Bombay High Court
Bombay Education Society vs State Of Bombay on 15 February, 1954
Equivalent citations: AIR 1954 Bom 468, (1954) 56 BOMLR 643, ILR 1954 Bom 1333
Author: Chagla
Bench: Chagla, Dixit
JUDGMENT Chagla, C.J.

1. These three petitions raise very important questions, first, as to the right of an Anelo-Indian school to admit non-Anglo-Indian students, and second, the right of non-Anglo-Indian students to be admitted to an Anglo-Indian school. The school with which we are concerned is the Barnes School which was founded in 1925. In December 1953 it had on its roll 415 students of whom 203 were non-Anglo-Indians and 212 were Anglo-Indians. It appears that in the whole State of Bombay there are 30 Anglo-Indian schools and the percentage of non-Anglo-Indian students studying in these schools Is 63 per cent, and the percentage of Anglo-Indian students studying in these schools'is 37 per cent.

It may also be mentioned that in the whole State of Bombay there are in all 1403 schools out of which 1285 teach through mediums other than English and 118 teach through the medium of English, As far as this school is concerned it has got 17 teachers of whom only one teacher is in a position to teach through the medium of Hindi and he takes up Hindi classes and teaches the students Hindi. On 6-1-1954, the Government of Bombay issued an order which is challenged in these petitions.

The circular points out that Government has been considering the question of the medium of instruction at primary and secondary stages of education, and it has been constantly the desire of Government to further the cause of education by making it possible for all students to study through the medium of their mother tongue. The circular also points out that the whole position was reviewed in 1951 and a general policy was laid down that admission to schools which teach through the medium of English should be restricted to certain categories of children, and the four categories are set out in this circular, and the important category to bear in mind is the category of children whose mother tongue was certified by the parent or guardian to be English.

The other categories do not directly arise for consideration in this petition. They deal with students who were previously studying with English as the medium of instruction or who had no facilities for receiving instruction in their mother tongue or whose parents or guardians were liable to inter-State or inter-regional transfer. The circular also points out the recommendations for Secondary Education Commission recently appointed and the recommendation on which emphasis is laid by the circular is that the mother tongue or regional language should generally be the medium of instruction throughout the secondary stage. Having emphasised the historical background, in CI. (4) of the circular it is stated that "The Government therefore feels that the stage has now been reached for the discontinuance of English as the medium of instruction in primary and secondary schools. Government has therefore decided that subject to the facilities to be given to linguistic minorities, all special and interim concessions in respect of admission to schools using English as the medium of instruction should hereafter be withdrawn."

2. Clause 5 is to the following effect:

"Government has accordingly decided as follows: subject to the exceptions hereinafter provided no primary or secondary school shall from the date of these orders admit to a class where English is used as a medium of instruction any pupil other than a pupil belonging to a section of citizens the language of which is English, namely, Anglo-Indians and citizens of non-Asiatic descent."

Then three exceptions are set out with which we are not concerned. Then we come to CI. (7):

"All schools (including Anglo-Indian Schools) using English as a medium of instruction should regulate admissions according to this circular. With a view to facilitating the admission of pupils who under these orders are not intended to be educated through the medium of English, these schools are advised to open progressively divisions of standards using Hindi or an Indian language as the medium of instruction, starting from Std. I in 1954. Government will be pre pared to consider the payment of additional grant on merits for this purpose."

3. Now let us consider what is the effect of this circular upon the rights of Anglo-Indian schools teaching through the medium of English and upon the rights of those citizens who want their children to be educated through the medium of English. It is clear that the circular prohibits the Barnes School, with which we are concerned on these petitions, from admitting any pupil other than an Anglo-Indian or a person of non-Asiatic descent. The Government Have made up their mind that the only section of citizens in this country whose language is English is the Anglo-Indian community and citizens who are not of Asiatic descent.

We are not concerned with foreigners or persons who are of non-Asiatic descent for the purpose of this petition. But as far as Indian communities are concerned, the clear view taken in this circular is that the only section of Indians whose mother tongue is English is the Anglo-Indian community, and therefore no Indian other than a person belonging to the Anglo-Indian community can be admitted into the school. Now, it would be noticed that the circular clearly prohibits any citizen who does not happen to be an Anglo-Indian and therefore does not belong to a section of citizens whose language is English, but whose own personal mother tongue may be English, from being admitted to this Anglo-Indian school.

In understanding and appreciating this circular it must be clearly borne in mind that although a section of the people of India may have a particular language, a member of that section may have a mother tongue different from the language of the section. This view was clearly accepted by Government itself, because, as already pointed out, in 1951 they allowed children to be adimitted to Anglo-Indian schools whose mother tongue was certified by the parent or guardian to be English. Therefore, Government clearly took into consideration the possibility that there may be Indians in the State of Bombay who were not Anglo-Indians & yet the mother tongue of whose children might be English, and such children were allowed to be admitted into Anglo-Indian schools.

We have been given by the Advocate General the recent census figures which are rather striking. The official census report as far as the State of Bombay is concerned states that there are 47,387 persons

speaking English as their mother tongue in the State of Bombay. Of these 35,439 were in Greater Bombay, 4,591 in Poona and 2,151 in Thana. We have been told by Mr. Palkhivala who appears for the petitioners that at the highest in the state of Bombay there could not be more than 25,000 .Anglo-Indians.

