**IN THE HIGH COURT OF BOMBAY AT GOA**

Misc. Civil Application No. 35 of 2012

Decided On: 18.01.2012

Appellants: **Luiza Fernandes and 4 Ors.**
**Vs.**
Respondent: **State of Goa, Through its Chief Secretary and 3 Others**
[Alongwith Public Interest Litigation WP No. 23 of 2011]

**Hon'ble Judges/Coram:**
A.P. Lavande & U.V. Bakre, JJ.

**ORDER**

**A.P. Lavande, J.**

1. Heard Mr. Coelho Pereira, learned Senior Counsel for the applicants, Mr. Nadkarni, learned Counsel for the original petitioners and Mr. Talaulikar, learned Addl. Govt. Advocate for respondents No. 1 and 2. By this application, the applicants, who are intervenors 5 to 9 in PIL Writ Petition No. 23/2011, seek the following relief :

(a) That the order of this Hon'ble Court be recalled/ modified in so far as the said order stays the implementation of the circular dated 10.06.2011 and the said circular dated 10.06.2011 be ordered to be implemented by the Respondents No. 1 and 2, in respect of Schools where the parents have exercised the option for their Children/Wards to pursue their Primary Education with English as the Medium of Instruction.

2. PIL WP No. 23/2011 has been filed challenging the cabinet decision dated 25th May, 2011 and the Circular dated 10th June, 2011, issued by the Directorate of Education, Government of Goa, inter alia, releasing grants to private English Medium Primary Schools in Goa.

3. In the year 1990, the State Government took a decision that no funds shall be provided to run English Medium Private Primary Schools and this decision has been reversed by the Cabinet decision, as well as by the circular, which have been impugned in the PIL Writ Petition. In PIL Writ Petition No. 23/2011, on 18th July, 2011, this Court after hearing the learned Counsel appearing for the petitioners, as well as the learned Advocate General, passed an order that the impugned decision shall not be implemented until further orders. Thereafter, the writ petition was taken up for hearing on different dates, by different Benches and ultimately, the PIL Writ Petition was taken up for final disposal by this Bench on 22nd November, 2011 and is being heard considering the issue involved in the matter.

4. In May, 2011, the applicants herein filed Writ Petition No. 316/2011, seeking the following reliefs :

(a) For a Writ of Mandamus or any other appropriate writ, direction or order in the nature of a Mandamus directing the Respondent State Government to grant aid to the English Medium Primary Schools in the State of Goa without discriminating them from Primary Schools imparting Primary Education in Konkani/Marathi/ Regional Languages;

(b) For a Writ of Certiorari or any other appropriate writ, direction or order in the nature of a Certiorari, quashing that the Exhibit P-2 Circular No. 73 dated 21/5/1990 and Exhibit P-3 Circular No. 73 dated 8/6/1990 by which it was decided no State funds will be provided to run English Medium Private Primary Schools and declare the same to violative of the Fundamental Rights of the Children's under Article 14, 21, 21A of the Constitution of India.

(c) Issue an appropriate writ, direction or order in the nature of a Mandamus, directing the Respondent Government to take urgent steps to grant aid to English Medium Primary Schools for the academic year 2011-12; and

(d) Issue an appropriate writ, direction or order in the nature of a Mandamus, directing the Respondent Union of India and the Respondent State Government to implement the provisions of the Right of Children to Free and Compulsory Education Act, 2009 without any further delay from the current academic year 2011-12; and

(e) Direct the Respondent Government to grant aid to English Medium Primary Schools in Goa without discriminating these Schools from Konkani/Marathi/ Kannada/Gujarati Medicum Primary Schools for the Academic Year 2011-12 by way of interim measure pending hearing of the Writ Petition; and

(f) For ad-interim exparte relief in terms of prayer 5 clause (e) above and issue such other writ, order or direction, as deemed fit in the circumstances of the case in the interest of justice.

