

(2018) 05 DEL CK 0225
In the Delhi High Court
Case No : W.P.(C) 3510 OF 2018

AYUSH TIWARI

APPELLANT

Vs

FACULTY OF LAW & ORS.

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Constitution of India, 1950 — Article 32, 348, 343

Citation : (2018) 05 DEL CK 0225

Hon'ble Judges : C.HARI SHANKAR;GITA MITTAL

Bench : Division Bench

Advocate : Mohinder J.S. Rupal, Prang Newmai, Slomita Rai

Final Decision : Dismissed

Judgement

GITA MITTAL, J.

1. This writ petition seeks a direction to the University of Delhi, more specifically the Faculty of Law, to conduct the LLB Entrance Examination in

Hindi in addition to English. An identical issue was raised by one Shailendra Mani Tripathi by way of a writ petition being W.P.(C) No. 3104/2014

which stood dismissed by an order dated 20th May, 2014 by the learned Single Judge. We find that the learned Single Judge had relied on the

pronouncement of the Supreme Court reported at (1990) 2 SCC 352 Hindi Hitrakshak Samiti & Ors. v. Union of India & Ors. wherein a similar

submission was rejected, holding as follows : 6. It is difficult to accept that in not holding entrance examination in any particular language,

be it Hindi or regional language, amounts to denial of admission on the ground of language. Every educational institutions has right to determine or set

out its method of education and conditions of examination and studies provided these do not directly or indirectly have any causal connection with

violation of the fundamental rights guaranteed by the Constitution. It may be that Hindi or other regional languages are more appropriate medium of imparting education to very many and it may be appropriate and proper to hold the examinations, entrance or otherwise, in any particular regional or Hindi language, or it may be that Hindi or other regional language because of development of that language, is not yet appropriate medium to transmute or test the knowledge or capacity that could be had in medical and dental disciplines. It is a matter of formulation of policy by the State or educational authorities in charge of any particular situation. Where the existence of a fundamental right has to be established by acceptance of a particular policy or a course of action for which there is no legal compulsion or statutory imperative, and on which there are divergent views, the same cannot be sought to be enforced by Article 32 of the Constitution. Article 32 of the Constitution cannot be a means to indicate policy preference.â??

Â 2. The University of Delhi had placed reliance on the pronouncement of the Supreme Court reported at (1963) Suppl.(1) SCR 112, The Gujarat

University, Ahmedabad v. Krishna Ranganath Mudholkar & Ors. wherein it had been held that the University had the implied power to prescribe for

the purposes of higher education, a number of media of instructions or even a sole medium of instruction to the exclusion of others. In this regard, we

may usefully extract relevant portion of paras 51 and 52 of Krishna Ranganath Mudholkar in the following terms : â??51. â?|. When an Act confers a

power on a corporation, it impliedly also grants the power of doing all acts which are essentially necessary for exercising the same. 52. Bearing the

aforesaid principles in mind, I must ask the question whether, on, a fair reading of the aforesaid Provisions, it can be said that the University has the

implied power to prescribe an exclusive medium of instruction. If once I reach the conclusion, namely, that such a power is necessary for carrying out

the purposes expressly authorized by the statute, I must hold that the said power is not beyond the competence of the University. The University has

to provide for instruction, teaching and training in different branches of learning and courses of study, to lay down the courses of instructions for

various examinations and to guide the teaching in colleges or recognized institutions. The power to prescribe a medium of instruction is implicit in the

power to provide for instruction and the power to guide the teaching. One can only instruct through a medium. It is impossible to conceive of

instruction without a medium. Indeed, they are parts of the same process. A university cannot make a provision for instruction or teaching without at the same time prescribing a medium or media for teaching it. If it can fix two media, it can equally prescribe a sole medium if it thinks that for the proper instruction a particular language is the most suitable medium. A perusal of the earlier Bombay statutes and similar statutes of other universities of this country indicates that the said universities prescribed the English medium only in exercise of similar powers conferred on them. If this fundamental power to prescribe the medium is denied to the universities, the substratum of their autonomy and utility under the Act will largely be jeopardized or affected. To illustrate, there may be 20 colleges affiliated to a university; if the university cannot prescribe a sole medium of instruction for all the affiliated colleges, each one of them may adopt a different language as its medium, with the result that there will be chaos in the sphere of higher education. If such a power does not exist, how is it possible for a university to hold examinations in a particular medium? It will be forced to hold examinations in all the different languages chosen by the affiliated colleges. Though the statute confers a plenary power on the University to hold examinations and confer degrees, it will not have the power, if the construction suggested by learned counsel for the respondents be adopted, to hold examinations in the language chosen by it. But it is suggested that though it has such a power, it must exercise it reasonably so as to satisfy the needs of the different colleges affiliated to it. I do not see how, if the University has the power to hold examinations in one language, the exercise of that power could become unreasonable if affiliated colleges chose to ply their own course in utter disregard of the opinion of the University. Be that as it may, I have no hesitation in holding that the University has the implied power to prescribe for the purposes of higher education a number of media of instructions or even a sole medium of instruction to the exclusion of others.â??

Â 3. The learned Single Judge had noted Article 348 of the Constitution of India, which states that the language to be used in the Supreme Court and High Courts as well as the Acts and Bills shall be in English. It was also opined by the learned Single Judge that if the relief as prayed was granted, it would tantamount to interfering with the autonomy of the University of Delhi.

4. The Intra Court Appeal by way of LPA No. 407/2014 assailing the decision of

the learned Single Judge dated 20th May, 2014 stands rejected by the Division Bench by an order dated 28th May, 2014 noting the explanation of the University of Delhi in para 3, as follows :

3. The counsel for the respondent Delhi University appearing on advance notice explains that the semester examinations were permitted to be taken in Hindi on the assumption that the students though may understand and / or be able to read in English language may not be able to express themselves properly in English language. It is further explained that while the semester examinations entails answering essay type questions, the entrance examination is objective type with the candidates being required to merely make a choice from the multiple answers given. It is stated that if the candidates cannot even read or understand English language, they would not be able to reap benefit of the teaching in English language or the case material and the other prescribed reading material which is invariably in English language.

4. We cannot shut our eyes also to the fact that the language of the Courts, particularly at Delhi, primarily remains English and the judgments of the Courts are pronounced and reported in English language. Use of English language is also necessitated owing to the present day policy of transfer of Judges of the High Court and of the Chief Justice being necessarily from another Court and who may or may not be versed in the Hindi language. 5.

This Court recently in *Dinanath Batra Vs. Union of India* MANU/DE/2602/2013 was concerned with the challenge to the preliminary examination of the Civil Services Examination from the year 2011 onwards (called Civil Services Aptitude Test) which contains a test of English Language

Comprehension Skills of Class-X th level worth 22.5 marks on the ground that the said test of English Language Comprehension Skills adversely affects the Hindi and other regional language speaking candidates taking the said exam. The Division Bench of this Court held that there was no bar, neither in the Constitution of India nor in any other law to selection for Civil Services on the basis inter alia of a test of English Language

Comprehension. It was further observed that Article 343 itself permitted continuation of use of English language for 15 years and thereafter also by law made by Parliament and the Parliament by promulgating The Official Languages Act, 1963 has, in addition to Hindi provided for continuation of

the use of English language as well. It was yet further held that the competitive test of English Language Comprehension Skills was necessary for

selection of Civil Servants in the modern scenario.â? The above precedents on identical facts, bind the consideration by this court. We therefore find

no merit in this writ petition, which is dismissed.Dasti under signatures of the Court Master.