

(1996) 07 MP CK 0064

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 564 of 1992

Dr. Amaresh Kumar

APPELLANT

Vs

Lakshmibai National College of Physical Education, Gwalior

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Constitution of India, 1950 — Article 343, 344, 351

Citation : AIR 1997 MP 43 : (1996) ILR (MP) 304

Hon'ble Judges : Shacheendra Dwivedi, J;S.S. Jha, J

Bench : Division Bench

Advocate : J.P. Gupta and R.D. Jain, appear as Amicus curiae, Party in person, for the Appellant; R.A. Roman, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.—This petition has been filed in public interest by the petitioner. The petitioner is seeking a relief that the orders Annexures P/2 and P/3-A circulated as office memorandum, issued by the Ministry of Home Affairs, National Language Department on 1st July, '91 be implemented and students in Lakshmi Bai National College of Physical Education, Gwalior (LNCPE) be imparted education in Hindi as well apart from English. It is also prayed that the students be permitted to write their examination papers in Hindi language. On 9-4-96, after hearing the arguments of the petitioner at some length it was found necessary to hear Members of the High Court Bar Association, Gwalior as the petition involves a very important question. Shri J. P. Gupta and Shri R. D. Jain, Senior Advocates appeared as amicus curiae on the request to assist the Court.

2. The petitioner has submitted that since Hindi has been declared as national language and LNCPE is under the control of Union of India, the students be permitted to write their paper in national language i.e. in Hindi.

3. Shri R. A, Roman, counsel appearing for LNCPE submitted that the students all over India and from abroad are admitted and instructions are imparted to them.

The examiners are also appointed ahead of the time. The prospectus of the course is issued before the admission of the students and it has been made very clear in the prospectus that medium of instruction shall be English. The students have joined the institution knowing fully well that the medium of instruction is English and at the time of examination they cannot complain about the medium of instruction.

4. Shri J. P. Gupta, learned Sr. Advocate took us through the various provisions of the Constitution in respect of the Official Language and duty of Union of India to enforce national language. He took us to the provisions of Arts. 29 and 351 of the Constitution of India. He submitted that the documents, Annexures P/2 and P/3-A have been issued under Article 351 of the Constitution of India and these documents have a statutory force and are liable to be executed. LNCPE being Department of Union of India, cannot overlook the notification and is bound to implement the instructions issued under Article 351 of the Constitution of India. Article 351 of the Constitution of India is re-produced below:--

"Directive for development of the Hindi language -- It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expression used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

In this Article the word used is "shall" whereby it means that it is the obligation of the Union of India to make a programme for enforcing the national language.

5. Shri Gupta has further argued though a student has no right to claim a particular medium of instruction yet he acquires a right when a statutory circular under Article 351 of the Constitution of India is issued by the Union of India. Shri R. D. Jain, learned Sr. Advocate appearing as amicus curiae has brought to our notice a compilation of constitutional provisions of the Official Languages Act, 1963, Official Language Resolution 1968 and Official Language Rules, 1976. He also invited our attention to the resolution adopted by both the Houses of Parliament on 18th January, 1968 which reads as under :--

"WHEREAS under Article 343 of the Constitution Hindi shall be the official language of the Union, and under Article 351 thereof it is the duty of the Union to promote the spread of the Hindi Language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India.

This House resolves that a more intensive and comprehensive programme shall be prepared and implemented by the Government of India for accelerating the spread and development of Hindi, and its progressive use for the various official purposes of the Union and an annual assessment report giving details of the

measures taken and the progress achieved shall be laid on the Table of both Houses of Parliament and sent to all State Governments;

2. WHEREAS the Eighth Schedule to the Constitution specifies 14 major languages of India besides Hindi, and it is necessary in the interest of the educational and cultural advancement of the country that concerted measures should be taken for the full development of these languages;

The House resolves that a programme shall be prepared and implemented by the Govt. of India, in collaboration with the State Governments for the co-ordinated development of all these languages, alongside Hindi so that they grow rapidly in richness and become effective means of communicating modern knowledge.

