
(2010) 03 UK CK 0020
In the Uttarakhand High Court
Case No : Writ Petition No. 2110 of 2009

High Court of Uttarakhand

APPELLANT

Vs

State Information Commissioner and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Constitution of India, 1950 — Article 343, 345, 348, 348(2), 350
Right to Information Act, 2005 — Section 19, 19(3), 28, 4, 6
Uttar Pradesh Reorganisation Act, 2000 — Section 2

Citation : (2011) 1 RCR(Civil) 375 : (2010) 1 UD 360

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard Arvind Vashisth, Advocate for the Petitioner and Sri Vipul Sharma, Advocate for the Respondents.

2. This writ petition has been filed by the High Court of Uttarakhand at Nainital through its Registrar General praying for a writ of certiorari to quash the order dated 9.11.2009 as well as order dated 3.12.2009 by which the State Information Commission has taken notice on the appeal filed u/s 19 of the Right to Information Act before it by Respondent No. 3 and had issued notices to High Court and consequently directed the High Court to supply information sought by Respondent No. 3 in "Hindi" language.

3. The brief facts of the case are that Respondent No. 3 sought three informations from the High Court vide his application dated 4.6.2009. The first information sought was as to whether certain persons (who have been named in the application, let us say, A, B, C, D, E, F & G) have anything to do with the case No. 4774 (M/S.) of 2001 (Old No. 11980 of 1991). The second information sought was as to whether the Administrative authorities and other authorities can interfere with an order of the High Court which was passed in the year 1991 and if they do so whether it would amount to contempt, etc. The third information sought was as to how much time does a case which is pending in a

land dispute normally takes before it is decided by a High Court. This application was in Hindi and Respondent No. 3 specifically requested vide a note in the application that the entire information should be given to him in "Hindi".

4. However, there cannot be any dispute regarding the fact that the first information which was sought by Respondent No. 3, as referred above, amounts to an "information" as defined Right to Information Act, 2005 and was therefore liable to be furnished by the High Court. The Public Information Officer of the High Court supplied this information, though not directly in a clear question answer form, as the Rules framed by the High Court provide but by stating that the list of memo of parties as amended in Writ Petition (M/S.) No. 4774/2001 (Old No. 11980/1991) Smt. Rani Padma Devi and Ors. v. State of Uttar Pradesh and Ors. Writ Petition (M/S.) No. 4774/2001 (Old No. 11980/1991) is being enclosed. All the same, whether this was the correct way of supplying the information is not an issue here. The relevant issue will be discussed shortly. The second information, prima facie, could not be given by the Public Information Officer of the High Court as it was more in the nature of an opinion. Regarding information No. 3 it was said that "no time is fixed". All the same, what has to be noted here is that although the information was sought in Hindi, this information, was supplied by the Public Information Officer in "English". Consequently, Respondent No. 3 filed an appeal before the appellate authority. The main grievance of the applicant in his appeal was that the information has been given to him in "English" language though he has specifically requested that this should be given to him in "Hindi". The Registrar (Judicial) of the High Court has been nominated as the appellate authority under the Act. The appellate authority after issuing notices to the parties heard the appeal and decided it vide his order dated 25.7.2009. The appeal has been dismissed on the ground that Respondent No. 3 failed to show as to how the High Court is bound by the statute i.e. The Right to Information Act, 2005 to supply information in Hindi, even if it is specifically asked for, and since Respondent No. 3 could not show any provision under the Right to Information Act, the request of Respondent No. 3 to supply information in Hindi was held to be baseless and it was held that the appeal had no merit. Moreover, what has also clearly outweighed all other provisions of law in the mind of the appellate authority while dismissing this appeal was his clear cut view, which is reflected in his order, that the "language of the High Court is English"!, and he is not liable to supply "information", in any other language, but English.

5. Respondent No. 3 consequently filed a second appeal before the State Information Commission (from hereinafter referred to as "Commission") u/s 19(3) of the Right to Information Act. In its first order dated 12.11.2009 notices were sent to the Public Information Officer regarding filing of the appeal and consequently when no one was present on behalf of the High Court before the Information Commission on 3.12.2009, and rather an application was sent by fax by the High Court seeking another date, an order was passed by the Commission fixing another date but meanwhile it was directed that the information which was

given to Respondent No. 3 should be translated into Hindi and be supplied to Respondent No. 3. It is this order which has been challenged by the Petitioner. It may also be stated here that during the course of the pendency of this writ petition before this Court the State Information Commission vide its order dated 18.1.2010 has made its earlier orders dated 9.11.2009 and 3.12.2009 as final. The writ petition has also been suitably amended.