Therefore, the census report makes it clear that in the State of Bombay there are at least 22,000 Indians who are not Anglo-Indians and whose mother tongue is English. Now, mother tongue is the language which a child studies and speaks and understands and appreciates from his cradle. Normally, it is the language, which his ancestors spoke. But there may be cases due to various reasons where either due to migration or some other cause the parents may adopt another language and if the child from his choldhood hears a language other than the language of his ancestors, as far as he is concerned it becomes his mother tongue.

Therefore, it is incorrect to say that the mother tongue of a child is the language of the linguistic group to which he belongs. Undoubtedly, in majority of cases it would be so, but there may be exceptions, and the test to apply to determine what is a mother tongue is not to inquire what is the linguistic group to which the child belongs, but to inquire what is the language of his home, what is the language of his environment and what is the language which he is accustomed to from his infancy.

4. Now, in this very case we have two petitioners before us apart from the school. We have Major Pinto who swears and says that the mother tongue of his daughter Brinda is English and that the entire family of the petitioner speak and use English at home. He wanted his daughter to be admitted to this Anglo-Indian school at Deolali and she could not be admitted because Major Pinto is not an Anglo-Indian. In the affidavit made by Government the fact that the mother tongue of the child is English is emphatically denied.

It is difficult to understand what were the materials at the disposal of Government which enabled it to deny a fact which must be personal and intimate to Major Pinto himself. We are not told in the affidavit what were the reasons which led Government to categorically deny the statement made by Major Pinto. We can understand Government not admitting a fact and putting the petitioner to the proof of his averment, but whenr an affidavit denies an averment the denial carries with it the inevitable connotation that, the denial is based upon knowledge and not merely upon igno-ranee of true facts.

Government has also denied that the language of the Indian Christain community is English. Perhaps it was justified in doing so, but what we are concerned with here is the specific allegation of Major Pinto that the mother tongue of his child, whom he wants to get admitted to the school, is English, and we do not find anything in the affidavit made on this petition which can lead us to the conclusion that the statement of Major Pinto is not correct or that Government were justified in denying that statement.

The other petitioner before us is Dr. Gujar and he wants his son also to be admitted to this school. He is a Hindu and he does not say that his mother tongue is English, but he has given reasons why

he wants his son to be admitted to this school. This is what he says:

"The petitioners find the said school which teaches through the medium of English suitable for their needs, having regard to the fact that the first petitioner desires the second petitioner (i.e. his son) to become a medical practitioner and to go abroad for higher medical studies and qualifications and therefore to be educated through the medium of English."

Therefore, we have two petitioners before us wanting their children to be admitted to this school for two different reasons. Major Pinto wants his daughter to be educated in his mother tongue; Dr. Gujar wants his son to be educated through the medium of English because he thinks that that education will be of help for the future prospects of his son. Both have been denied admission to the school.

5. Therefore, the first important effect of this circular on which emphasis must be placed is that no Indian other than an Anglo-Indian-- & we are using the word "other" because Anglo-Indians are also Indians -- can be admitted to an Anglo-Indian school although the language of his home may be English and his child may have been brought up on English from its infancy. The other important effect of this circular is that no Indian who wants his child to be educated through the English language for reasons which he may think of paramount importance for reasons which he may think to be in the interest of his own child, can also find admission into the school.

The ban is clear and categoric. The ban is against every non-Anglo-Indian and the ban is in respect of the study through the medium of English. It is also significant to note that the ban is only against Anglo-Indian schools and not against any other school with regard to any other language. This perhaps might be made a little clearer. A non-Anglo-Indian, let us say, whose mother tongue is Gujarati, can get admission into any school in the State although the school may he teaching its students through the medium of languages other than Gujarati. Whether the school is a Tamil or Telugu .or Urdu or Marathi school, the Gujarati child can get admission. But when he comes and knocks at the gate of the school which is teaching English, he is sternly told that he will not get admission.

The position of the Anglo-Indian child is even more singular. As far as he is concerned, there is no restriction on his liberty at all, because of course, obviously he can study in his own school through the medium of English, or he can study through the medium of any other language in any school in the State of Bombay. Three grounds have been given by Government in justification of this circular. The first is the advancement of Hindi, the second is the cause of education which requires a child to be taught through the medium of his mother tongue, and the third is that in the interest of the child English should be done away with because he has better chance of a public and private employment if he studies through the medium of a language other than English.

6. Let us test those three grounds given by the State. We will at a later stage consider the position of English and Hindi under the Constitution, but I think we might say at the very outset that no Indian with any patriotic sense could possibly criticise the action of Government which is intended to further the progress of the language which is now recognised under the Constitution as the national

and official language. Nor do we think that any one who has any knowledge of education or who has any thing to do with education would also controvert the view of Government that it is in the best interest of a child that lie could learn through the medium of his mother tongue.

Obviously, a child's mind is infinitely more taxed at its early development if he has got to learn different subjects through a language which is not his own. His attention then is not only of cussed upon the subject that he has to learn, but also upon the intricacies of a foreign language. But it seems to us on a close scrutiny of this circular that neither of these two purposes is served by it and cannot possibly be intended to serve these two purposes. ' The circular does not require the Anglo-Indian school to teach students through the medium of Hindi. As a matter of fact, even in the alternative that the Government suggests to the school, it is left optional upon it either to open classes using Hindi or any Indian language as the medium of instruction. Therefore, this circular would be satisfied if tomorrow the Barnes school were to open a Tamil class and admit all Indian students, whether their mother tongue was Tamil or Guja-rati or Marathi or Urdu, it is difficult to understand how the cause of Hindi would be advanced this alternative which Government has put to fore the school.