3. WHEREAS it is necessary for promoting the sense of unity and facilitating communication between people in different parts of the country that effective steps should be taken for implementing fully in all States the three-language formula evolved by the Government of India in consultation with the State Governments.

This House resolves that arrangements should be made in accordance with that formula for the study of a modern Indian language, preferably one of the Southern languages, apart from Hindi and English in the Hindi speaking areas and of Hindi along with the regional languages and English in the non-Hindi speaking areas.

4. AND, WHEREAS, it is necessary to ensure that the just claims and interest of people belonging to different parts of the country in regard to the public services of the Union are fully safeguarded;

This House resolves :--

(a) that compulsory knowledge of either Hindi or English shall be required at the stage of selection of candidates for recruitment to the Union services or posts except in respect of any special services or posts for which a high standard of knowledge of English alone or Hindi alone, or both as the case may be, is considered essential for the satisfactory performance of the duties of any such service or post; and

(b) that all the languages included in the Eighth Schedule to the Constitution and English shall be permitted as alternative media for the All India and Higher Central Service Examinations after ascertaining the views of the Union Public Service Commission on the future scheme of the examinations, the procedural aspects and the timing."

He submitted that in pursuance of this resolution, programmes were prepared for use of Official language. He also submitted that the official language of the Union is Hindi under Article 343 of the Constitution. He also invited our attention to Article 344 of the Constitution. It provides constitution of Committee of Parliament on official language and a formation of Commission. The Commission

was empowered to make recommendations to the President. Shri R. D. Jain submitted that in pursuance of the aforesaid provisions and recommendation of Commission, Office Memorandum No. (O. M. No. 13034/50/87-OL(C), D/-11-11-87) for arrangements to impart training in Hindi medium at the Training Centres w.e.f. 1st January, 1989 was issued. He submitted that all these notifications have a statutory force because they have been issued under the provisions of the Constitution as such the notifications deserves to be enforced and right accrued to students in the institutes of Central Government imparting training. He contend- ed that LNCPE is also an institute which is imparting training and under the control of Central Govt. The contention of the learned counsel for the respondent is that the Institute is an autonomous body and affiliated to Jeewaji University, Gwalior recently. He submitted that these circulars are not applicable to the autonomous body.

6. It is an admitted position that these institutes are under the control of the Central Government and they cannot overlook the instructions issued by the Central Government.

7. Shri Roman submitted that the students have no right to claim medium of instructions. They cannot claim that they have a right to take up the test in Hindi. Shri Roman relied upon a decision in the case of Hindi Hitrakshak Samiti and others Vs. Union of India and others, . He submitted that denial of examination in any particular language, that is, Hindi or any other regional language does not amount to denial on the ground of language and is not violative of Article 29(2) of the Constitution of India. He submitted that in view of the aforesaid judgment, writ petition for direction to hold the examination in Hindi is not maintainable. He also submitted that the matter relates to policy of imparting instructions in English and no writ lies against the respondents;

8. We have considered the rival contentions of the parties. We have to consider the scope of the notifications, Annexures P/ 2 and P/3(A), whether these notifications have any statutory force under the Constitution.

9. A question pertaining to notification by the Karnataka Government in respect of language policy came before Supreme Court for consideration where it was made compulsory to study regional language of the State. English Medium Students Parents Association challenged the act of Karnataka Gov-ernment. The case was finely adjudicated by the Supreme Court in the case of English Medium Students Parents Association Vs. State of Karnataka and others, . The Supreme Court considering the import of Article 35A held that the facilities for instruction in mother tongue at primary stage should be endeavoured of every State and by every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children. This Article was designed to implement one of the States Reorganisation Commission's important recommendations regarding safeguards for linguistic minorities in the States after reorganisation.

