
(2002) 09 PAT CK 0104
In the Patna High Court
Case No : C.W.J.C. No. 7505 of 1998

Dr. Jayakant Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Bihar Primary School Teachers Appointment Rules — Rule 15

Citation : (2002) 4 PLJR 710

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Arbind Kumar Jha, for the Appellant; Ashok Kumar Singh, for state and Ravi Ranjan, for Union of India, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This petition has been filed as an affirmative action by one Dr. Jayakant Mishra, resident of village and Post Office Gajahara, district Madhubani. He claims that he is the President of All India Maithili Sahitya Samiti, Allahabad and has sufficient interest in the promotion and development of Maithili language, literature and script and the preservation and conservation of the culture of Mithila. He further mentions that he is filing this petition in a representative capacity for the Maithili speaking people of Bihar. He claims that Maithili is spoken in North and Central Bihar which consists of Sitamarhi, Sheohar, Madhubani, Darbhanga, Samastipur, Khagaria, Begusarai, Saharsa, Supaul, Madhepura, Araria, Vaishali (Hajipur), Munger, Bhagalpur and Banka and parts of the districts of Muzaffarpur, Motihari, Kishanganj, Katihar, Purnea, Sahebganj, Godda and Deoghar. The petition was filed in 1998 when the State of Bihar had not been split into two. Three of the districts, Deoghar, Godda and Sahebganj, at present are districts of new State of Jharkhand.

2. In the writ petition a lot has been written in the praise of Mithila, Maithili and Mithila culture. But, since the purpose of the petition is entirely different, it will not be appropriate for the Court to get involved in the qualities of the head and

the heart in a singular praise of Maithili language or culture so that by mistake odious comparison may be indulged in with other languages and ethnic cultures of the Nation.

3. Plainly, the relief sought in the petition is that it is the obligation of the State to provide for mother tongue to be taught at the primary stage provided sufficient number of children are available and their guardians desire that instruction be imparted to primary school children in Maithili. Such a claim could be made by any section of the people of India who claim a distinct language and script so that the language is preserved for the benefit of the community which lays a claim for preservation.

4. The State Government appears to be reacting in its approach to other languages of its peoples, not closely resembling Hindi or its various dialects. Part of the misunderstanding arises when those who run the Government make the mistake of misplaced chauvinism, projecting nationalism on the basis of the major language which the peoples of north India may speak with different dialects. The first basic mistake which has been taken place, in the context of the present matter, is that the Government of Bihar has misunderstood the difference between official language, national language and mother tongue-Raj Bhasha, Rashtra Bhasha and Matra Bhasha. The Hindi speaking States in their administration at times act as if the other languages of the nation are in juxtaposition to Hindi as rival. This is not so. Asserting the hegemony of Hindi and being belligerently pushing it under a misconception that it is the national language (rashtra bhasha) so ordained by the Constitution of India is the biggest misunderstanding and one solitary factor which contributes to discord with people of the nation where Hindi is not spoken. A person who does not speak Hindi is no less a nationalist than any other citizen who comes from a Hindi speaking State. That Hindi may be encouraged so that it becomes a standardised link language is another aspect. But, such an effort should not be pushed so far as to offend the sensibilities of other people of India who speak their languages and are equally proud of them.

5. Some of these languages are identified in the EIGHTH SCHEDULE of the Constitution. Eighteen languages are mentioned. These are Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu and Urdu. Do any these languages, or any one of them, have the status of Rashtra Bhasha or national language? The answer is No. The Constitution of India balances with a sense of sensitivity and equality amongst the people to give due respect to ethnic identity of the peoples, their language and their culture. The Constitution of India speaks of a composite culture of the nation. The Court will revert to this aspect later.