As we have already pointed out, there is no obligation upon a child to go to a school teaching through the medium of Hindi. He can go to any school with any medium of instruction, so long as he keeps away from the contamination of English. Even with regard to the medium of instruction we do not see anything whatsoever in this circular which advances the cause which must be dear to the heart of every educationist in this country that children should be educated through the medium of their mother tongue.

It is not that there is any compulsion upon a child to study through the medium of his mother tongue. The compulsion is something very different and very obvious. The compulsion is, learn. through any language, whether it is your mother tongue or not, but don't learn through the English language. Therefore, there is considerable force in the argument advanced by Mr. Palkhivala and by Mr. Anthony on behalf of the petitioners that the circular is aimed at not for the advancement of Hindi or the teaching of students through the medium of their mother tongue, but the circular is. aimed at the destruction of the English language.

For this purpose attention is drawn to an earlier circular issued by Government dated March 4, 1948, which we are told is still in force and which prevents schools which receive Government grant from teaching English outside the school hours. (We may mention that the Advocate General objected to our looking at this circular). Of course, this circular is not made applicable to English teaching schools. Therefore, if a school after teaching according to the curriculum laid down by Government wishes to hold special classes in English for its students, there is a ban against it by Government.

Presumably the school could hold special classes for teaching of any other language; it could hold special classes for the teaching of any other subject; but the only subject which is tabooed is English. It is, therefore, urged that this circular discriminates against the English language and does. not recognise the English language as an Indian language and does not give it its proper place which has

been given to it under the Constitution, it was also argued with some force that this circular discriminates as between the rich and the poor.

It was pointed out that a rich man who wanted his son to be educated through the medium of English could send him outside the State where the educational policy of the State is not the same as the policy of our State, or he could even send him to Europe to be educated in the English language, it was only the poor man who wanted his child to be taught through the medium of English language who would be directly hit by his circular.. He would have to submit to the circular because he would have no option but to send his son to the school indicated by the State.

7. It is difficult to understand what exactly Government means in its affidavit when it refers to public and private employment. As far as private employment is concerned, we should have. thought it entirely the concern of the parent as to what private employment it desires its son to take up. The private employment may well be with an English or an American firm where the knowledge of English may be most important and essential. With regard to public employment, as We shall point out in some detail later, today English is the only language which is recognised for the purpose of admission into posts filled up by the Union Public Service Commission, into posts in the Armed Forces of our country, and for Judicial appointments,

8. In our opinion, the circular has seen the light of day largely due to the fact that there is considerable misapprehension as to the place of English under our Constitution, and in order to remove this misapprehension it is necessary to consider the various provisions of the Constitution. Article 343(1) declares the official language of the Union to be Hindi in Devanagari script. But the framers of the Constitution were very wise indeed and they realised that in drafting the Constitution they were not writing on a clean slate.

After 200 years of association with India the English language could not be wiped off the pages of history, and bearing in mind that association the articles in the Constitution go on to provide for an interim period which must elapse before the Hindi language could come into its own. Therefore, in Art. 343(2) we find that for a period of 15 years the English language is to continue to be used for all the official purposes of the Union for which it was being used immediately before the commencement of the Constitution.

The proviso gives the power to the President to authorise the use of Hindi language in addition to the English language for any of the official purposes of the Union, and even after 15 years Parliament may by law provide for the use of the English language for such purposes as may be specified in the law. Within these 15 years Art. 344(1) provides for the appointment of two commissions, one at the expiration of 5 years from the commencement of the Constitution and the other at the expiration of 10 years from the commencement of the Constitution, for the purpose of making recommendations to the President as to the progressive use of the Hindi language for the official purposes of the Union, and for the restrictions on the use of the English language for all or any of the official purposes of the Union.

After the commission has made its recommendation, a joint committee of both the Houses of Parliament has to be set up and this committee after considering the recommendations of the commissions has got to make a report to the President. Then Art. 345 deals with regional languages, and it is significant to note the definition of a regional language. It is a language in use in the State, and Art. 345 provides:

"Subject to the provisions of Articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State."

Therefore, this article enables the Legislature of a State either to adopt Hindi or to adopt any one or more of the languages in use in the State. There is no prohibition or restriction against the State as to any particular language which it may adopt for official purposes. The only condition that has got to be satisfied is that it must be a language in use in the State. The proviso to this article is again significant that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Article 346 provides that the language which is the official language of the Union shall be the language for communication between one State and another State and between a State and the Union. Therefore, today the only language which can be used for communication between our State and another State or between our State and the Union is English, because that continues to be for the time being the official language of the Union.

Then Art. 348 deals with the language of the Supreme Court and the High Courts, and notwithstanding any recommendation by the commission and notwithstanding the earlier provisions to which reference has been made, the language of the Supreme Court & of the High Courts is the English, language until Parliament by law otherwise provides.

As far as the High Court is concerned, the State-has been given the power through its Governor to adopt the use of the Hindi language or any-other language used for the official purposes' of the State in proceedings in the High Court, taut even there a restriction is placed that as far as the judgment, decree or order passed by the High Court is concerned it must be in the English language, unless Parliament by law otherwise directs, and not the State Legislature.