The said writ petition came up before the Division Bench and since the impugned circular was issued on 10th June, 2011, on 20th June, 2011, this Court dismissed the writ petition as infructuous.

5. As stated above, thereafter, interim relief came to be granted in the PIL Writ Petition on 18th July, 2011 by this Court. On 19th July, 2011, the applicants herein made an application for intervention, which was allowed by this court by an order dated 3rd August, 2011.

6. In PIL Writ Petition No. 23/2011, we have heard extensively Mr. Nadkarni, learned Senior Counsel appearing for the petitioners, Mr. Nariman, learned Solicitor General, as well as Mr. Kantak, learned Advocate General, so also Mr. S. D. Lotlikar, and Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for some of the intervenors.

7. At this stage, it is pertinent to note that in the course of arguments, Mr. R. Nariman, learned Solicitor General and Mr. Kantak, learned Advocate General have submitted that in view of the interim order dated 18th July, 2011, the State Government is not in a position to implement the impugned decision taken by the State Cabinet, as well as the impugned circular and further submitted that in the event the PIL Writ Petition is dismissed, the State Government would implement the cabinet decision, as well as the circular from the Academic Year 2012-13.

8. In December, 2011, the applicants herein filed Petition (s) for Special Leave to Appeal (Civil) CC 19586/2011, challenging the interim order dated 18th July, 2011 passed by this Court. On 16th December, 2011, the Apex Court, permitted the applicants to withdraw the special leave petition, and passed the following Order :

Learned senior counsel appearing for the petitioners seeks leave of the Court to withdraw the petition with the liberty to make an appropriate application before the High Court for modification/vacating the interim orders granted on 18.07.2011.

Permission sought for is granted. Petition is disposed of as withdrawn with the liberty as prayed. If such an application is made, we request the High Court to consider the same in accordance with law.

9. It is the case of the applicants that pursuant to the liberty granted by the Apex Court, the present application has been filed.

10. Mr. Coelho Pereira, learned Senior Counsel appearing for the applicants submitted that the interim order is causing serious prejudice to the applicants, as well as the parents who have exercised option in terms of the circular dated 10th June, 2011 and chosen English as medium of instructions and in case the interim order is not vacated, serious prejudice would be caused to the applicants, inasmuch as the applicants would be deprived of their right to get education to their children in the language they choose. Learned Senior Counsel, after placing reliance upon Articles 21A and 51A of the Constitution of India, submitted that the applicants are entitled to choose the medium of instructions for their children and it is the duty of the State Government to provide primary education in English language, when an option is exercised. Learned Senior Counsel further submitted that in view of the dismissal of Writ Petition No. 316/2011 by this Court on 20th June, 2011 on the ground that the same has become infructuous, the applicants at this stage are seriously prejudiced by the operation of the interim order that has been passed in the PIL Writ Petition. Learned Senior Counsel, after placing reliance upon the provisions of the Right of Children to Free and Compulsory Education Act, submitted that there is a duty cast upon the State Government to provide primary education in English if the parents choose primary education for their children in English. Learned Counsel further submitted that the applicants are deprived of their right to have primary education in English due to operation of the interim order which deserves to be vacated. In support of his submissions, learned Senior Counsel has placed reliance upon a judgment of the Apex Court in the case of State of Uttar Pradesh and ors. vs. Bhupendra Nath Tripathi and ors.,   : (2010) 13 SCC 203.

