

DR. RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY
GRAND INTRA-MOOT COURT COMPETITION

In the Hon'ble High Court of Bongia

Case Concerning, *'the Educational Rights'*

Ms. Milaki

Mr. Kirkitya and

The Domili Professional University (DPU)

..... (Petitioners)

V.

The State of Bongia

.....

(Respondents)

On submission to the Hon'ble High Court

At Bongia

Memorandum on behalf of the Respondent

'State of Bongia'

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Jain, M.P., Indian Constitutional Law – Fifth Edition – Volumes I and II
Basu, Durga Das, Commentary on the Constitution of India – Eighth Edition

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STATEMENT OF JURISDICTION

The petitioners approach the Honorable High Court of Bongai under Article 226 of the Constitution of India, 1950. The respondents respectfully submit to this jurisdiction invoked by the petitioners.

SYNOPSIS OF FACTS

In the Union of Tikula, a democratic republic nation, the state of Bongia is the largest state in terms of population as well as land. Chi-chi is the official language of the country as well as mother tongue of majority of people of the state of Bongia. In bongia, there is a linguistic minority community Domili that has its origin from the state of Domil and a Kurdu speaking religious minority community. Its mother tongue is also known as Domili. In the state of Bongia, there are very few primary schools that impart education in the Domili or Kurdu as a medium of instruction.

The other states adopt a two language system in primary education one being English, which is a language for international communications and the second being the official language of the state. In Bongia it's only at the college level that the medium of instruction is bilingual, where the students have to opt for either Chi-chi or English as the medium of instruction. A lot of private universities have come up in the state of Bongia, which have been established under different Acts of the state legislature of Bongia. Thus, the status of higher education in the Union of Tikula, is in a complete mess.

Due to lack of uniformity in imparting education and managing affairs of the private universities in the State of Bongia, the students are being exploited and standard of education has lowered down. In order to cope with the situation and regulate the private universities, the state of Bongia passed the Private Universities (Regulation) Act (hereinafter the Act), 2009.

The provisions of the Act apply on any linguistic or religious minority Private University. The provisions of the Act give freedom to the Private Universities to raise their funds through donations and also to charge fee as per their requirement. It also provides freedom in the decision regarding allotment of seats subject to the infrastructure of the university. One of the provisions in the Act makes it mandatory that Chi-chi will be the only language of instruction in all private universities. Looking into the continuous degradation of education and corruption in admission and results, the Act seeks to prohibit the students of the state of Domil from admission in the private universities of Bongia. Only those Domili students, who are domiciles of Bongia are eligible for admission in the private universities of the state of Bongia.

A big business house from the state of Domili established a private university the Domili Professional University (DPU) in the state of Bongia. The DPU provides the education to all

Domili students, irrespective of their domicile. It offers courses in both Domili and English medium and also reserves 50% seats in all courses for the Domili minority community.

The Act, after coming into force refused the no objection certificate of the DPU for starting its new academic session from July 2009, on the ground that it had admitted students from the state of Domili in violation of the Act. Furthermore, the DPU has refused to offer the courses in Chi-chi medium.

Ms. Milaki, a resident of state of Bongia, seeks to pursue the modern course in Mass Communication, which is offered by the DPU only in English medium. But the DPU can no longer offer this course and even if it runs, it will be in Chi-chi medium with much diminished value.

Mr. Kirkitiya is a Domili but domiciled in Bongia. He has been going to the private schools in the state of Bongia, which pay emphasis on learning English as well. He is adept in English as well as Domili. He intends to pursue higher education in Bongia but due to the outdated courses offered by the private universities and Chi-chi being the only medium of instruction, he is in dilemma. He is disappointed by the fact that the DPU had not been allowed to start its session.

Ms. Milaki and Mr. Kirkitiya file two different writ petitions in the Honourable High Court of Bongia for the violation of their legal as well as fundamental right to education. The DPU also files a writ petition in the same High Court alleging violation of its fundamental rights to establish, manage and administer an educational institution guaranteed under the Constitution of Tikula.

Hence the present petition before the Hon'ble High Court of Bongia.