Bills and Acts have got to be in the English language, and where the State otherwise directs. a translation of the Bill or Act in the English. language has to be published. Article 351 casts an obligation upon the Union to promote the spread of Hindi language, to develop it so that it will serve as a medium of expression for all the elements of the composite culture of India and to-secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages, of India specified in the Eighth Schedule.

9. Now, a rather strange contention was put forward by the State that the only Indian languages recognised by the Constitution are the languages that find a place in the Eighth Schedule. Turning to

this Schedule, it only contains 14 languages, and ttie reason for enacting this Schedule is to be found in Art. 344(1) and Art. 351. Article 344(1) deals with the commission and a directive is given to the President that in constituting the commission he should have member* representing the different languages specified in the Eighth Schedule.

In Art. 351, as already pointed out, the duty is cast upon the Union to create for our country a national language which will have in it the exprea-sions used not only in Hindustani but also in the languages mentioned in the Eighth Schedule. In. other words, the Hindi language contemplated by the Constitution is the language which will represent not only the diverse culture of India, but also its different important languages. Therefore, the most that one can say is that the Eighth Schedule enumerates 14 important Indian languages and they are enumerated for a specific purpose.

But it is entirely fallacious to suggest that the only Indian languages recognised by the Constitution are these 14 and no other. I am sure,, thousands and tens of thousands of Indian speaking languages other than these 14 would be very indignant if it was suggested to them that the language which they speak is not an Indian language recognised by the Constitution. Every language in India which is in use is an Indian-language. Not only is it an Indian language, but, as we shall presently point out. Arts. 29 and 30 contain specific provisions for the conservation and protection of every Indian language.

Therefore, in the eye of the Constitution, no-distinction is made between the English language and the language spoken by other Indian minorities. It may be said that in a sense the English-language is a foreign language. It does not arise from the soil; it does not owe its origin to any of the classical languages of this country; it was brought to this country by foreigners and in that sense undoubtedly English is a foreign language.

But in the constitutional sense -- and that is the only sense we are concerned with -- it is as much an Indian language today, as much recognised by the Constitution, and as much entitled to protection as any other language spoken by any other section or community in this country. To give a specific instance, Konkani language which is well known in this State is not a language referred to in the Eighth Schedule. Nobody can suggest it is not a language recognised by the Constitution.

In the same sense English is a language recognised by the Constitution though, as already stated, the distinction between English and Konkani obviously is that whereas Konkani is a language of the soil, it owes its origin to the people of this country, it is based upon Sanskrit which is a classical ' language of this country, English is entirely different judged by those considerations. But there is one other sense in which English has been given more importance in the Constitution than even the languages mentioned in the Eighth Schedule. English' today and till it is replaced by Hindi is the official and administrative language of the country. It is also the official language of the States till the States replace it by some other language. It is the language of the Courts, the Supreme Court and the High Courts.

It is the language of legislation, because, as rightly pointed out, not only our Constitution is drafted in English, but till different provisions are made, all our laws, orders and notifications are to be in

the English language, and although it may be perhaps contrary to the spirit of the Constitution, but today we are called upon to construe a document which is in the English language and whose validity was strongly supported in the English language and whose unconstitutionally was equally emphatically pointed out in the same language. It is from this point of view that we shall presently have to consider whether it is constitutional on the part of the State today to make any distinction between the English language and the other Indian languages spoken by a section of the people in India.

10. The next question that we have to consider is, what is the right of a parent in relation to the education of his child? Or, to put in a different language, or to make a different approach to the subject, what is the right of the State in controlling the education of a child? What a citizen enjoys in a democracy and what he values most is liberty of thought, and it cannot be disputed that the one simple and easy method of controlling thought is to control the education of the young. Therefore, democratic Constitutions have been always at pains to prevent power being given to the State which would in any way undermine this important liberty.

We have travelled a long way since the days when it was considered axiomatic that the parent had the right to do what he liked with his child. The state today to a large extent controls parental action. The state cannot permit the parent to say that he will give no education to his child. It is certainly open to the State to make education compulsory. The State can also in its own schools determine what the curriculum should be, what the medium of instruction should be, what subjects should be taught in the interest of education, and so on.

But the important and fundamental question still remains as to whether the State can compel the parent to give to his child the kind of education which it thinks is the proper education, because once such a right is conceded to the State, then the state can standardize education and can. regiment children into its own pattern. Therefore, if there is real liberty of thought, there must be liberty to experiment with education and the right of the parent to decide what kind of education the child will receive.

It is wrong to assume that democracy exista for the purpose of ruling out all error. The right to decide does not mean the right to decide to do-the correct thing. Trie right to decide must inevitably include the right very often to decide to-do the wrong thing, and provided the wrong thing is not against the interest of the State or does not undermine its safety or security, that right must be conceded to the parent. The right to decide what education the child will have is such an important right that one finds in the Declaration. of Human Rights, to which India is a party, the following provision:

"Article 26(3). Parents have a prior right to choose the kind of education that shou

Therefore, while the right of the State is to make education compulsory, to provide facilities

Our Constitution, be it said to its glory, has embodied most of the articles contained in the

11. Before we come to the Constitutional provisions, it is perhaps instructive to look at one c
"....corresponding to the right of control, it is the natural duty of the parent to give his

And at p. 401 (1046) he says:
"..... .evidently the legislature has attempted materially to interfere with

The learned Judge recognises the importance of learning English, but he observes at the sa
"....Perhaps it would be highly advantageous. if all had ready understanding of our ordinary

The other case is -- 'Pierce v. Society of Sisters Of Holy Names', (1925) 268 US 510:69 Law Ed 1070 (B) where the question arose whether a law requiring all children between the ages of eight and sixteen years to attend the public schools was in conformity with the Constitution, and it was held that the law was unconstitutional inasmuch as it interfered with liberty of parents and guardians to direct the upbringing and education of children under their control, and at p. 534 (1077) McReynolds J. says:

"No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, then teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

And at p. 535 (1078) we have a striking passage in the judgment:

"..... the fundamental theory of liberty upon which' all governments in this Union repose excludes any general power of the state to standar-dise its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

12. Turning to our Constitution, art. 29(2) provides ;

"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."

