

(2012) 11 AHC CK 0186
In the Allahabad High Court

Case No : Civil Miscellaneous Intervener Application No. 317847 and Civil Miscellaneous Amendment Application No. 317944 of 2012 and Civil Miscellaneous Application No. 320743 of 2012 in Civil Miscellaneous Writ Petition No. 51172 of 2012

Arun Kumar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Constitution of India, 1950 — Article 348(2)

Citation : (2013) 1 ADJ 457

Hon'ble Judges : Amitava Lala, Acting C.J.; Ashok Srivastava, J

Bench : Division Bench

Advocate : N.C. Tripathi and Arun Kumar Singh In Person, for the Appellant; Ramanand Pandey, S.C. and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, A.C.J.

1. The aforesaid intervener application and amendment application have been filed by the High Court Bar Association, Allahabad through its Honorary Secretary for being impleaded as respondent in the writ petition and seeking amendment of the order dated 05th October, 2012 passed by this Court in the aforesaid writ petition. The third application, being Civil Misc. Application No. 320743 of 2012, has been filed by the petitioner in-person seeking direction upon the authorities concerned to permit him for participation in the election of Co-operative-2012 Ghazipur by way of nomination. First of all, we shall deal with the applications filed by the High Court Bar Association due to greater importance.

2. Fact remains that a writ petition was disposed of by order dated 17th October, 2012. Since the writ petition was filed in vernacular language, the Division Bench in its order dated 5th October, 2012 accepted the persuasive value of the order of the learned Single Judge dated 24th July, 2012 passed in Civil Misc. Writ

Petition No. 665 of 2007 (Ritesh Kumar Trigunayat v. State of U.P. and others) in respect of supplying translated copy of affidavit in English. The operative part of the order of the learned Single Judge is as follows:

The Registry will not entertain any counter-affidavit which is in vernacular language unless translated copy thereof in English is also attached with it in future. The Joint Registrar (Listing) is directed to circulate this information to all concerned persons. Any omission in this behalf would be treated seriously.

3. The order of the Division Bench passed in the present writ petition dated 05th October, 2012 is as follows:

Leave is granted to the learned counsel appearing for the petitioner to file translated copy of the writ petition by next date.

It has been decided by one of Hon''ble Judges of this Court sitting Singly (Hon''ble Mr. Justice Sunil Hali) by order dated 24.7.2012 in Writ C No. 665 of 2007 (Ritesh Kumar Trigunayat v. State of U.P. and others) that no affidavit will be filed in Hindi and if it is filed, a translated copy will be provided for the purpose of consideration of the same. The relevant part of the order is quoted herein:

The Registry will not entertain any counter-affidavit which is in vernacular language unless translated copy thereof in English is also attached with it in future. The Joint Registrar (Listing) is directed to circulate this information to all concerned persons. Any omission in this behalf would be treated seriously.

Against this background, we are of the view that the observation of the Court has persuasive value. It should be applicable in case of writ petition, criminal and civil proceedings also.

This order will be circulated by the Registrar General to all concerned and in case of necessity the Allahabad High Court Rules may be amended to that extent.

Let it appear before appropriate Bench. Subject to filing of the translated copy of the writ petition, the matter will be heard.

4. Both the orders are innocuous orders only to accommodate the Judges. Neither any intention of the Court can be there nor it was flatly refused to accept any application in vernacular language. The Court meant by the order/s that whenever any writ petition or affidavit will be filed in vernacular, a translated copy thereof in English language will be supplied to accommodate the Judges. There is a reason behind it which cannot be foreseen unless and until the society demands so. By the present policy, very often the Judges are coming to the Allahabad High Court from different parts of the country. Either they are not fully or partially accustomed with the vernacular language or they are not used to proceed with Court proceedings in vernacular language. Therefore, it is the duty of the Bar to accommodate the Judges with translated copy or copies, if he or they require. This is purely an understanding to render justice to the litigants, for

whose benefit both the Bench and the Bar are created. There is no whisper in the order to the effect that translated copy of the annexures will also be filed alongwith the writ petitions or affidavits and unless so filed, the department will not accept the same.