ISSUES RAISED

- I.** Whether the state of Bongia can enact the statute to regulate the private minority educational institutes?
- II.** Whether the state of Bongia is legally justified to prevent the students from the state of Domil from taking admission in the private universities in Bongia?
- III.** Whether the state can compel the DPU adopt Chi-chi as the medium of instruction?

SUMMARY OF ARGUMENTS

1. It is submitted that the state has complete jurisdiction to enact the laws for governing the private minority universities. ‘Education’ comes under the concurrent list of the Indian Constitution. Moreover, the National Commission for Minority Educational Institutions Act 2004 permits the state government to regulate the private minority universities. The relevant provisions of the Act define the state government as the ‘appropriate government’ for the purpose of regulation of the private minority universities in the state. The judicial pronouncements have also conferred sufficient authority on the state government in the matters of fixation of seats in the private minority universities.
2. It is submitted that the state is legally justified in prohibiting the students from the state of Domili from taking admission in the private universities of Bongia. No fundamental right of the petitioners has been violated. Article 15(1) of the Constitution prohibits the discrimination on the ground of the place of birth. It does not prohibit the discrimination on the ground of place of residence or domicile. Thus, the state of Bongai is authorized to make provisions for the benefits of the Domili students residing in the state of Bongia. Looking into the diminishing standard of education in Domili, the state of Bongia can prohibit the students from the state of Domil from taking admission into the private universities of its territory.
3. It is submitted that the state of Bongia can impose the Chi-chi as the language for the medium of instruction in the DPU. The recent decisions of the Honourable Supreme Court of India provide the jurisdiction to the state to compel the private minority universities of the state to adopt Chi-chi as the medium of instruction. Moreover, the rights provided under Article 29 and 30 are not absolute.

Summary of Arguments.....xx

PLEADINGS

I. THE RESPONDENT HAS COMPLETE JURISDICTION TO ENACT THE LAWS FOR GOVERNING THE PRIVATE MINORITY UNIVERSITIES.

In the Constitution of India, the powers to enact the laws on several subjects have been granted to the Parliament as well as the state legislatures¹. These subjects have been provided in the lists in the Seventh Schedule of the Constitution. These lists have been divided into three parts, namely, the Union List (List –I), the State List (List-II) and the Concurrent List (List-III). The Parliament is empowered to enact on the subjects of the List-I and List-III. Similarly, the state legislatures are empowered to enact laws on the subjects of List-II and List-III. Thus, both the Parliament as well as the state legislatures have the jurisdiction to enact laws on the subjects of the Concurrent List.

A. ‘Education’ forms the part of the Concurrent List (List-III).

Education forms the part of the Concurrent List². Entry 25 of the List mentions in the explicit terms the authority of the states to enact laws on the subject of education. The entry 25 reads as follows:

25. 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.

B. ‘Appropriate Government’ under the National Commission for Minority Educational Institutions Act, 2004.

The Act defines lays down that the state would be the appropriate government for the regulation of the private minority educational institutions recognized for conducting any programmes for studies under the act of the concerned state³.

Section 12C(b) of the Act also empowers the State Government to prescribe percentage governing admissions in a minority educational institution.

¹ Articles 246 to 249 of the Constitution.

² Entry 25 of the List-III or the Concurrent List.

³ Section 2(aa) of the the National Commission for Minority Educational Institutions Act, 2004.

C. Several state legislations have been enacted to regulate the private minority universities.

Several state legislatures have enacted the laws to regulate the private minority universities. These statutes have provided the authority to the state governments to regulate the private minority universities. For example the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee) (Special Provisions) Act, 2006 empowers the Karnataka state to make laws for the fixation of the seats in the private minority universities⁴.

D. Judicial pronouncements.

In the landmark case of *In P.A. Inamdar vs. State of Maharashtra*⁵, the duty was laid on the shoulders of the State Government concerned to notify the percentage of the minority students to be admitted. Further in that case it became crystal clear that the state has the authority to maintain and facilitate the excellence of the standard of education. The Constitutional Bench of the Supreme Court observed as under-

“Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff and the quantum of fee to be charged, cannot be regulated.”

In light of these points, it can be observed that the state legislature of Bongia has the complete jurisdiction to enact the laws for governing various aspects of minority educational institutes and that of DPU as well. Therefore, the impugned Act is not violative of Article 30(1) of the Constitution.

