achieve the objectives so prescribed. In Section 29(2) of the RTE Act, the curriculum shall be decided by the academic authority looking to the conditions specified in Section 29 (2) (a) to (h). Therefore, the competent authority/academic authority can safely be classified as NCERT or SCERT, who have to decide the curriculum

and the medium of instruction. Now, by the proposed amendment, the State Government want to take such power with them. The detailed discussion is made in paragraph 50 of the judgment. Thus, if we see the dominant intention of both the legislations, prior to amendment, it were alike to each other, but later they are different.

82. As per Article 254, in a matter contained in Concurrent List, there should not be any repugnancy in the provision on the subject matter; otherwise Central law would prevail or in case of repugnancy, after the assent of the Hon'ble President of India, the said State law may be followed. Thus, it is clear that the law under the RTE Act or the 1982 Act regarding the medium of instruction is alike prior to amendment. By the proposed amendment, the State law would be different from the Central law, to which admittedly the assent of the Hon'ble President of India has not been received. In such circumstances, the change of medium of instruction from mother tongue Telugu to English medium by the impugned G.O., is hit by doctrine of repugnancy. In this regard, discussion has already been made in paragraph 52 in detail and may be read in support.

83. In the State of Andhra Pradesh, judicial notice can safely be taken that the minorities are there. One part of the State is attached to Odisha, other part, to Karnataka and yet another, to Tamil Nadu; however, the minority persons of Odiya, Kannada and Tamil language are there in the State and the schools are running to give liberty of linguistic minority in the State. Article 30 of the Constitution of India

confers right to all the minorities to run the educational institutions based on religion and language and to administer the same. Article 30-1A confers right of property to them. Article 350-A specifies that it shall be the endeavour of every State and every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities. Thus, in the context of the provisions of Articles 30 as well as 350-A of the Constitution of India, converting the medium of instruction to English compulsorily in the schools run by all managements, by the impugned G.O., is in gross violation of Articles 30 and 350-A of the Constitution of India.

84. In view of the above discussion, the G.O., as issued by the State Government is in contravention of the provisions of Section 29(2) of the RTE Act, Section 7 (3) and (4) of the 1982 Act, Rules 8 and 23 of the Central Rules as well Rule 25 of the State Rules. In fact, the impugned G.O. is merely a Government Order, but in case it is being taken as executive instructions, even then it would not survive, in view of the law laid by Hon'ble the Apex Court in the case of **State of Madhya Pradesh and Anr. v. G.S. Dall and Flour Mills**²⁰. In the said case, it is specified that executive instructions can supplement a statute or cover the areas to which the statute does not extend, but it

²⁰ AIR 1991 SC 772

cannot run contrary or to whittle down the effect of the statutory provisions. Considering the law laid down in the said judgment, it can be held that the impugned G.O., even if it is in the shape of executive instructions, it is contrary to the provisions of the Acts and Rules.

85. In view of the discussion made in paragraph 54, it is clear that the functions of the Parents' Association have been classified in Section 21 of the RTE Act as well as Rules 3 and 4 of the Central Rules and Rule 19 of the State Rules. Under those provisions, it is not the function of the Parents' Association to recommend for change of medium of instruction. As per the counter-affidavit of the respondents, it reveals that the Government is relying upon the parental aspirations, tending towards English medium and accepted their request in place of taking independent decision by their own. In support of the same, the post-decisional affirmation by Parents' Association through its Resolution passed on 07.01.2020 has also been placed. As discussed in paragraph 54 above, it is clear that once it is not the function of the Parents' Association/School Management Committee in the statute, the recommendation made by the said Association or School Management Committee which is against the provisions of the law and is not acceptable. Therefore, the defence as taken by the State Government, citing the datas, is of no relevance to the issue.

86. As per the contention of the respondents, the reports of the Mr.N.Balakrishnan Committee constituted to study and recommend necessary reforms for strengthening the school education in the State as

well as the report of Regulatory and Monitoring Commission under the leadership of Mr.Justice R.Kantha Rao, as mentioned in the counter-affidavit, have not been made available. However, in absence of having such reports, the contention of the respondents is not acceptable, therefore, the said contention is hereby repelled.

