

(2000) 10 PAT CK 0017

In the Patna High Court

Case No : C.W.J.C. No's. 6582 of 1991, 2263, 3379, 3624 and 3669 of 1992
and 5160 and 5163 of 1994

Binay Kumar Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 51A

Citation : AIR 2001 Patna 148 : (2001) 1 PLJR 125

Hon'ble Judges : Ravi S. Dhavan, C.J.;Aftab Alam, J

Bench : Division Bench

Advocate : Tara Kant Jha, Satish Chandra Jha and Subodh Kumar Jha, for the Appellant; S.A. Narain, General, V.N. Sinha, G.P. IX, Ajatshatru, S.P. Singh and Ajay Kumar, for the Respondent

Judgement

1. The deletion of Maithili language is an issue in the present writ petition. This writ petition makes a grievance that once Maithili had been inserted for being offered as a subject in a public examination conducted by the Bihar Public Service Commission, the withdrawal of the language was an exercise which was unconstitutional, illegal and arbitrary. Unfortunately, the cause for this exercise was another writ petition which is connected with the present writ petition.

2. The controversy is best understood by the communication which places on record the excuse for deleting the subject Maithili as a language in the examinations conducted by the Bihar Public Service Commission. This order of the State Government, in itself places the facts on record and the issues which sprang out of the Government order runs thus :

^^funs"kkuqlkj mi;qZDr fo"k; ij dkfeZd ,oa iz"kkIfud lq/kkj foHkkx ds i=kad 15842 fnukad 26&8&72 }kjk fcgkj yksd lsok vk;ksx }kjk lapkfyR la;qDr izfr;ksfxrk ijh{kk esa ^^eSfFkyh Hkk"kk** dh ,afPNd Hkk"kk ds :i esa lFEefyr djus dh Lohd`fr iznku dh xbZ Fkh ftlds fo:? iVuk mPp U;k;ky; esa ,d ;kfpdk Jh jkds"k dqekj ,oa vU; cuke jkT; ljdkj nkf[ky fd;k x;k gS ftlesa dgk x;k gS fd

1990&91 dh tux.kuk ds vuqlkj fcgkj esa Hkkstiqjh] vkfnoklh ,oa exgh Hkk"kk Hkkf"k;ksa dh rgyuk esa eSfFkyh Hkk"kk Hkkf"k;ksa dh la[;k de gSA vr,o Hkkstiqjh] vkfnoklh ,oa exgh Hkk"kk ,oa lkfgR; dks NksM+dj vk;ksx dh ijh{kkvksa esa eSfFkyh dks ,sfPNd Hkk"kk ds :i esa j[kuk U;k;kfpr ugha gSA

jkT; ljdkj us bl ekeys esa iw.kZ :is.k fopkj djus ds mijkUr fu.kZ fy;k gS fd fcgkj flfoy lsok ?+HkrhZ? fu;ekoyh] 1984 ds fu;e&95 ds vUrxZr vuqlwph &Mh esa lfEefyr eSfFkyh Hkk"kk ,oa lkfgR; dks ,sfPNd :i ls gVk fn;k tk;sA**

3. From the Government order of 29 February, 1992 itself, it is clear and on record that a case pending at the High court (C.W.J.C. No. 6582 of 1991 : Rakesh Kumar v. the State of Bihar) became a cause to withdraw Maithili language as a subject from the syllabus of the examination. Clearly, either the State ought to have waited for the decision of the High Court or left the matter as it is. Merely because a matter was pending at the High Court could not offer ready excuse to the State to withdraw Maithili language as a subject in the examinations conducted by the Bihar Public Service Commission. This was an exercise in politics.

4. The counter affidavit has been filed by the State respondents is one of irresponsibility. It has been affirmed by a Section Officer, a clerk, whom this Court does not regard as a person of responsibility to offer comments on the policies of the Government. Clearly, the Secretary of the Government should have filed the counter affidavit but by asking a Section Officer to reply to the petition, the State Government evaded responsibility, Firstly, in the counter affidavit it is accepted that Maithili language was an optional subject in the examinations and had been placed in the syllabi of the Bihar Public Service Commission after the Cabinet had taken a decision, implying thereby by the Council of Ministers. Thus, it is being explained, that Maithili as a subject had been validly included in the syllabi.

5. In this matter to find out the real truth as to what went into the decision to include Maithili as a voluntary subject in a public examination on the formulation of a policy by the Government and thereafter to excluded it, the High Court sought the original record. The Advocate General also had the matter adjourned on 18 September, 2000 by making a statement that he also wanted to get to the bottom of the matter by examining the entire record. He made a statement on that day that the record was not being made available. This was strange, that the State record was not being made available even to the Advocate General. On 25 September, 2000 the Advocate General stated before the Court that the record has been misplaced and has not been located and adjournment was sought on this ground and granted. On 25 October, 2000 a statement was made by a Government pleader that the misplaced record is under search. This matter of a missing record in a Court matter was now either being treated lightly or some one in the government did not want the Court to see the record. It appears that the State Government misunderstood the fact that when a certiorari was issued by the High Court there is no choice before the government excepted to

place the record. The only escape is by claiming privilege under the law and the claim for privilege also cannot be made so lightly. Thus, on 25 October, 2000 the High Court required that this story of a missing record should be placed before the High Court by an affidavit, and on 30 October, 2000 an affidavit was filed by the Special Secretary in the Personnel and Administrative Reforms Department, State of Bihar, making a formal statement that the State record in the matter relating to the inclusion of Maithili language and literature could not be traced" despite hectic search. The search was still on, the Court was told. This was a strange explanation that the record was available when it was a question of extracting Maithili language and literature as an optional subject, but it was not available when an issue was pending in Court.