⁴ Section 5 of THE KARNATAKA PROFESSIONAL EDUCATIONAL INSTITUTIONS (REGULATION OF ADMISSION AND FIXATION OF FEE) (SPECIAL PROVISIONS) ACT, 2006.

⁵ (2005) 6 SCC 537.

II. THE RESPONDENT IS LEGALLY JUSTIFIED TO PREVENT THE STUDENTS FROM THE STATE OF DOMIL FROM TAKING ADMISSION IN THE DPU.

Section 15 of the impugned Act Private Universities (Regulation) Act, 2009 prohibits the Domili students from the state of Domil from taking admission in the private universities of Bongia. As far as the prohibition of the Domili students from taking admission in the DPU is concerned, the Respondents submits that there is no violation of fundamental rights of the Domili students.

A. Discrimination on the ground of place of residence.

The discrimination between the students of the state of Bongia and those of the state of Domil is based on the ground of domicile, that is, the place of residence. On the other hand, the Article 15(1) prohibits the state from discriminating on the ground of the place of birth. Even what Article 15(1) prohibits has not been prohibited by Article 29(2).

Thus, in the landmark case of *University of Madras v. Santabai*⁶, the denial of admission to a girl student in educational institutions has been upheld.

B. Minority institution is not a device for admitting minority students of adjoining state.

The management of a minority institution cannot resort to the device of admitting the minority students of the adjoining state in which they are in majority to preserve minority status of the institution. In the state of Domil, the Domili students are in majority but they are in minority in the state of Bongia. So the DPU can not be used as a device to provide cross-border admission of the Domili students.

The relevant parts of the a *T.M.A. Pai Foundation vs. State of Karnataka*⁷, make the above stand clear as they say-

“.....If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore the students of that group residing in the State in which the institution is located have to be necessarily admitted in a larger

⁶ AIR 1954 SC Mad. 67.

⁷ (2002) 8 SCC 481.

measure because they constitute the linguistic minority group as far as that State is concerned. In other words the pre-dominance of linguistic minority students hailing from the State in which the minority educational institution, is established should be present. The Management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining states in which they are in a majority, under the facade of the protection given under Article 30(1)”.

Relying on these justifications, the Respondent is justified to prevent the Domili students from taking admission into the private minority universities of Bongia. In the case of *Sidhrajibhai v. State of Gujarat*⁸, it has been held that regulations can be made keeping in view discipline, health, sanitation, morality and public order. In the present case, keeping in view the rising corruption and downfall of the education in the state of Domili, the Respondent can make regulations in the interest of the discipline in the state.

⁸ AIR 1963 SC 540.

III. CHI-CHI CAN BE IMPOSED AS THE MEDIUM OF INSTRUCTION AT DPU.

Section 11 of the Act lays down that the Chi-chi would be the only medium of instruction in private universities of the state of Bongia. The Respondent has inserted such provision, keeping in view the interest of the Chi-chi, the mother tongue of the state and the people speaking it.

In *English Medium Students Parent Association vs. State of Karnataka*⁹ it has been held that particular State can validly take a policy decision to compulsorily teach its regional language. A proper understanding of the regional language has been held to be essential for carrying out day today affairs of the people.

The similar has been the view of the apex court in the case of *Usha Mehta vs. State of Maharashtra*¹⁰. The state may instruct the private minority universities to adopt the state language as the medium of instruction. It has not been to be violative of minority rights.

Henceforth the Respondent is legally justified to instruct the DPU to adopt the Chi-chi as the medium of instruction.

⁹ (1994) 1 SCC 550.

¹⁰ (2004) 6 SCC 264.

PRAYER FOR RELIEF

In light of the facts stated, arguments advanced and authorities cited, the Respondent, humbly prays before the Honorable Court, to be graciously pleased to:

- I.** Quash the writs filed by the petitioners in the Hon'ble court of law since there is no violation of the fundamental rights and minority rights.
- II.** Maintain the status quo of the impugned Act since there is no violation of the rights as alleged by the petitioners.
- III.** Pass any other order, which the court may deem fit in light of justice equity and good conscience.

All of which is most humbly prayed

Counsel for the Respondent