10. While quoting Mahatma Gandhi in paras 20 and 21 of the judgment by their Lordships as under:

"20. Mahatma Gandhi, the Father of the Nation, on more than one occasions emphasised on the mother tongue being the medium of instruction. He forcefully said :

"The baby takes its first lesson from its mother. I, therefore, regard it as a sin against the mother land to inflict upon her children a tongue other than their mother's for their mental development."

xx xx xx "I hold it be as necessary for the urban child as for the rural to have the foundation of his development laid on the solid rock of the mother tongue."

XX XX XX "Who can calculate the immeasurable loss sustained by the nation owing to thousands of its youngmen having been obliged to waste years in mastering a foreign language and its medium, of which in their daily life they have the least use and in learning which they had to neglect their own mother-tongue and their own literature."

21. All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational, process becomes artificial and tortuous. The basic knowledge can easily be garnered through the mother-tongue. The introduction of a foreign lan-guage tends to threaten to" atrophy the development of mother-tongue. When the pupil comes of age and reaches the 5th Standard level, the second language is introduced. The child who has not taken Kannada as a First language is required to take it as a second language. At the secondary stage the three-language formula is introduced. However, in cases of non-Kannada speaking students grace marks up to 15 are awarded. Certainly, it cannot be contended that a student studying in a school from Karnataka need not know the regional language. It should be the endeavour of every State to promote the regional language of that State. In fact, the Government of Karnataka has done commendably well in passing this G.O. Therefore, to contend, that the imposition of study of Kannada throws an undue burden on the students is untenable. Again to quote Mahatma Gandhi:

"The medium of instruction should be altered at once and at any cost, the provincial languages being given- their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating."

11. The above judgment also considered all earlier judgments pertaining to imposition of official language and regional language.

12. The question considering the compulsory training in official language, namely, Hindi was considered by the Hon"ble Supreme Court in case of Union of

India (UOI) and Others Vs. Murasoli Maran, . While considering the scope of Articles 343 and 344 of the Constitution of India, it was held by the Apex Court that a Commission shall be constituted for recommendation to the President as to the progressive use of the Hindi language for the official purposes of the Union and restrictions on the use of the English language for all or any of the official purposes of the Union and the language to be used for all or any of the purposes mentioned in Article 348. Article 344 provides that a Committee shall be constituted and it shall be the duty of the Committee to examine the recommendations of the Commission constituted under Article 344(1) and to report to the President their opinion thereon. Article 344(6) provides that notwithstanding anything in Article 343, the President may, after consideration of the report referred to in Clause (5), issue directions in accordance with the whole or any part of that report. Article 351 provides that it shall be the duty of the Union to promote the spread of the Hindi "language, to develop it so that it may serve as medium of expression for all the elements of the composite culture of India. In exercise of the powers conferred on the Parliament by Article 343(3) of the Constitution, the Parliament passed the Official Languages Act, 1963. This Act was amended in the year 1968 and Sub-section (4) was added to Section 3. Sub-section (4) of Section 3 amended is reproduced below:--

"Without prejudice to the provisions of Sub-section (1) or Sub-section (2) or subsection (3), the Central Government may, by rules made u/s 8, provide for the language or languages to be used for the official purpose of the Union, including the working of any Ministry, Department, Section or Office, and in making such rules, due consideration shall be given to the quick and efficient disposal of the official business and the interests of the general public and in particular, the rules so made shall ensure that persons serving in connection with the affairs of the Union and having proficiency either in Hindi or in the English language may function effectively and that they are not placed at a disadvantage on the ground that they do not have proficiency in both the languages."

