

PETITIONER:
HINDI HITRAKSHAK SAMITI AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 26/02/1990

BENCH:
MUKHARJI, SABYASACHI (CJ)
BENCH:
MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)
PUNCHHI, M.M.

CITATION:
1990 AIR 851 1990 SCR (1) 588
1990 SCC (2) 352 JT 1990 (1) 359
1990 SCALE (1) 433

ACT:

Constitution of India, 1950: Articles 29(2) and 32--Non-holding of pre-medical and pre-dental examinations in Hindi or other regional languages--Whether amounts to denial of admission on grounds of language--Whether violative of Fundamental Rights--Writ for direction to conduct examination in particular language--Whether appropriate remedy.

HEADNOTE:

A Writ Petition was filed in this Court praying for a direction to the respondents to hold pre-medical and pre-dental examination in Hindi and other regional languages.

It was contended that pre-medical studies in medical and dental examination should be permitted in Hindi and other regional languages and not in English alone, that admission should not be refused and/or examinations should not be held in English alone if the examinees or the entrants sought to appear in Hindi or other regional languages, and that by not holding the examinations in Hindi or other regional languages, there was a breach of Article 29(2).

Dismissing the writ petition as withdrawn, the Court,

HELD: 1.1 The jurisdiction conferred on the Supreme Court under Article 32 is an important and integral part of the Indian Constitution but violation of a fundamental right is the sine qua non for seeking enforcement of those rights by the Supreme Court. [591D-E]

1.2 Not holding entrance examination in any particular language, be it Hindi or regional language cannot amount to denial of admission on the ground of language. Every educational institution has right to determine or set out its method of education and conditions of examination and studies provided these do not directly or indirectly have any casual connection with violation of the fundamental rights guaranteed by the Constitution. It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and

589

it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi

Language, or it may be that Hindi or other regional language because of development of the language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in-charge of any particular situation. [591 E, G JUDGMENT:

1.3 Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference. [592B-C]

1.4 The actions following from non-acceptance of any policy perspective cannot amount to direct and casual violation of the fundamental right of the citizens guaranteed under the Constitution of India. Court is not the forum to adjudicate upon the questions of policy unless such a policy is the direct mandate of the Constitution. [592D]

1.5 Whether in particular facts and circumstances of the instant case, admission to medical or dental Institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this Court, and order under Article 32 of the Constitution in those circumstances would not be an appropriate remedy. [592H, 593A]

&
CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 428 of 1989.

(Under Article 32 of the Constitution of India).
Dr. L.M. Singhvi, N. Wazir and D. Bhandari for the Petitioners.

Rajiv Dutta for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. This is an application under Article 32 of the Constitution of India for issue of a writ of mandamus

590

directing the Central Government to hold pre-medical and pre-dental entrance examinations in Hindi and other regional languages as, according to the petitioners, mandated by Article 29(2) of the Constitution of India. The petition is by nine petitioners. Petitioner No. 1 is Hindi Hitrakshak Samiti which is stated to be a society formed with the aim and object of propagating and ensuring the propagation of the national language Hindi and other regional languages; and to further the cause of the citizens of India who are educated in any one or more of the languages and who face difficulty in competitive examinations in which the medium of examination is English only.

Petitioners Nos. 3 to 10 are the students who allege that they wish to appear in the coming PMT/PDT examinations in Hindi or other regional languages and are being adversely affected and discriminated against, and will be in a disadvantageous position in the forthcoming PMT/PDT examination in comparison to those who have passed the higher secondary or equivalent examination with English as their medium of instruction. The petition seeks issue of writ directed against the Union of India, Central Board of Secondary

Education and Medical Council of India.