6. One of the contentions of the Petitioner before this Court is that u/s 15 of the Right to Information Act, the State Information Commission must consist of (a) the State Chief Information Commissioner and (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. The Petitioner contends that since the State Information Commission in Uttarakhand consists of only the State Chief Information Commissioner and there are no other State Information Commissioners, it is an improperly constituted body and therefore has no jurisdiction in the matter. This contention of the Petitioner, all the same, has no bearing now as this Court has been informed at the bar that the State Government has appointed one State Information Commissioner who is presently functioning in the State of Uttarakhand and, therefore, the State Information Commission now consists of (a) the State Chief Information Commissioner and (b) one State Information Commissioner. Therefore, this argument of the Petitioner does not stand on its legs being factually incorrect and is therefore not being considered. As such, there cannot be any challenge as far as the jurisdiction or authority of the State Information Commission, while issuing notices and taking cognizance in the matter in its purported exercise of Section 19 of the Right to Information Act is concerned.

7. Jurisdiction, or lack of jurisdiction is therefore not an issue before this Court. All the same, since the root of the matter is as to whether the High Court was right in supplying the information to Respondent No. 3 in English alone although specific request was made to supply said information in Hindi, it is necessary that this issue be decided by this Court itself, instead of directing the parties to first raise this issue before the Commission.

8. "Language" or rather "what language has to be used" is the only issue before this Court. What has to be decided by this Court is as to whether the State Public Information Officer (from hereinafter referred to as "SPIO") or the appellate authority of the High Court, as nominated under the Act were right in denying the information to the applicant in "Hindi", although specifically asked, on a reasoning that the language of the High Court is English, or for that matter on any other reasoning.

9. Before one examines the provisions relating to the "language" in the Constitution of India, as given in Part XVII of the Constitution, it would be worthwhile to first examine the scope and the ambit of the Right to Information Act itself.

10. The Right to Information Act, 2005 (from hereinafter referred to as the "Act")

is a revolutionary and a path breaking enactment, arguably the most important legislations which has come from the Parliament since the Hindu Code Bill was passed into an Act in 1950s. A Full Bench of Delhi High Court in its seminal judgment in Secretary General, Supreme Court of India v. Subhash Chandra Agarwal in 2010(1) RCR 764: 2010(1) S.C.T. 545: LPA No. 501 of 2009 has held that the Right to Information Act is "the most significant event in the life of Indian democracy."

11. The preamble to the Act states that it has been enacted to set out "the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, ..". Under the Act a public authority is bound to furnish an "information" which is being sought from it, unless such an information is exempted u/s 8 of the Act (which is not a present case here). The High Court being a public authority is therefore liable to furnish information once it is sought, unless it is exempted by the Act itself.

12. The word "information" has been defined in Section 2(f) of the Act which reads as under. -

2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

13. The word "record" has been defined in Section 2(i) of the Act which reads as follows:

2(i) "record" includes -

- (i) any document, manuscript and file
- (ii) any microfilm, microfiche and facsimile copy of a document
- (iii) any reproduction of image or images embodied in such microfilm [whether enlarged or not
- (iv) any other material produced by a computer or any other device

14. Section 2(j) defines the word "right to information". Section 2(j) reads as under:

2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to -

- [i] inspection of work, documents, records
- [ii] taking notes, extracts, or certified copies of documents or records

[iii] taking certified samples of material

[iv] obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device

15. It is a common misconception that the Right to Information Act is there only to furnish information from Public Authorities, and the Act is designed providing mechanism as to how the information would be given and the consequence or the failure on part of the public authorities while failing to furnish information. All the same, this is not all what the Act provides. Section 4 of the Act prescribes the positive obligations on a Public Authority. There is a whole catalogue of information which a Public Authority must furnish under Clause (1) to Section 4, inter alia on the net and publish it in a manner so that it is widely and easily known to public. Clause (2), (3) and (4) of Section 4, which are also relevant, are being reproduced here:

4. Obligations of public authorities. -

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of Clause (b) of Sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purpose of Sub-section (1), every information shall be disseminate widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation. - For the purposes of Sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

16. Sub-section (3) to Section 4 states that for the Purpose of Sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public. Sub-Section 4 to Section 4 further says that this information has to be given considering, inter alia, the "local language" and the most effective method of communication in that local area and the information should be easily accessible.

17. There is no dispute regarding the fact that the official language of the State

of Uttarakhand is Hindi and the local language which is most widely understood in Uttarakhand is also Hindi. The word "disseminated" has been defined in the explanation to Section 4 which would mean "making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority". Therefore, the intention of the Legislature was clear, which was that the information must be supplied to a citizen in the language which is easily understood by him.