11. Per contra, Mr. Nadkarni, learned Senior Counsel appearing for the original petitioners, submitted that the interim order was granted on 18th July, 2011 and no grievance was made by the applicants herein regarding the same and the applicants chose to file Special Leave Petition directly before the Apex Court, challenging the said interim order. According to learned Senior Counsel, this application has been filed only to save the managements of the schools which have ultimately chosen to change the medium of instructions either from Konkani or Marathi to English, without obtaining the approval from the Directorate of Education and contrary to the Order dated 18th July, 2011 passed by this Court. Learned Senior Counsel further submitted that in the event the interim order is vacated, the same would amount to permitting the managements of the schools which have violated the order to continue English as the medium of instruction contrary to the order passed by this Court, which exercise is impermissible in law. Inviting our attention to the order passed by the Apex Court, Mr. Nadkarni submitted that the Apex Court has only granted liberty to the applicants to approach this Court, but the applicants, having been intervenors in the PIL Writ Petition, are not entitled to seek any substantive relief by filing an application, more particularly having regard to the fact that the State Government itself has come out with a stand before this Court that it does not want to implement the impugned decision and the impugned circular during the Academic Year 2011-12. Mr. Nadkarni further submitted that the stand of the State Government in Misc. Civil Application No. 1029/2011 filed by the petitioner is that the State Government is going to take action against the managements of the schools which have changed the medium of instruction contrary to the order passed by this Court. Mr. Nadkarni, therefore, submitted that having regard to the stand taken by the State Government, the applicants are not entitled to the reliefs sought for. Mr. Nadkarni also pointed out that in the application, the applicants have not only sought stay of the interim order, but have also sought further direction to release the grants in favour of the managements which have changed the medium of instruction, which supports the contention of the petitioners that the application has been filed at the behest of the managements which have violated the order of this Court. Placing reliance upon the judgment of the Apex Court in the case of Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax Haryana, Rohtak,   : (1999) 3 SCC 141, Mr. Nadkarni submitted that the applicants, as intervenors, are not entitled to get any substantive relief and they can only address the arguments in support of one or other side. Mr. Nadkarni lastly submitted that the application has been filed at the fag-end of the hearing of the writ petition, which is almost to conclude and on this ground alone the application is liable to be dismissed.

12. In rejoinder, Mr. Coelho Pereira submitted that he is restricting his prayer only to the extent of vacation of the interim order and he is not pressing for further relief. Mr. Coelho Pereira submitted that the applicants have approached this Court in view of the liberty given by the Apex Court and not at the instance of the managements of the schools.

13. We have carefully considered the rival submissions, perused the record and the judgments relied upon.

14. PIL Writ Petition No. 23/2011 is being taken up by us for final hearing from 22nd November, 2011 and the final hearing is almost concluded. On that ground alone, in our considered opinion, prayer made by the applicants deserves to be dismissed. The interim order has been in operation since 18th July, 2011. Moreover, it is the stand of the State Government itself that it would implement the cabinet decision, as well as the circular from the Academic Year 2012-13, subject to the result of the PIL Writ Petition.

15. In view of the clear stand taken by Mr. Nariman, learned Solicitor General and Mr. Kantak, learned Advocate General on behalf of the State Government, the prayer made by the applicants for vacating the interim order at this stage does not deserve to be granted. It is pertinent to note that the applicants are the intervenors in the PIL Writ Petition and, as such, are not entitled to seek any substantive relief in the petition filed by the petitioners in public interest. Granting the relief claimed in the application, at this stage, would be granting something which even the State Government as party respondent does not press. On this count also, the present application is liable to be dismissed.

16. Mr. Nadkarni is fortified in placing reliance upon the judgment in the case of Saraswati Industrial Syndicate Ltd. (supra), in which the Apex Court has held that the purpose of granting an intervention application is to entitle the intervenor to address arguments in support of one or the other side. In so far as the submissions made by Mr. Coelho Pereira, learned Senior Counsel for the applicants on the basis of the provisions of Articles 21A and51A of the Constitution of India and the provisions of Right to Education Act are concerned, we find that the same do not advance the case of the applicants, having regard to the nature of the reliefs claimed in the application. The ratio of the judgment in the case of State of Uttar Pradesh and others (supra), relied upon by Mr. Coelho Pereira is not at all applicable to the present case, since the issue before the Apex Court was entirely different. For the reasons aforesaid, we do not find any merit in the present application. Consequently, the application stands dismissed.