13. On 7th June, 1955, the Official Language Commission was appointed by the President under Article 344(1) of the Constitution. The Commission submitted its report in which the arrangements made by Government of India for training their employees on voluntary basis in Hindi language was reviewed. The Commission was of opinion that if experience showed that no adequate results were forthcoming under such optional arrangements, necessary steps should be taken by the Government of India making it obligatory on Government servants to qualify themselves in Hindi within the requisite period, to the extent requisite for the discharge of their duties. These recommendations of the Official Language Commission were placed before a Committee of the Parliament, who decided to prescribe obligatory requirements on Government servants to qualify themselves in Hindi language. Accordingly, training in Hindi language was made obligatory by a Presidential order dated 27th April, 1960. The Supreme Court in the aforesaid judgment held that direction for making training in Hindi obligatory is not violative of any of the Articles but is in consonance with Articles 343 and 344 of

the Constitution of India.

14. Though notifications are being issued by the Government from time to time for implementation of Hindi as official language as provided under Articles 343 and 344 of the Constitution of India, some hindrance is being created by the officers for their own personal interest.

15. Part XVII of the Constitution relates to Official Language.

Article 343 provides that the official language of Union shall be Hindi in Devnagari script. This language was to be enforced within 15 years from the date of enforcement of Constitution.

Though the framers of the Constitution provided by way of interim arrangement that official language shall continue to be English for a period of 15 years; however, the period has been extended.

Though India won its independence on 15th August, 1947, yet we could not overcome the mental slavery till today, that is about 50 years of independence. It is well known that very little percentage of Indian population knows English, yet vested interest of minority of people who had advantage of being in higher post on account of knowledge of English, never wanted this Article should come into force. They have a feeling of superiority on account of the knowledge of English. It is well-known that child learns the language of his mother and understands the same. On account of imposition of language of English majority having better knowledge cannot achieve the expected result on account of their failure to express or write their views in English with the result those, who have knowledge of English, yet less intelligent had become superior to majority of students who have little or no knowledge of English. With the result the language English as imposed is doing more harm in development of intellect of the child.

The framers of the Constitution were aware of this fact, but few people's vested interest has stalled development of official language and regional languages of India. The citizens of India are still forced to face the trauma of the past period of English Dominion over India by the imposition of English upon them. The act of imposition of English gives an impression that we are still under the clutches of the British Rule.

The pious intention of the framers of the Constitution was to get rid of English; to wash away bitter memories of British Rule over India. But the officials, who have negligible percentage have a feeling that abolition of English may cause disappearance of their superficial superiority over others. On account of this mentality the notifications were not enforced by the respondents.

16. Department of Official Language in the year 1988-89 held annual programme for implementation of official language policy of the Union. The official language policy was notified on 18th January, 1968, and as per para 1 of the Resolution of Parliament in 1967, the Central Government was entrusted with the responsibility to prepare and implement a more intensive and comprehensive

programme every year for accelerating the progressive use of Hindi for the official purposes of the Union as well as its spread and development. Accordingly, Official Language Programme is prepared every year annually. In continuation of promotion of Official Language, Annexures P/2, P/3 and P/3(A) were issued by the Ministry of Home Affairs, Department of Official Language. These circulars, which have been issued for promotion of Official languages squarely fall within the ambit of Article 351 of the Constitution of India, since these circulars are under Article 351 of the Constitution of India. They have a statutory force and are binding on all concerned. The respondents cannot shirk their responsibility by not implementing these circulars. These circulars are liable to be executed and followed. The respondents are, therefore, directed to implement the circulars Annexures P/3 and P/3 (a) immediately so that none can suffer on account of bureaucratic act of the respondent institution.

17. Since no remedy can be given to the petitioners pertaining to the order of the examination, as the examinations are already held. The only writ which may be issued to the respondents is that from the next session they should impart instructions in their institute in Hindi also. The Officers cannot ignore Constitutional obligation of Union of India and its employees are bound to implement notification under Article 351 and citizens of India be allowed to forget the bitter past of British Rule over India.

18. The petition is accordingly allowed. There shall be no order as to costs.

19. Before parting with the case, we convey our gratitude to Shri J. P. Gupta and Shri R. D. Jain, Senior Advocates, for assisting the Court.