6. The aspect of languages is dealt with by the Constitution of India in Part XVII of the Constitution between Articles 343 and 351. Not to be ignored, in the context of languages, is the Eighth Schedule of the Constitution which as mentioned earlier refers to 18 languages. The Eighth Schedule of the

Constitution is in the context of 344 (1)-and 351. Part XVII of the Constitution of India is entitled Official Language. It comprises of four chapters. These Chapters are entitled Chapter I, Language of the Union; Chapter II, Regional Languages; Chapter III, Language of the Supreme Court, High Court, etc. and Chapter IV Special Directives. Conspicuous by its absence is the expression national language (rashtra bhasha). The Constitution of India is careful not to identify a particular language as a national language. But, the Constitution of India does speak of an official language (raj bhasha). The official language (raj bhasha) has been named as Hindi in Devnagari script and for a stipulated period. The English language has also been given a place for being used for all official purposes of the Union as the President may so provide and direct. The Constitution of India speaks of a institution of a Commission and a Committee of Parliament on official language. The Constitution of India speaks of the progressive use of Hindi as a language for use as official language and restriction in use of the English language for all or any of the official purposes of the Union. The Constitution of India also recognises languages for being used officially as are enumerated in the Eighth Schedule. This is the official part of it. The matter before the Court is not concerned with other aspects like language of the Supreme Court, High Court, etc.

7. But, this case is concerned about the special directives which need to be resorted to and the obligation of the State to provide for instruction in mother tongue at the primary stage. The Court mentions this because the matter at hand should not be looked at with any sense of rivalry or belittling one language or another.

8. This plain and simple affirmative action before the Court desires that if communities of the nation are identified as a linguistic minority group then the State is obliged to ensure the preservation of the language of the minority and this claims should not be seen in hostility.

9. The petition refers to certain directives of the State Government issued from time to time particularly since 1950 which in no uncertain terms do place on record that the State Government had taken a policy decision to arrange for Maithili to be used as a medium of instruction at the primary stage wherever people desire such facility to be available. In this regard, order of the Government of Bihar dated 22 March, 1950 needs to be noticed. It runs thus:

I have to state that the State Government have decided Maithili may be adopted as a medium of instruction at the primary stage and schools teaching through this medium may be given recognition.

10. Such similar orders continued to be issued by the Government of Bihar and these are matters of record as reflected in the order dated 16 November, 1966, (Annexure 4/1), 28 March, 1966 (Annexure 4/1 series), orders dated 13 December, 1973 (Annexure 4/2), 24 December, 1986 (Annexure 4/4), 24 July, 1975 (Annexure 4/ 5), 10 July, 1975 (Annexure 4/6). May be these orders were

not implemented and put into effect.

11. An issue is being made out of a non issue. The petition lay pending at the High Court for 4 years. The State Government did not bother to reply to it. When the hearing was taken up the State Government chose to file a counter affidavit, four years after it was filed by taking up a posture as if Maithili is to be pulled out from the curriculum of schools without receiving any State recognition. The counter affidavit has been sworn by the Secretary, Higher Education, Government of Bihar. It makes no reference to the Constitution of India and, thus, the misunderstanding or the apathy to any one else's language and culture. For instance, an unmindful statement is made in the counter affidavit which neither has head nor tail except to insult a community by saying that any reference to their language has been extracted by Government non-recognition as a dentist pulls out a tooth. This particular statement reads thus:

Under Rule 15 it has been provided that all previous Government Rules/order/Circulars shall be repealed after comment (sic) of new appointment rules. That all the circulars referred to by the Petitioner has been (sic) repealed and is (sic) not operative.

Which rule the Secretary to the Government is referring to has not been given in the counter affidavit. Before the High Court, a counter affidavit of the State is a formal document which places either the stand or the policy of the Government. At present, the Court is not on the question whether the stand or the policy is in conformity with the Constitution of India or not. The statement which has been noticed by the Court could not be explained by the State Counsel No. 3 either. He was at a loss to connect this statement with any rule. He could not explain as to from where Rule 15 had been extracted so that by one stroke of pen recognition of Maithili as a language had disappeared from Government records. The statement made in the counter affidavit appears to have been made more as a reaction to Maithili language taking the form of ethnic bias. The High Court does not expect that a Secretary to the Government will refer to a rule and not give its title. This is misleading the court. However, let the statement be considered on its face value.