The principle underlying this article is clear. It is open to the State to maintain such educational institutions as it thinks proper. It is open to the State to give aid to an educational institution out of its funds. If it thinks that the school is not being properly run or its curriculum is not as it desires, it may not give aid out of its funds. But once you have an educational institution which is maintained by the State or which receives aid out of State funds, then the State cannot prevent any citizen from having admission into that institution only on the ground of religion, race, caste, language or any of

them.

In our opinion, this article embodies two important principles. One is the right of the citizen to select any educational institution maintained by the State and receiving aid out of State funds. The State cannot tell a citizen, "You shall go to this school which I maintain and not to the other." Here we find reproduced the right of the parent to control the education of the child. The other important principle underlying this article is that an educational institution which the State recognises cannot restrict admission to members of a particular religion, race, caste or language.

One of the underlying features of our Constitu tion is that it sets up a secular state, and a secular State is incompatible with communal educational institutions. It is open to any community to have a school of its own and restrict it to members of its own community, but if it chooses to take grant from the State, then the community cannot deny the opportunity to any citizen of studying in its institution merely because he does jriot belong to the community which founded the school.

The Advocate General found it rather difficult to find an answer to the claim of Dr. Gujar and Major Pinto when they claimed admission to the Barnes School on the ground that the school received aid out of State funds. In the first place, it was suggested by the Advocate General that although a citizen could not be denied admission if he wanted to go to a Tamil, Telugu or Marathi School, there was nothing in art. 29(2) to prevent the State from compelling a citizen not to be admitted into a school which gave its instruction through the medium of the English language.

This argument was again based on the assumption that whereas English was a foreign language the other languages were not foreign languages. Even assuming that that assumption is correct, it is difficult to understand how the operation of Art. 29(2) can be circumscribed in the manner suggested by the Advocate General. It is perfectly open to the State, if the Constitution permits it, not to give a grant to an English school, but once it gives its grant and puts its imprimatur upon the school, the article must come into operation and the right of the citizen immediately arises.

The right of the citizen arises by virtue of the fact that it is the State funds that are helping to maintain the school, and if State funds are helping to maintain the school, that school cannot refuse admission to any citizen on the ground of religion, race, caste or language. Therefore, in our opinion the only two conditions that are necessary for the operation of Art. 29(2) are that there must be an institution maintained by the State and it must receive aid out of State funds. Therefore, as soon as you have such an educational institution, the right of the citizen to admission to this school arises and that right cannot be defeated only on the ground that he belongs to a particular religion, race, caste or speaks a particular language.

13. The Advocate General has then contended that denial of admission would be unconstitutional provided that denial is based only on the ground of religion, race, caste or language, and his submission in this case is that denial is not based only on the ground of religion, race caste or language. For this purpose let us once again look at the circular which is challenged. The prohibition which is embodied in this circular is against Anglo-Indians and citizens of non-Asiatic descent.

The Advocate General says that the prohibition is against pupils belonging to a section of citizens, the language of which is not English. But the circular makes it clear that in the opinion of Government only the Anglo-Indians constitute a section of citizens, the language of which is English, and every other Indian community cannot fall within the ambit of the section of citizens referred to in this circular.

The Advocate General says that the ban is not on racial or linguistic ground; the ban is in the interest of education. Non-Anglo-Indians are not to be admitted to this school not because they are non-Anglo-Indians, but because in the opinion of Government it is not in the interest of non-Anglo-Indian students that they should learn through the medium of English. As we shall presently point out, the law is now well settled that in construing the right given to the citizen and in interpreting the prohibition against depriving the citizen of his right, the Court is not concerned with the motives or reasons that lead Government to pass a law or issue an order.

The reasons or motives may be the most laud-. able, but what the Court is concerned with is the operation of the law or order and the question that the Court hag got to ask is, how does this order operate? Does it operate by preventing a citizen from exercising his right only on the ground that he belongs to a particular religion, race, caste or speaks a particular language?

If we were to apply that test to the fact of this case, what we have to ask ourselves is, what prevented Mr. Gujar's son and Major Pinto's daughter from being taken into the school; and the answer is--and that can be the only answer -- that they are not Anglo-Indians, one is a Hindu and the other is an Indian Christian, and that is the only reason which compelled the school authorities by obeying the Government order to deny these two citizens their right under Art. 29(2). We may pose the question in a different language. Would Mr. Gujar or Major Pinto have been denied these rights if they had been Anglo-Indians? Again, the answer is clear that they would not have been denied these rights.