18. In the present case Respondent No. 3 had specifically asked that he should be supplied information in "Hindi".

19. u/s 2(e) word "competent authority" has been defined which also includes the Chief Justice of the High Court and the competent authority has been empowered to make rules u/s 28 of the Act, which reads as under:

28. Power to make rules by competent authority. -

(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(i) the cost of the medium or print cost price of the materials to be disseminated under Sub-section [4] of Section 4

(ii) the fee payable under Sub-section [1] of Section 6

(iii) the fee payable under Sub-section [1] of Section 7

(iv) any other matter which is required to be, or may be, prescribed.

20. These rules have since been framed in the High Court of Uttarakhand which are known as the Uttarakhand High Court Right to Information Rules, 2009. These rules have also been perused by this Court. The Rules nowhere state that the information will be given in English only. In fact, the rules are silent as to the language in which the information has to be given.

21. However, a bare perusal of Section 4 of the Right to Information Act, namely, Sub-Sections 3 and 4 to Section 4 clearly shows that as far as possible the information must be given in the local language. Logically therefore where a specific request has been made to supply such an information in the local language, then it would be even more necessary to supply such information in that local language. This would be in the true letter and spirit of Sub-Sections 3 and 4 to Section 4 of the Act. Therefore, the authorities of the High Court were clearly wrong, firstly in supplying the information in English and thereafter in insisting not to supply the information in Hindi. The writ petition must fail on this limited question of the Right to Information Act itself.

22. However, there is much more to the issue than a mere interpretation of the

Right to Information Act. The question is as to whether inspite of the fact that Hindi is the official language of the State, information cannot be given to the applicant under the Right to Information Act in Hindi. The High Court, more particularly, the appellate authority of the High Court has heavily relied upon Article 348 of the Constitution of India, which inter alia states that the Court proceedings in the High Court shall be in English. It is this provision of the Constitution of India which clearly outweighed all other provisions of law, in the mind of appellate authority while rejecting the appeal on the grounds that the information shall not be given in Hindi because the language of the High Court is English!

23. It is a considered view of this Court that the appellate authority has clearly misunderstood the relevant provision of the Constitution. First and foremost, in exercising its powers as a public information officer of the High Court, a Public Information Officer is not "High Court" for the purposes of Article 348 of the Constitution of India. He is exercising only administrative powers and under no stretch of imagination can he be called even a "court" or a quasi-judicial authority. The case of an appellate authority may be only slightly different as it may have certain trappings of a quasi-judicial authority. However, even here the proceedings before him cannot be termed as a proceeding before a High Court in order to get protection Article 348 of the Constitution of India.

24. Article 348[1][a] of the Constitution of India states that all proceedings in the Supreme Court and in every High Court shall be in the English language. Now, a "Proceeding" has both a "narrow" as well as "wide" meaning. A narrow meaning of the word "proceeding" would be a proceeding in the High Court where it would include the arguments being made by the counsel in English, pleadings being filed in English language, notings of the Court Officers in English language and finally the judgment and decree being made in English. This would be a narrow interpretation of word "proceeding". A wider interpretation may also include apart from the above actual proceedings in a court room, other works as well, such as the applications being made in the Registry, and the basic work which is being done by the para legals, the gamut of work performed in the Registry, which is also related to court work. Even if this wide interpretation is adhered to at the moment, supplying of information under the Right to Information Act, will not be called a part of "court proceedings" and since it is not a part of court proceedings, the Public Information Officer as well as the appellate authority are not saved by the aforesaid provision of the Constitution of India. It would not only be a clear misreading of Article 348 of the Constitution of India but it would be against the letter and spirit of the Right to Information Act as well.

25. The concerned officers of the High Court, on the contrary were bound to supply the information in Hindi for the reasons that Hindi is firstly the official language of the Union, as Article 343 clearly states the official language of the Union shall be Hindi in Devanagari script. Hindi also happens to be the official

language of the State of Uttarakhand. Under Article 345 the official language of a State has to be declared by a notification. In the undivided State of Uttar Pradesh as well as in the present State of Uttar Pradesh the official language of the State is Hindi by an Act known as Official Language Act, 1951. Since these notifications have been adopted by the State of Uttarakhand, Hindi is also the official language of the State of Uttarakhand. Although the State Counsel has not been able to show specifically as to whether there was any separate notification by the State of Uttarakhand under Article 345 of the Constitution of India after its creation, yet it is not an issue before this Court inasmuch as the learned Additional Chief Standing Counsel Sri K.P. Upadhyay has stated that Hindi is the official language of the State of Uttarakhand. Now, since Hindi is the official language of Uttarakhand there is no reason for the public authorities to deny this information to a citizen in a language which happens to be the official language of the State.