6. Maithili as a language is of ancient origin. The desire of the petitioner (in the first writ petition) that Bhojpuri language as a subject be included in the syllabi of the competitive examination of that particular year, i.e. the 36th Combined Competitive Examinations of the year 1990, may be an aspect to be considered by the government. By now it is on record that the earlier writ petition filed by one Rakesh Kumar was the cause of exclusion of Maithili language from the syllabi of the Bihar Public Service Commission and the order of the Government deleting it brought the present petition subsequently as a result.

7. There are no more facts than have been noticed by the Court in the earlier petition. More reasons apparently are given in the government order of 29 February, 1992.

8. From the Government order it is apparent that because of the pendency of the writ petition filed by Rakesh Kumar an exercise was undertaken by the State Government to use statistics to indicate the usage of certain languages in Bihar. This arithmetics was then utilised to present a record that certain languages are in recessive use. Census figures were also utilised in coming to this appraisal. Thus, the State of Bihar gave a rational for Maithili going into disuse. This is a dangerous game. Classical languages, experience shows, are basically relegated to higher academics or for study by those who have a passion to pursue these languages. To name a few, there are Sanskrit, Persian, Latin, Greek, Palli, Mandarin; the list is not exhaustive. Some of these languages, apparently has seen use from disuse and has been brought back as a living language. This is Hebrew. Its revival was the direct result of the creation of the State of Israel.

9. Linguistic identities are not quirks of history. As heritage, a languages lives with a civilisation and passes out with it. A language flourishes with patronage and recedes into disuse with lack of it. A State hostility to language will be its death knell. A hostility to a language is hostility to the people who use it. Even a dominant language, thus, recedes into the background.

10. For taking language as a subject the State of Bihar has permitted several other not so popularly used languages as subjects. Some of these languages are English, Sanskrit, Persian. Arabic, Pali and Bengali. The action to exclude Maithlli

is one which disturbs harmony amongst the people of Bihar. It conveys a message belittling Maithili.

11. The Constitution of India refers to the subject of languages. Part XVII mentions Official Language. This part has four chapters. Chapter I, on LANGUAGE OF THE UNION. Chapter II, On REGIONAL LANGUAGES. Chapter III, on LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC., and Chapter IV, on SPECIAL DIRECTIVES. But when the Constitution was amended, to take effect in 1977, by the fortysecond Constitutional Amendment, there were more reference to honouring and respecting the language of others. This was in Part IV-A entitled Fundamental Duties. This part has a solicitory Article 51A. In context it says

51A Fundamental duties. --It shall be the duty of every citizen of India,-

(a) to (d).....

(e) To promote harmony and the spirit of brotherhood amongst all the people of India transcending religions, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to (j).....

12. Then, often not noticed is the declaration in the Preamble. The Constitution of India secures to all the citizens of the Republic, liberty of thought, expression and equality of opportunity, and not to have fraternity an empty meaning and assures dignity of the individual. Expression equality, opportunity and dignity in the individual are ingredients of Culture, heritage, education and civilisation. Language is only part of this fabric.

13. The Constitution of India speaks of harmony and the spirit of common brotherhood amongst the people transcending linguistic and regional or sectional diversities. The Constitution speaks of regard so as to value and preserve the rich heritage of our composite culture.

14. Chapter II on REGIONAL LANGUAGES, Article 347, speaks of aspirations of the population of a State on the use of any language spoken by them to be recognised.

15. All this taken together renders the sapirit of the Constitution to respect the diverse heritage of the people of India, not to insult any part. If the State, in the interest of a certain section of the population, desires within permitted parameters, to take affirmative action to encourage a particular group it may do so. The Constitution of India permits an affirmative action to encourage a deprived section of population. The Constitution does not harm the culture and heritage of people in a regressive action. A language of one section of the population may be encouraged, but that of another is not harmed.

16. Bhojpuri may be encouraged. But Maithili should not be subjected to insult. Languages not even in use are permitted to be taken for public examination, so why single out Maithili for extraction? Maithili was encouraged for insertion initially.

17. This matter of offering language as a subject in public examinations, like the one conducted by the Bihar Public Service commission, must not be embroiled in a recessive action by the State. This is antagonising the harmony which Constitution guarantees, not to offend the culture and heritage of one section of the people.

18. Maithili is an ancient language which lends itself to script and the spoken word both. This language is, also, Bihar's heritage. Linguistics are still in the process of unraveling the script and phonetics to return a verdict whether Maithili may be the forerunner of modern Bengal

19. All this controversy has been created taking advantage of the pendency of a case at the High Court, demanding that Bhojpuri be made available as an optional subject in the examination. By all means it may. Such an affirmative action may be taken by the State of Bihar. But an offending action to insult another man's heritage and language is violation, even of the positive thrust of affirmation action. The Constitution permits affirmative action. But the Constitution does not allow harm to a right guaranteed to think, and express freely the thought which a language permits to be conveyed.

20. In the circumstances, the Government order of 29 February, 1992, is quashed. The State Government is directed to insert Maithili language in the syllabi of the Bihar Public Service Commission as it was before. The record makes it so clear that the deletion of Maithili language had happened because the State fired a gun on the shoulder of the High Court and made this case an excuse. The Court will not permit this. Hereinafter, if the State may like to take any other decision on the inclusion of other languages, it may, but it will have to be within the framework of law and the Constitution of India.

21. In the result, petition No. 2263 of 1992 : Binay Kumar Mishra v. The State of Bihar and C.W.J.C. Nos. 3379 of 1992, 3624 of 1992, 3669 of 1992, 5160 of 1994 and 5163 of 1994 are allowed with costs. C.W.J.C. No. 6582 of 1991: Rakesh Kumar v. the State of Bihar and others, is dismissed with costs.