As a matter of fact, the school authorities have informed these parents that there is no objection to their children being taken in the school, they are otherwise qualified, but the sole reason why they cannot take them is because under the Government circular they are not allowed to take any child who is not an Anglo-Indian. Even if it were to be said that Mr. Gujar and Major Pinto's children are not admitted to the school on the ground that they do not speak the English language or they do not belong to the linguistic group whose language is English, even so would the prohibition offend against Art. 29(2) because it is not only religion, race or caste that is contemplated by Art. 29(2), but also language.

14. There are two decisions which are directly in point. The earlier decision is that of the Privy Council and that is--'Punjab Province v. Daulat Singh . What fell to be considered by their Lordships in that case was S. 293 of the Government of India Act. In. that section the language used is similar to the language used in Art. 29(2), and their Lordships very succinctly laid down the test which should be applied in cases that come to be considered under that section.

Sir John Beaumont, who was in a minority when the case came before the Federal Court, took the view that in applying the terms of sub-s. (1) of S. 298 it is necessary for the Court to consider the scope and object of the Act which was impugned so as to determine the ground on which such Act was based. The Privy Council emphatically expressed its dissent from that view and this is what they say (p. 71):

"....their Lordships are unable to accept this as the correct test. In their view, it is not a question of whether the impugned Act is based only on one or more of the grounds specified in S. 298, sub-s. 1, but whether its operation may result in a prohibition only on these grounds. The proper test as to whether there is a contravention of the Sub-section is to ascertain the reaction of the impugned Act on the personal right conferred by the Sub-section, and, while the scope and object of the Act may be of assistance in determining the effect of the operation of the Act on a proper construction of its provisions, if the effect of the Act so determined involves an infringement of such personal right, the object of the Act, however laudable, will not obviate the prohibition of sub-s. 1."

There fore, although the grounds on which the State has based this circular may not be grounds of religion, race or caste, and we do not for a moment think that those could have been the grounds that actuated the State, still if the effect of the order is to deprive the citizens of their right only on the grounds mentioned in Art. 29(2), then there is a contravention of the fundamental right guaranteed to the citizen. What we have to consider, to use the language of the Privy Council, is the reaction of the order on the personal right conferred by this article upon the citizen and the clear reaction is that the citizen is deprived of his right to be admitted into a school maintained by the State solely on the ground that he is not an Anglo-Indian.

15. The other case which is equally clear is a recent decision of the Supreme Court in--'State of Madras v. Champakam Dorairajan', . In that case the State of Madras had issued an order with regard to the admission of students to the Engineering and Medical Colleges of the State and by that order it had directed that the seats should be filled in by the selection Committee by a certain basis which reserved certain seats for non-Brahmins, Backward Hindus, Brahmins, Harijans, Anglo-Indians, Indian Christians and Muslims.

A Brahmin lady wanted admission to one of these colleges and she was denied admission on the ground that the seats reserved for Brahmins had already been filled in and therefore as a Brahmin she could not be admitted to the college. She contended that her right under Art. 29(2) was violated and the question that arose before the Supreme Court was whether that was so. It was urged on behalf of the State that what the State of Madras was doing was the carrying out of a directive or State policy contained in Art. 46, viz. promoting with special care the educational and economic interests of the weaker sections of the people. This argument was rejected and Mr. Justice Das in his judgment at p. 228 says:

"... what is the reason for this denial of admission except that he is a Brahmin and not a Non-Brahmin. He may have secured higher marks than the Anglo-Indian and Indian Christians or Muslim candidates but, nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid

communities, such denial of admission cannot but be regarded as made on ground only of his caste."

The position of Mr. Gujar's son and Major Pinto's. daughter is identical. They want their children to be educated in an English school. The school can give them accommodation, they are in every way qualified to be admitted, but the only reason for denial of admission is that they are not Anglo-Indians, but one is a Hindu and the other is an Indian Christian. In view of the Advocate General's contention that we must read Art. 29(2) in the light of Art. 29(1) which deals with quite a different matter with which we shall deal subsequently, it is interesting to note that at p. 227 Mr. Justice Das points out:

"It will be noticed that while clause (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens."

16. Therefore, in our opinion, the order of Government clearly contravenes the right of Mr. Gujar and Major Pinto under Art. 29(2). They are citizens of the country and they have a right to have their children admitted to the Barnes School which is aided by State funds. In our opinion, the denial of admission to them is based solely on the ground that they are not Anglo-Indians

17. Now, having dealt with the right of the citizen, we must turn to the right of the school to admit non-Anglo-Indian students. As already pointed out, this is a school administered and maintained by an Anglo-Indian Society for the interest of Anglo-Indian students. The Anglo-Indian community has been recognised under the Constitution as a racial minority. Article 366(2) defines 'an Anglo-Indian' as a person "Whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only."

Articles 29 and 30 deal with cultural & educational rights of minorities and Art. 29(1) provides:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

The Anglo-Indian community being a racial minority recognised by the Constitution also possesses a distinct language which is the English language and possessing a distinct language it has the right to conserve that language. It was urged by Mr. Anthony that the right given under this article is not a right to conserve a culture in segregation. A culture in order to thrive and nourish must exist in freedom, and if the State compels Anglo-Indians to carry on their education in their own school without the students being given the right of intermingling with other students, testing and comparing their culture with the culture of other students, and being given the right to convey to other students through their own language the culture embodied in that language, the right given under Art. 29(1) to a community would become illusory.

In our opinion, it is unnecessary to pronounce any opinion on this contention put forward by Mr. Anthony, though there can be no doubt that the Constitution has given to a minority under Art. 29(1) a real and substantial right to conserve its own language and culture. Then we have Clause (2) of Art. 29 with which we have already dealt. Then comes Art. 30(1) which provides:

"All minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice."

