



**MOOT COURT SOCIETY
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DU LC-1 & NHRC NATIONAL MOOT COURT COMPETITION 2014

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**ORGANISED IN COLLABORATION WITH
NATIONAL HUMAN RIGHTS COMMISSION**

MOOT PROPOSITION

A unique case that encompasses several conflicting fundamental rights and freedoms and constitutional duties of different entities came up before the National Human Rights Commission, from State Taz, India directly due to non-establishment of State Human Rights Commission in that State.

A brief statement of facts of the same is given below: -

Pazu, is a small district in State Taz which is inhabited mainly by Pao tribe¹, a Scheduled Tribe as per Presidential notifications made under Art. 342 of the Constitution. As per the 2011 census, there are 413 Pao families in Pazu and it has a total population of 2478. The tribe has a distinct language and culture which is under threat from the dominant language and culture of State Taz. For the protection of their language and culture, Pao Tribe constituted a body called *Sason Pao Kompū* (which means “Save Pao Community”) towards the beginning of 1980. One of the conservation works that was taken up by *Sason Pao Kompū* (hereinafter referred to as SPK) was to document several literary works, including folk art and culture in Pao language.

¹ Pao tribe has been listed as ‘linguistic minority’ by National Commission For Religious And Linguistic Minorities.

SPK wrote to the Department of Education in 2009 to make it compulsory to impart at least primary education in Pao language in Pazu district in consonance with the community right of the tribe to conserve its distinct language, script or culture under Article 29 of the Constitution. Further, it was advanced that since India has ratified in 2006 the Convention on the Protection and Promotion of Diversity of Cultural Expression (2005), and language being intrinsic to the expression of culture as well as a means of communicating values, beliefs and customs, State should take up positive steps/ measures to conserve the language.

The State government took up the proposal submitted by SPK and constituted a panel to study the impact of imparting primary education in the mother tongue of the children before taking any step in this regard. After conducting the study, the panel concluded that imparting primary education in mother tongue would make education contextual and relatable, learning easy and help in conceptualization to the children.

Accordingly, the Department of education, in pursuance of the constitutional mandate under Article 350A of the Constitution of India, instructed the Directorate of Education of State Taz to notify all schools in Pazu district to -

- i) compulsorily impart primary education (till class V) in Pao language (mother tongue) from the next academic session onwards,
- ii) permit those students who were studying in 2nd, 3rd and 4th standard to continue with the present language of instruction, and

- iii) to close down all unauthorized schools that were not following the prescribed conditions.

The order was passed on 01/04/2013. And consequently, from the next academic session i.e. 2014-15 onwards, all primary schools in Pazu district have to teach compulsorily their students in Pao language.

In the mean time 52 families of migrant workers belonging to Pao community came back to the village after the industrial unit in which they were working closed down due to recession. They have no alternative left but to depend for their subsistence on the few acres of agricultural land which they own in the village. Their children, most of whom were in the primary stage of education (26 in number), had to start or continue with their studies in the village school. But the above mentioned order of the Directorate of Education posed a problem for them as their children were not well versed with the Pao language being born and or brought up in the suburban area where the main State language is spoken.

Consequently, this group of parents, led by Mr. Liolin Pao brought a representation before the Directorate of Education. They tried to convince the Director that imparting of primary education in Pao language to children belonging to the tribal community would have a negative impact on the future employment prospects of their children since in almost all jobs, whether in the public or private sector, the demand is of those who can speak the main State language and English. Any delay in imparting education in those languages would hamper the career of his child in future. Therefore, they requested the Director to either defer the implementation of the order dated 01/04/2013 by few years or partly implement the same in some selected schools in the village so that they have the option of sending

their children to schools where the medium of instruction is not Pao language.

Their request was not granted by the Directorate of Education and these families had no other option but to approach the National Human Rights Commission as their State did not have a State Human Rights Commission.

Accordingly, Mr. Liolin Pao then approached the NHRC, on behalf of himself and the group of parents facing similar problem, to intervene in the matter complaining that the order of the Directorate of Education dated 01/04/2013 is violative of the parents' and children's human rights in general and right to education and right to development in particular.

