

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

1. Weragoda Kapuge Priyantha,
“Agra”, Pahala Karannagoda,
Warakagoda.
 2. Hewage Don Ananda,
Sri Sarananda Road,
Pahala Naragala,
Gowinna.
 3. Lalith Samantha Wijesinghe,
No. 179/1, Pannil Kandha,
Kananwila,
Horana.
 4. Kurukulasooriya Oswal
Chanditha Mario Fernando,
No. 77, Kirigala Road,
Handapangoda.
- Petitioners

CASE NO: CA/WRIT/157/2016

Vs.

1. Secretary,
Ministry of Education,
“Isurupaya”,
Sri Jayawardhanapura Kotte,
Battaramulla.
- And 6 Others
- Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Mahanama De Silva for the Petitioners.
Hashini Opatha, S.C., for the 1st Respondent.
Decided on: 10.06.2019

Mahinda Samayawardhena, J.

The petitioners who are parents of several students of Ashoka College of Horana filed this application seeking to quash by way of writ of certiorari the decision contained in P12 and to prohibit by way of writ of prohibition implementation of the said decision. If writ of certiorari is issued, writ of prohibition is redundant. By P12, the 1st respondent, Secretary to the Ministry of Education, informed the Manager of the said school to teach either in the mother tongue (Sinhala/Tamil) or in bilingual medium in terms of the Education Policy of the Government or face the consequences.

Ashoka College of Horana is, admittedly, a Government Approved Private Unaided School.

This decision, according to P12, is based on section 6 of the Assisted Schools and Training Colleges (Special Provisions) Act, No.5 of 1960. That Act, as seen from section 2, makes provisions applicable to Assisted Schools.

Section 6(1) of the said Act, so far as relevant to this application, states that:

The proprietor of any school which, by virtue of an election made under section 5, is an unaided school—(a) shall educate and train the pupils in such school in accordance

with the general educational policy of the Government [and] (g) shall comply with the provisions of any written law applicable to such school and matters relating to education.

Section 6, in my view, does not apply to all Unaided Schools. It applies only to former Assisted Schools but later became Unaided “*by virtue of an election made under section 5*”.

Section 5 allowed a proprietor of any Assisted School, by serving a written notice on the Director of Education, to elect to administer that school as an Unaided School.

The school under consideration—Ashoka College, Horana—was not an Assisted School which became an Unaided School by virtue of election under section 5 of the Act. It has been, from the beginning, a Government Approved Private Unaided (English Medium) School.

The predecessor to Ashoka College is Marshall Preparatory School, which, according to the petitioners, has been founded in late 1880s by a European lady by the name of Miss. Marshall. Since then this Private School has been conducting classes in English Medium.

Hence the decision contained in P12 is based on a wrong premise and therefore bad in law. Section 6 of the Assisted Schools and Training Colleges (Special Provisions) Act, No.5 of 1960 has no application to Ashoka College, Horana.

I quash P12 by writ of certiorari. Issuance of writ of prohibition prohibiting implementation of the decision contained in P12 is superfluous. However I formally issue writ of prohibition as well.

Copious submissions were made about Education Policy of the Government as section 6 of the Assisted Schools and Training Colleges (Special Provisions) Act enjoins the proprietor of any Assisted School, which, by virtue of an election made under section 5, became an Unaided School, to educate and train the pupils in such school in accordance with the General Educational Policy of the Government.

As section 6 of the Assisted Schools and Training Colleges (Special Provisions) Act is inapplicable to Ashoka College of Horana, although it is not necessary for the present purposes to consider the General Educational Policy of the Government, let me add the following for completeness.

It is the position of the learned counsel for the petitioners that the Government Policy in respect of the Medium of Instruction is contained in the Education Ordinance, No.31 of 1939 and Education Regulations 1951 made thereunder marked X1, and according to them, there is no prohibition for a school like Ashoka College, a Government Approved Private Unaided School, to conduct classes from Grade 1 to 12 in English Medium.

The learned counsel further submits that section 2 of the National Education Commission Act, No. 19 of 1991, provides for His Excellency the President to declare National Education Policy, but no such Declaration has up to date been made, and Education Policy of the Government shall therefore be understood from the Education Ordinance and the Education Regulations of 1951 made thereunder.

The learned State Counsel appearing for the Secretary to the Ministry of Education, admits that no such Declaration for National Education Policy has been made, but states that Education Policy of the Government can be culled, if not assumed, from the documents tendered to Court, and according to those documents, a Private Unaided School such as the Ashoka College cannot conduct classes purely in the English Medium.

It is regrettable that the National Education Policy of the Government is to be understood on assumptions in bits and pieces from documents scattered everywhere, when the Parliament passed the Law 28 years ago in 1991 to establish the National Education Commission *inter alia* to recommend and advice His Excellency the President to declare National Educational Policy.

Section 2(1) of the National Education Commission Act, No. 19 of 1991, reads as follows:

The President, subject to the provisions of the Constitution, may, declare from time to time the National Education Policy which shall be conformed to by all authorities and institutions responsible for education in all its aspects.

Section 2(3) of the Act reads as follows:

The National Education Policy shall be formulated on a consideration of the recommendations and advice made to the President by the National Education Commission established by section 3.

It is distressing to note that we do not have a National Educational Policy, which, in my view, shall be a top priority. Circulars are issued by the Ministry of Education from time to time by giving various directives to the authorities concerned, in my view, without having a clear vision. By looking at circulars of the Ministry marked P7A-P7C, it heartening to note that, since recently, the Ministry has understood the importance of changing the Medium of Instruction to English.

Competence in English is essential for personal success in today's globalized world. English should not be the language of the urban elite to downgrade otherwise talented rural youth. In my view, it is hypocrisy to make it compulsory to the children of underprivileged to study in Sinhala or Tamil Medium, while making it possible for the children of the elite and affluent to study in English Medium at International Schools or overseas, may be, to keep the distance.

I might also add that, International Schools have been operating in a vacuum with no authority to regulate, manage or control by the Ministry of Education. They are registered under the Companies Act or as Board of Investment projects.

It is apt to quote the concluding remarks made by Professor Rajiv Wijesinghe, who in 2001 served as a Consultant to the Ministry of Education to initiate the reintroduction of English medium education in the state sector, at a seminar on the subject of "Promoting English Medium Education", marked X with the counter affidavit.¹

¹ <https://rajivawijesinha.wordpress.com/2011/07/28/promoting-english-medium-education/>

English is no longer just the language of the British, a legacy we could do without. Rather it is the principal international language, one of increasing opportunities all over the world. The comparative advantage we had with regard to English has been sacrificed at the altar of a divisive linguistic nationalism, which I fear has contributed to our nation being deprived of a tool that could have helped us immeasurably. While the privileged continued to benefit from their possession of this tool, the vast majority of our people, of all communities, had no access to it. We owe it to them and to the nation as a whole to take all possible steps, in the interests of equity as well as national prosperity, to set right this sad situation.

Application of the petitioners is allowed. The 1st respondent, the Secretary to the Ministry of Education, shall pay each of the four petitioners a sum of Rs. 100,000/= as costs of the action.

The Registrar is directed to send copies of this Judgment to the Secretary of the Ministry of Education and the Chairman of the National Education Commission.

Judge of the Court of Appeal