Now, not only is a minority given the right to establish and administer educational institutions, but the words which must be underlined and emphasised are that the educational institutions must be of their own choice. It is not open to the State to dictate to a minority what the nature of its educational institution should be. It is for the minority itself to decide through what educational institution it would be able to conserve the rights given to it under Art. 29(1). It is not as if the State is helpless before minorities who may set up any kind of educational institutions.

The important corrective that the State has and possesses is that unless the educational institution conforms to and complies with the proper rules laid down by the State, the State may deny to the educational institution any aid from its funds, except where the State-is bound to grant aid to any particular minority under the Constitution. But the right of the State is not to dictate to the minority what the nature of its educational institution should be; its right is not to recognise a particular educational institution.

18. Then we come to Art. 337 which deals expressly with the Anglo-Indian community, and it provides:

"During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State specified in Part A or Part B of the First Schedule for the benefit of the Anglo-Indian community in respect of education a were made in the financial year ending on the thirty-first day of March, 1948."

Then there is a provision for reducing this grant and that is:

"During every succeeding period of three years. the grants may be less by ten per cent, than those for the immediately preceding period of three years."

Finally there is a provision that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease. Therefore, the grants which the Anglo-Indian community is entitled to receive for the purpose of education are grants sanctioned by the Constitution and safeguarded by the Constitution, and for ten years they are entitled to receive these grants as provided by this article. But there is a very important proviso to this article and the proviso is this:

"Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent, of the annual admissions therein are made available to

members of communities other than the Anglo-Indian community."

The Constitution, therefore, prohibits an Anglo-Indian school being run only for the benefit of Anglo-Indian students. There is an obligation cast upon an Anglo-Indian educational institution to-make available to members of communities other than the Anglo-Indian community at least 40 per cent, of the annual admissions. This proviso may at flrst blush seem rather strange, but when one tries and understands the reason underlying this proviso, one must come to the conclusion that tilt proviso is of the most salutary character.

Without meaning any disrespect to the Anglo-Indian community, historically in the past the Anglo-Indians took up a particular attitude in this country. They felt that they were nearer and closer to the governing class than to the people of this country. By reason of race, by reason of language, by reason of social upbringing, they felt that they were a superior community to the other communities that resided in this country. After Independence the Anglo-Indians realised that their future lay with this country and it would be suicidal on their part if they kept aloof and apart from. the general national stream, it is in order that the Anglo-Indians should be fitted into the national pattern that this proviso was enacted.

No country is more aware of the fatal results of separatism than our country, and in order to prevent all separatism and all separatist interests the Constitution provided that even where Anglo-Indians were given their right to maintain their own institutions and to be given a grant, those institutions must not be communal or separationist in their character and Anglo-Indian students must in their formative period be made to mix with, students of other communities. In this connection it is rather interesting to refer to a Constitutional document, which is the minority report signed by Sardar vallabhbhai, on which this article was based, and the great Indian leader in presenting this report to the Constituent Assembly points out;

"In connection with this article we also feel that in this way these institutions might become a valuable educational asset which should cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community."

Therefore, what Sardar Vallabhbhai clearly intended was that these schools should not be maintained at State expense only for the Anglo-Indian, community, but for the educational needs of the whole nation.

19. With this background and with the provision contained in art. 337, we have to consider whether the order of the State contravenes the provision of this article. In face of the proviso to art. 337 the State is asking the Anglo-Indian school not only not to make available 40 per cent, of the annual admissions which are reserved for non-Anglo-Indians, but to prohibit any non-Anglo-Indian from entering the school. In other words, the State is asking the Anglo-Indian school to disregard the most important provision of art. 337 on which its very fight to receive the grant is based.

In the affidavit the State has given an assurance to the school that the Constitutional grant which it is entitled to under art. 337 will not be discontinued if it complies with the order of Government.

However solemn the assurance of Government may be, if the school continues to receive a grant in contravention of the clear provision of the Constitution, any taxpayer would have the right to prevent Government from giving this grant to the educational institution. If the school does not make available 40 per cent, of its annual admissions to members of communities other than the Anglo-Indian community and the Government notwithstanding that gives a grant to the institution, a citizen would be entitled to come to this Court and prevent the Government from violating the Constitution.

Therefore, the assurance of Government is neither here nor there. Government cannot give an assurance, the carrying out of which would involve the violation of the Constitution. Nor can Government ask an Anglo-Indian educational institution to do something which is contrary to the Constitution. With reagrd to this article also the Advocate-General had hardly any reply. The only answer he gave was that Government was not preventing the Anglo-Indian school from admitting non-Anglo-Indians. It had made a suggestion that it should open classes in which Hindi or other Indian languages should be taught, and if the school were to carry out the Government's suggestion, then it could comply with the proviso to art. 337.

Mr. Anthony who is the Chairman of the Anglo-Indian Board and who appeared for the school pointed out in the first instance how utterly impracticable the suggestion of the State was. He said, as we have 'already pointed out, that the school had 17 teachers, only one of whom knew Hindi, and if parallel classes would be started it would mean employment of a large number of teachers who would be able to teach in the particular language which the school would adopt. But the objection to Government's suggestion is more fundamental than merely a practical objection.