12. The submission before the Court is that by Rule 15 all circulars and orders in the context of Maithili stand abrogated, recalled and repealed. Is this possible? After an adjournment was taken, State counsel placed before the Court a copy of the Bihar Gazette, Extraordinary, No. Patna 458 dated 1 October, 1991, Human Resources Development Department notification dated 30 September, 1991-9/Wa-0549/91-2055 issued under Article 309 of the Constitution of India. This copy of the notification in Hindi refers to a rule known as Bihar Primary School Teachers Appointment Rules (Bihar Prarambhik Vidyalay Niyukti Niyamawali. Clause 15 of the rule, it is stated, has been abrogated by earlier circular and orders. The plain question is what is this rule about. This rule is framed under Article 309 of the Constitution of India. Article 309 reads: "Recruitment of conditions of service of persons serving the Union or a State." It is under Part

XIV of the Constitution of India, under the heading: Services under the Union and the State. These rules are about the recruitment of primary school teachers.

13. Thus, the State of Bihar firstly attempted to conceal from the High Court an order by which Maithili as a language may have been deleted so as not to receive any recognition. Circular and orders which may recall or repeal the recognition by the State Government were not placed, but pleaded. The rules were not mentioned in the counter affidavit and have been placed before the Court when the State Counsel was required to give reference to the context of Rule 15 mentioned in paragraph 8 of the counter affidavit. Thus, a reference was torn out of its context to mislead the Court. The Court has seen the rules and it mentions nowhere that Maithili ceased to receive recognition a) the primary stage should an occasion arise to teach it at that level on a demand by the community which speaks the language. In fact, this very rule which was concealed from the Court mentions other languages for leaching on which arrangements will be made:

14. The Court is contained to observe that tearing rules out of context to mislead and prejudice the Court is misplaced loyalty to the government. This is a dangerous tendency subversive to openness, fairness in the functioning of parliamentary democracy under the Constitution of India which rests on the motto: Satyamev Jayte.

15. The Government orders which repeal and abrogate as was pleaded are intact and the statement torn out from a rule not placed before the Court and part of an entirely a different context was a very unfair defence of the State Government.

16. The Constitution of India recognises that languages of the peoples are to be preserved. The Constitution of India makes a special reference for providing facilities for instruction in mother tongue, (matribhasha) at the primary stage. The Constitution was amended in 1956 to incorporate Article 350A. This Article reads:

350A Facilities for instruction in mother-tongue at primary stage.-It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instructor in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

17. Thus, when the Constitution obliges a State to provide for instruction in the mother-tongue at the primary stage not only is it an obligation on the State but even on a local authority; for instance, a municipality. A provision for imparting instruction in the mother-tongue at the primary stage of education to the children belonging to linguistic minority groups, is an endeavour which, has to be made.

18. This friction over other peoples language is an antithesis of the sentiments of the Constitution, which respects other languages as the mother-tongues of those

who speak them. "The official language of the Union shall be Hindi...." Hindi, as *raj bhasha*, is not a rival to other language named in the Eighth Schedule and this posture should never be taken. There is a directive in the Constitution for the development of Hindi language. This directive it contained in Article 351 of the Constitution. But as it is contained in the Constitution Hindi cannot exist in isolation either. If Hindi is to be enriched then the Constitution itself says it will be by assimilating the form, style and expressions used is Hindustani and in other languages of India (specified in the Eighth Schedule). The directive which highlights the compos|y culture of India is an exercise in peace no hostility and belligerence. The exercise is or harmony and not discord. Article 351 of the Constitution reads:

351 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.

19. Other peoples cultures, languages and ethnic identities cannot disappear in (sic) air. Ideally, a citizen should know the languages of the Eight Schedules. Practically this may not be possible. But any effort which means a conflict to play up insult or demean a language of a particular community should be discouraged by the State Government. This is anti Constitution. Such an action would be an antithesis of the composite culture of the nation, a concept desired by the Constitution.

20. To sum up, Maithili is a distinct language spoken in Bihar and parts of Jharkhand. Such of those persons who claim that it is their, mother-tongue, then, in sonformity with the Government orders issued by the State Government from time to time, should an occasion arise that in a class there will be 10 children or 40 in a school, then, in accordance with the Government orders and in keeping with the spirit of the Constitution, Article 350A, a eacher has to be appointed at the primary stage to impart instruction in the mother-tongue which the children speak. The circumstance is not only of Maithili, but should (sic) community desire that arrangements be made for medium of instruction at the primary stage in the mother-tongue, given the constraints of the Constitution, the State or the local authority is obliged to make arrangements.

21. The Government orders are alive and available. The record is so certified by a writ of certiorari.

22. The petition succeeds.

R.N. Prasad, J.

23. I agree.