It is stated that in the year 1974 there was a survey by National Council for Educational Research & Training (NCERT) which, according to the petitioners, showed that out of the students passing intermediate, about 92.5% take their examination in Hindi and other regional languages. The petitioners allege that Kothari Commission's report on Civil Services Examination had recommended that the examination papers be set both in English and Hindi and the examinees should have a choice of answering them in English, Hindi or any of the 15 regional languages Constitutionally recognised. It was stated that it was also noteworthy that the Kothari Commission's report had recommended that Hindi and other regional languages in Universities would be necessary in order to make use of the best potential available in the country. In 1986 this Court in the case of Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College, Allahabad & Ors., [1986] 3 SCC 727 dealt with certain aspects of admission to the Medical College, but not on the present aspect. Letters and representations to the Ministry of Health & Family Welfare, by the petitioners were made on 23rd September, 1988 requesting the Government to consider conducting the PMT/PTD examinations in Hindi and other regional languages. It is stated that a letter was issued on both December, 1988 by the Government of India to the effect that the Joint Engineering Examination (JEE) for the five I.I.Ts. and the

591
Engineering College of Banaras be conducted in Indian languages from 1990 onwards. The petitioners assert that they had received numerous letters and grievances from students with Hindi medium background to press for this instant petition.

When the application was moved before this Court on 17th April, 1989 this Court had issued notice.

We have examined the matter and have heard Mr. L.M. Singhvi. We are of the opinion that the prayers sought for herein are not such which can be appropriately, properly and legitimately dealt with under Article 32 of the Constitution of India. The contention of the petitioners is, as mentioned hereinbefore, that pre-medical studies in medical and dental examination should be permitted in Hindi and other regional languages and not in English alone, and the admission to the Institutions should not be refused and/or examinations should not be held in English alone if the examinees or the entrants seek to appear in Hindi or other regional language.

Article 32 of the Constitution of India guarantees enforcement of fundamental rights. It is well-settled that the jurisdiction conferred on the Supreme Court under Article 32 is an important and integral part of the Indian Constitution but violation of a fundamental right is the sine qua non for seeking enforcement of those rights by the Supreme Court. In order to establish the violation of a fundamental right, the Court has to consider the direct and inevitable consequences of the action which is sought to be remedied or the guarantee of which is sought to be enforced. Mr Singhvi, counsel for the petitioners, contends that under Article 29(2) of the Constitution no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. He contends that by not holding the test in Hindi or other regional languages, there is breach of Article 29(2). He also draws our attention to Article 29(1) of the Constitution which enjoins that any section of the citizens residing in the territory of India or any part thereof having a distinct

language, script or culture of his own, shall have right to conserve the same. It is difficult to accept that in not holding entrance examination in any particular language. be it Hindi or regional language, amounts to denial of admission on the ground of language. Every educational institution has right to determine or set out its method of education and conditions of examination and studies provided these do not directly or indirectly have any casual connection with violation of the fundamental rights guaranteed by the

592

Constitution. It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in-charge-of any particular situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference.

It is difficult to contend that the actions following from nonacceptance of any policy perspective, amount to direct and causal violation of the fundamental right of the citizens guaranteed under the Constitution of India. Court is not the forum to adjudicate upon the questions of policy unless such a policy is the direct mandate of the Constitution.

It is well-settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the judiciary and judicial forums and not by the administrators or executives. But it is equally true that citizens of India are not to be governed by the Judges or judiciary. If the governance is illegal or violative of rights and obligations, other questions may arise out whether, as mentioned hereinbefore, it has to be a policy decision by the Government or the authority and thereafter enforcement of that policy, the Court should not be, and we hope would not be an appropriate forum for decision.

In the background of the facts and the circumstances of the case and the nature of controversy that has arisen, we are of the opinion that proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any particular language to the Institution on that basis, is a matter of policy. Whether in particular facts and the circumstances of this case admission to medical or dental Institution by conducting examination in Hindi or other regional languages would be appro-

593

priate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this Court, and order under Article 32 of the Constitution in those circumstances would not be an appropriate remedy.

Counsel for the petitioners drew our attention to the facts that notice had been issued to the respondent. That is true. On a closer examination of this matter we are of the opinion that in view of the controversy involved herein, we should not proceed with this application on that basis any further.

Counsel for the petitioners then wanted to withdraw this writ petition. He is permitted to do so, and the writ petition is dismissed as withdrawn but this will not prejudice the rights, if any, of the petitioners, legal or otherwise, to take appropriate steps, if any, as they may be advised, in accordance with law.

N.P.V.

Petition dismissed.

594

JUDIS