87. Now, reverting to the arguments advanced by the State Government as well the interveners that such a decision of changing the medium of instruction from Telugu to English, is in favour of the poor, in particular, scheduled castes and scheduled tribes. As per G.O.Ms.No.76 dt.10.06.2008, G.O.Ms.No.78 dt.05.10.2017 and Govt. Memo dated 16.11.2017, in the schools run by the State Government, Telugu medium as well as English medium parallel classes from standard I to VIII may indicate the extended interpretation of Section 29(2) of the RTE Act. It is not in dispute, prior to issuance of the impugned G.O., dated 20.11.2019, parallel English medium schools are running in the State of Andhra Pradesh from 1st standard, therefore, the child and parent are having option to get admission in English medium or Telugu medium as per their choice. In such a situation, if poor people want to get their child admitted in English medium school, they can admit their child. Therefore, the stand taken by the interveners or by the State Government in the light of Article 46 of the Constitution is also of no help to them, hence, the said argument is hereby repelled.

88. Yet another argument as advanced by the State Government is that, change of medium of instruction and making Telugu as a

compulsory subject, would not divulge the credibility of Telugu language, which is admittedly a highly recognised language in the State of Andhra Pradesh. It is said that at Mandal level, one school in each Mandal in Telugu medium shall continue and if any request is made for free transport to the children, in case the school is not in the neighbourhood, as defined in RTE Act, the Government shall make all arrangements for the same. As per the discussion made in detail hereinabove, on change of medium of instruction as English in the schools, running one school in each Mandal in the District would not satisfy the requirement of the provisions of the RTE Act, therefore, the said stand is also not tenable and is hereby repelled.

89. The history to educate the citizens started from *Pathashalas* and *Madarsas*. The British people brought Christian Missionaries' System emphasizing English as medium of instruction in education to glorify the British conquerors. In the Indian history, in the year 1853, the focus of vernacular education was emphasized. Thereafter, in 1882, as per the recommendation of Sir William Wilson Hunter (Hunter Commission), local language was recognized in primary education, but it was not encouraged. However, by the reforms of Bal Gangadhar Tilak, establishment of certain educational institutions in primary education and vernacular languages was recognized. The said efforts were glorified by Gopal Krishna Gokhale in 1911, giving priority to the local languages. Thereafter, some recommendations were made in the Wood Abbot Report in 1936-37 regarding

compulsory education to be given to the children aged between 7 and 11 years in the mother tongue replaced by *Nai Talim*. Vivekananda recommended that grasping in mother tongue may give better results and the education must be imparted in one's own language. Mahatma Gandhi said that the baby takes its first lesson from its mother; therefore, change of medium of instruction at primary stage to any other language is a sin to the mother tongue. Rabindranath Tagore and Dr.Sarvepalli Radhakrishnan recommended that the education at primary stage should be in mother tongue/vernacular/local language and any consequential education should be in English medium or in any other language.

90. The post-independence era also remained influenced by the same view and the Report of the States Reorganisation Commission, 1955 first recommended mother tongue/regional/local language as medium of instruction in primary stage of education. The National Policy was formulated in 1968 emphasizing the development of a citizen through Indian languages, which is essential for cultural and educational development. The three-language formula was brought, which remained successful wherever it was made applicable. Thereafter, recommendations of the UNESCO and NCF supported that the mother tongue or regional language should be the medium of instruction, which can result in overall development of the citizen. Therefore, in the context of India, the three-language formula and later three-language modified formula are prevalent and as per those

policies, the medium of instruction at primary stage in the country, following the National Policy on Education, is being observed.

91. At the cost of repetition, it may be appropriate to reiterate here that in the State of Andhra Pradesh, the development of the regional language/mother tongue Telugu is having its own history. It started from 11th Century A.D. As discussed in paragraphs 35 and 36, it is clear that since the support of Nannaiah, with the movements of Gidugu Rama Murthy Pantulu and the establishment of Andhra Viswhakula Parishad and Navya Sahitya Parishad, legacy of Telugu literacy flourished. After independence, a Committee was formulated for development of Telugu language under the President-ship of Mr.JPL Gwynn on 28.12.1966, who submitted report in which Dr.Krishnamurthi's views were adopted and on the basis of those, 'Adhikara Basha Sangam, Telugu Academy' (a statutory body) was established in Andhra Pradesh and on the basis of the recommendations, Telugu was started as medium of instruction in primary education as well as in higher education, which is prevalent. However, considering the era of pre-independence to post-independence, the implementation of medium of instruction in Telugu is going on since the last more than 50 years, recognizing Telugu as medium of instruction/mother tongue at the primary stage. Abrupt change, without any basis by a G.O., issued by the State Government, how far is it justified is a matter of concern to the educationists, the academic authority and the competent authority

under the provisions of the RTE Act and the 1982 Act. But, as discussed, in the opinion of the Court, without having any basis, issuance of the G.O., by the State Government reflects absolute non-application of mind.

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.

J.K.MAHESHWARI, CJ

NINALA JAYASURYA, J

MRR