5. Surprisingly, a commotion has been created with regard to refusal on the part of the department in accepting applications/affidavits without translated copy of the annexures too, and when a learned Single Judge passed a longish order taking advantage of the writ petition filed before such Bench with annexures in vernacular. Such order as observed by us, Smt. Rajeshwari Vs. State of U.P. and Others, is uncalled for, contrary to the true spirit of the order of the Division Bench and in violation of the judicial discipline. Learned Single Judge has held that the order of the Division Bench is per incuriam as the Division Bench has ignored the judgment of another Division Bench of this Court in Prabhandhak Samiti and Another Vs. Zila Vidyalaya Nirikshak, Allahabad and Others, . Though said judgment of Prabhandhak Samiti (supra) was dependent upon the situation arose at the relevant point of time, yet we want to say that issue of the judgment was right of the petitioner to file relevant petition/application in vernacular language in the High Court, wherein the issue before this Division Bench and the Single Judge is that if the petition, application, affidavit, etc. are filed in vernacular then a translated copy thereof in English will also be filed before the Court for its convenience when the Chief Standing Counsel of the State has accepted the direction of the Court and issued circular/s. Having so, the judgment and order of the learned Single Judge passed in Smt. Rajeshwari (supra), which has been placed before this Court, is an obiter dicta and without jurisdiction and no effect or further effect can be given to such type of orders. Therefore, we confine ourselves to our own order, which has been passed earlier on 5th October, 2012, and say that the order has been passed correctly. There is another aspect of the matter. The Division Bench in Prabhandhak Samiti (supra) was considering a notification of 05th September, 1969 issued under Article 348(2) of the Constitution of India. The notification was in vernacular, which was translated by the Division Bench in English in Paragraph-14 of the judgment, as under:

14.....Translated into English paragraph 4 would read as under:

4. The question of progressive use of Hindi in the proceedings of the Allahabad High Court was again considered. Now, under Article 348(2) of the Constitution of India, the Governor of Uttar Pradesh is pleased to order with the prior consent of the President, that the Hindi may be used in the affidavits to be filed and in the statements and documents to be included in the paper books prepared for the use of the Allahabad High Court, subject to the following conditions :

- (1) If the Bench so desires, it may make special order that the affidavits, statements and documents in Hindi be translated into English, and
- (2) If some extract of pleadings, statements and documents in Hindi is

incorporated in any judgment, English translation thereof may be made immediately thereafter.

6. The said notification clearly provides that if the Bench desires, it may make special order that the affidavits, statements and documents in Hindi be translated into English. Similar provision is there in respect of extract of the pleadings, statements and documents also. The direction of the learned Single Judge in Ritesh Kumar Trigunayat (supra), which has also been followed by this Division Bench, was not contrary to the said notification. A perusal of the aforesaid judgment also indicates that there is no conflict in our direction and the law laid down by the Division Bench in the aforesaid case i.e. Prabhandhak Samiti (supra). Therefore, in our view, the judgment of learned Single Judge in Smt. Rajeshwari (supra) was totally uncalled for.

7. Learned Single Judge has relied upon the judgment of the Supreme Court in Dr. Vijay Laxmi Sadho Vs. Jagdish, . In the said judgment the Supreme Court had occasion to consider the notification issued under Article 348(2) of the Constitution in the State of Madhya Pradesh. In the said notification it was clearly mentioned that Hindi shall be official language of the High Court. No such notification has been issued in the State of Uttar Pradesh, which is evident from the notification dated 05th September, 1969 which has been issued in the State of Uttar Pradesh under Article 348 (2) of the Constitution. In the State of Uttar Pradesh, to encourage the use of Hindi language there were several notifications which permitted use of the Hindi in several steps. The first notification was issued in the year 1961, where the Hindi was permitted only for the argument purposes in criminal jurisdiction. Later on, by another notification the Hindi was permitted in the civil jurisdiction also and in the last notification the use of the Hindi for the affidavits, statements was also allowed. In the background of the aforesaid facts, the Division Bench had interpreted that the Hindi can be used in the pleadings in the High Court. Keeping in view the doctrine of stare decisis, we are in respectful agreement with the Division Bench judgment in Prabhandhak Samiti (supra). While relying upon the judgment of the Supreme Court, the learned Single Judge has completely ignored the law laid down in the said judgment in respect of the judicial discipline. The relevant part of the judgment of Dr. Vijay Laxmi Sadho Vs. Jagdish, , being para-graph-33 is extracted below:

33. As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be

respected at all costs.

8. Moreover, there is a principle known as "comity of Judges". Particularly when the issue relates to High Court itself, such principle has to be applied for taking uniform stand, if not, make an observation to place the matter before the appropriate Court which had passed original order, that too when it is of a Division Bench, whose order has a binding effect, but not to show any judicial over-activism at the behest of handful of persons. In this regard, we have come across the judgments in *State of U.P. and another Vs. C.L. Agrawal and another*, etc., , *M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.*, , *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, , *Rattiram v. State of M.P.*, 2012 (4) SCC 516 and *U.P. Power Corporation Ltd. Vs. Rajesh Kumar and Others*, . In *Furest Day Lawson Ltd. (supra)* the Supreme Court has held that a prior decision of the Court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". In *U.P. Power Corpn. Ltd. (supra)* it has been held by the Supreme Court that judicial discipline commands in such a situation when there is disagreement, to refer the matter to a larger Bench. It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself. It was further held that one must remember that pursuit of the law, howsoever, glamorous it is, has its own limitation on the Bench. In a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter should be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure. The Supreme Court has also held that judicial enthusiasm should not obliterate the profound responsibility that is expected from the Judges.

9. We are respectful about our mother tongue that too if it is a national language, but that does not necessarily mean that we shall be so rigid that we should forget and ignore internationality of the judicial system and the language used in the common parlance. Day by day different situations are being cropped up. New concepts of litigations are coming, in which knowledge of English is far

more required. Therefore, if we do not follow, the State will be pushed back in the competition. Many States are tutoring the people both in vernacular and English. Many States are tutoring in the vernacular, Hindi as national language as well as in English. Surprisingly, we find that in this State there is a conscious effort to replace English completely by vernacular. There is a big gap between English ruling and English teaching. Both cannot be equated with each other. Many eminent Europeans have enriched our vernacular/s when many eminent vernacularists enriched the English language. Another important fact is regarding use of the vernacular in the High Court. Excepting very few, no one uses parliamentary words in vernacular in the High Court and, if a Judge reacts in similar manner or converse situation of the Courts become drawing room, it is not at all a welcoming situation of the State judiciary. Therefore, when learned Chief Standing Counsel has accepted the order and issued an office circular to all the Standing Counsel/State Law Officers to the effect that all pleadings including counter-affidavits filed on behalf of the State be in English and in case they are in vernacular, translated copies thereof may be supplied alongwith the same to be filed in Court, we do not find any reason not to follow our own dictate.

10. In view of the above, we do not find any merit in the applications filed by the High Court Bar Association, Allahabad for intervening and amendment that too after disposal of the main writ petition. Therefore, both the applications filed by the High Court Bar Association are rejected, however, without imposing any cost. If a Judge is not well conversant with the vernacular (Hindi), he may issue a direction to file English translation along with the writ petition, application, affidavit, etc. if it is in vernacular. So far as the application filed by the petitioner in-person is concerned, we find that the writ petition has been disposed of giving directions for expeditious disposal of the appeal filed by the petitioner before the concerned tribunal upon giving opportunity of hearing to the petitioner, therefore, no affirmative order can be passed in this application by this Court on merit and if the petitioner has any grievance, he can raise the same in the pending appeal before the tribunal by making necessary applications. Thus, the application filed by the petitioner is rejected also without imposing any cost.

Ashok Srivastava, J.

I agree.