They requested the Commission for the following reliefs: -

- (i) withdrawal of notification relating to compulsory use of Pao Language in primary education,
- (ii) stay the implementation of Section 4 of Taz State Education Rule² (compulsory sending of children between 6-14 years to school until alternative school is provided for their children), and
- (iii) direct the SPK to stop social practice of ostracism against his family.

NHRC asked the State Government of Taz and SPK to give an appropriate reply (or a well-reasoned response) to the complaint filed by Mr. Liolin Pao and others. The State government denied violation of rights of any individual or community stated the said order passed by the Directorate of

² **Section 4 of Taz State Education Rules framed under Right to Education Act, 2009** - Compulsory attendance in school – it shall be compulsory for parents and guardians of children between 6 to 14 years of age to send them to school when it is open for teaching. Non-sending of children belonging to this age group to school by their parents/ guardians, without any reasonable ground, will invite strict action from the authorities as per rules.

Education was in consonance with the recognized national laws, international conventions and policies.

SPK also submitted a prompt reply to the NHRC, wherein it lauded the move of the government to impose compulsory imparting of primary education in Pao language in Pazu on the ground that it would help in the preservation of their fast diminishing local language. It also quoted that, as per The People's Linguistic Survey of India³, India has lost nearly 250 languages in the last 50 years. SPK also denied advocating or practicing social ostracism against any person including Mr. Liolin Pao.

After perusal of the written submissions made by the State, SPK, Mr. Liolin Pao & others, the Commission was of the opinion that –

- i) Firstly, the following questions need to be answered:
 - a) what is meant by the term 'mother tongue'. Does it mean the language in which the child is comfortable with? If yes, who will decide the same?
 - b) whether a student or a parent or a citizen has a right to choose a medium of instruction at primary stage?
 - c) whether the imposition of mother tongue in any way affects the fundamental rights under Articles 14, 19, 29 and 30?
 - d) whether the State can by virtue of Article 350-A of the Constitution compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools?

³ The People's Linguistic Survey of India is a registered society under the Indian Societies Registration Act of 1860.

- ii) Secondly, the matter involved substantial question of interpretation of the right to education under Article 21 A and the right to culture through conservation of its distinct language under Article 29, both of which are Fundamental Rights enshrined in Part III of the Constitution of India; and
- (iii) Thirdly, appropriate direction may be required to be issued to the government so as to successfully and meaningfully implement the welfare measures relevant in this case.

Accordingly, the Commission decided to file a petition before the Supreme Court under Article 32 of the Constitution of India, on behalf of the complainant, Mr. Liolin Pao, who belongs to a socially and economically disadvantaged group, for issuance of appropriate writ/s and or direction/s as the Honorable Court may deem fit keeping in mind the facts and circumstances of the case.

The petition has now been listed for hearing before the Supreme Court on March 8, 2014. *National Human Rights Commission vs. State of Taz and Others*, Writ Petition (civil) No. X4258 of 2013.

Note:

1. Prepare written memorials and oral arguments on behalf of Mr. Liolin Pao as well as State of Taz.
2. In addition to the Constitution and other national laws, the following international documents may be referred to:
 - (i) UDHR (specifically articles 22, 26 and 27)
 - (ii) ICCPR (specifically articles 24 and 27,)

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- (iii) ICESCR (particularly articles 6, 10,13,14, and 15)
- (iv) Convention on the Promotion and Protection of Diversity of Cultural Expressions
- (v) Convention on Rights of the Child, 1989
- (vi) Declaration on the Rights of Persons belonging to the National, Religious and Linguistic Minorities., G.A. Resolution 47/135 of 18th Dec.,1992.
- (vii) Report on 42nd and 43rd sessions of the Committee on Economic, Social and Cultural Rights in which the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) reported on the theme “*Mother Tongue, Multilingualism and the Right to Education.*”

Disclaimer – The contents of this problem including names, facts, etc. are fictitious. Any resemblance whatsoever is purely coincidental.

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