As already pointed out. under art. 30(1) a minority has the right to establish and administer educational institutions of its own choice. The choice of the Anglo-Indian community is that it should have a school where the medium of instruction should be English, where the teachers should teach through that medium, and where other languages should not be taught for practical or other considerations. If the school were to comply with the Government's suggestion, then the institution which it will be administering would not be a school of its own choice, but of the choice of the State.

Even if they are to run two institutions, one would be of its own choice and the other certainly would not be of its own choice. Therefore, it is not open to the State to ask an educational institution to be run in a manner which does not find approval of the community which runs it, but which finds approval of the State. In the case of minorities other than Anglo-Indians, under art. 30(1) if they establish and administer institutions of their choice which do not find favour with Government, the Government could stop giving grant to them.

But the position of Anglo-Indians is different. Not only have they been given under the Constitution the right to establish and administer educational institutions of their own choice, but for ten years under art. 337 they have been given the right to receive the grant as provided in that article. Whatever may be the position after ten years when the grant ceases, till the grant con-tinues Government cannot make a bargain with the Anglo-Indian institution that it would get the grant provided it conforms to the directives issued by the state with regard to the running of an

educational institution.

20. In our opinion, therefore, the order issued by Governent also offends against art. 337. It is clearly incumbent upon the school to admit 40 per cent, of non-Anglo-Indians and the Government cannot prevent the institution from carrying out its Constitutional obligation.

21. A very interesting and a very able argument was advanced by Mr. Palkhivala as to the true interpretation of art. 19(1)(a). He argued that our Constitution did not merely guarantee the freedom of speech but of expression, and according to him whereas speech referred to substance the expression referred to the form, and according to him under this article no citizen can be denied the freedom of expression which would include freedom to imbibe thought and culture through any medium.

The question posed by Mr. Palkhivala is a very large one and in the view that we have formed. that arts. 29(2) and 337 are contravened, it is unnecessary to consider this question. We may also mention that it was the contention of Mr. Palkhivala that there was also violation of art. 19(l)(g), viz. the right to practice a profession, and according to him a teacher has a right to impart education through any language if he can find students who are prepared to receive the education from him, and Mr. Palkhivala says that the restriction placed by Government upon this right of Anglo-Indian teachers is not a reasonable restriction.

We may also point out that Mr. Palkhivala drew our attention to the fact that the only restriction that can be placed by the State as far as art. 19(l)(a) is concerned is within a narrow ambit contained in clause (2) of art. 19. It is also unnecessary to pronounce anything upon this aspect of the case. We may also refer to the contention of the Advocate General that as far as the Bombay Education Society is concerned it was a Joint stock company and therefore not a citizen within the meaning of art. 19 and therefore it cannot claim any right guaranteed to citizens under that article. According to him the fact that petitioners Nos. 2 and 3 who are directors of the company and who are admittedly citizens of this country were also Joined as petitioners made no difference to the position, that the right claimed was by the company and that right was not safeguarded under Article 19 of the Constitution.

It was also urged that arts. 14 and 15 were contravened by the order. It was urged that there was discrimination against English and against students wishing to learn through the medium of English, and also that equality before the law was denied to Anglo-Indian and non-Anglo-Indiar. students. In our opinion, we are not here concerned with the larger question of discrimination or equality before the law. It is sufficient for the purposes of the petitioners if the specific right given to them under art. 29(2) has been contravened.

22. The result, therefore, is that we must hold that the order issued by Government is bad on the ground that it contravenes arts. 29(2) and 331 of the Constitution. We will, therefore, issue a writ against the State preventing it from enforcing this order. against the school. With regard to Mr. Gujar and Major Pinto, in view of our judgment they have a right to have their children admitted to the Barnes School, and as Government has been prohibited from enforcing that order against the

school, there is nothing to prevent the school from admitting the children of Mr. Gujar and Major Pinto.

23. On the question of costs, Mr. Palkhivaia has pointed out that the question we have considered was not only a question of great importance, but it involved various considerations and it has taken us three days to dispose of these three petitions, and therefore he wants us to fix the costs under R. IV-A of Appendix E of the Appellate Side Rules at a sum exceeding Rs. 150. Now, that rule was passed by us for a very good reason. We are most anxious that in Constitutional matters where a citizen complains of a violation of his fundamental right, he should not be prevented from coming to this Court in the fear that if he were to lose he would have to pay heavy costs to the other side, and therefore, we have fixed the figure of costs at a very modest sum.

The two limits laid down in that rule are Rs. 45 and Rs. 150, and we have provided that ordinarily the costs should not exceed Rs. 150, This is undoubtedly a case which is not an ordinary case, and therefore to the extent that Mr. Palkhivaia asks us to award costs higher than Rs. 150, he is perfectly within his right. But even so, when we fix costs exceeding the sum of Rs. 150, we must constantly bear in mind the right of the citizen to come to this Court without that feeling that he would be mulcted in heavy costs in case his con-tentions were not upheld by the Court.

In this case it is the citizen who has succeeded and the State which has lost. We may have a case tomorrow where the State might succeed and the citizen loses. Whatever principle we lay down today with regard to costs must bind in fairness not only the State but also the citizen, and therefore in the larger interest of citizens themselves and in order to protect their constitutional rights, we think it would be wrong to ask the State to pay very heavy costs in this case. We, therefore, think' that the proper costs that the State should pay to the petitioners would be Rs. 1,000. Costs will be in one set for all the three petitioners. The three petitions will be consolidated.

23. Order accordingly.