26. A reference to Article 348 of the Constitution of India, in context to the State of Uttarakhand must also be necessary. Article 348 declares that, inter alia, all proceedings in a High Court shall be in English language, yet Clause (2) empowers the Government of the State with previous approval of the President, to authorise the use of Hindi or any other language used in the State to be used in a proceeding in that High Court. In the erstwhile State of U.P. Clause (2) of Article 348 was invoked and the Government had issued a notification authorising the use of Hindi in the High Court. Consequently a writ petition was filed in Hindi in "Devnagari" script before the High Court and the question arose as to the validity and propriety of the same. This issue was decided by a seminal judgment of Allahabad High Court in the case of Prabhandhak Samiti and Another Vs. Zila Vidyalaya Nirikshak, Allahabad and Others, , where the Court ultimately held what language has to be used in a High Court will not be determined by the provisions of Article 345 but can only be decided on the basis of the ambit and scope of Article 348. The language of Article 348 being very clear that until Parliament by law otherwise provides, inter alia, all proceedings in a High Court shall be in English language. However, the validity of the notification under Article 348(2) authorizes the use of Hindi and the subsequent filing of writ petition in Hindi was also upheld. In fact as the law now stands if a Judge so desires he can also write his judgment in Hindi, although he would have to supply an authorised English translation of it. Since Uttarakhand has been carved out of the erstwhile State of U.P. and Hindi still continues to be the official language of the new State, by the same principles the status of "Hindi" shall remain the same as it was in U.P.

27. Moreover, the laws as it existed in the erstwhile State of U.P. prior to the appointed date i.e. November, 9, 2000, shall continue to operate in Uttarakhand unless so notified or amended and therefore this position has also not changed. The definition of law in Section 2(f) of the Uttar Pradesh Reorganisation Act, 2000 includes an order or notification as it existed prior to the creation of the State of Uttarakhand on 9.11.2000. Therefore the position of English language in

a proceeding in Uttarakhand High Court would remain the same as it was in the erstwhile State of U.P.

28. The necessity of a reference to this aspect in the present case was felt as it must be clearly understood that the use of English language even in a proceeding in a High Court, as far as it relates to Uttarakhand, is not so rigid as it is perhaps being understood. In another important decision of Allahabad High Court in *Balraj Misra and Anr. v. Hon"ble Chief Justice of High Court, Allahabad and Ors.*

29. Moreover Article 350 of the Constitution of India contains a direction that a person is entitled to submit a representation for redressal of his grievance to any officer or authority of the Union or the State in any of the languages used in the Union or the State. Article 350 reads as under:

350 Language to be used in representations for redress of grievances. - Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

30. The request for information before Public Information Officer under the Act, is also in the nature of a representation whereby a person is seeking information from a public authority and the Constitutional direction is that a person is entitled to seek such a direction in the language used in that State. On this score as well, once the request was made to supply the information in Hindi, the same was liable to be complied with.

31. Apart from this, Article 351 of the Constitution of India is in the nature of a Direction to the Union of India to promote and spread 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. Article 351 of the Constitution reads as follows:

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 expressions 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.

32. Therefore, both the information officer of the High Court as well as the appellate authority of the High Court who have exercised their powers under the Right to Information Act have clearly misread, both the provisions of the Right to Information Act as well as the provisions of the Constitution of India in their true letter and spirit and are wrong in denying the information to Respondent No. 3 in Hindi, though specifically asked for.

33. Writ petition, therefore, is liable to be dismissed. The order passed by the

Information Commission dated 9.11.2009 and 3.12.2009 are upheld. The public information officer of the High Court is hereby directed to supply all the information sought by Respondent No. 3 in Hindi.

34. It is, however, made clear that in case Respondent No. 3 also seeks any "record" in the matter they will be supplied only in language they are available or "held" by the High Court. In other words, if the record itself is in English, the same need not be translated in Hindi. Only the "question answer form", and the reply given by the Public Information Officer have to be in Hindi, when asked for.

35. This aspect needs clarification. It is true that the proceedings in a High Court are in English language. Therefore by and large "records" are in English. Yet is the public information officer also bound to supply the "record" in "Hindi", even when it is specifically requisitioned though originally the records are in English. The answer to this would be in negative. This is not the intent or the mandate of the Act. This is for two reasons. Firstly, the definition of "right to information" itself states that a citizen has access to information which is "held" by or under the control of any public authority. Obviously since the "information" in the form of a record is "held" by the public authority in English, it has to be supplied in that language. Secondly, even Section 4(4) of the Act, which has been referred above, states that the obligation of the Public Authority is to "disseminate" "information" in local language but with considerations of "local language" as well as "cost effectiveness" alongwith other consideration. The cost of translation of all record in "Hindi" would be immense and would be practically not possible. As such the records can only be given as they exist. The public authority i.e. High Court in the present case, is not obliged to translate records into Hindi, and furnish them even when requisition is so made.

36. It has also been pointed out by the learned Counsel for the High Court Sri Arvind Vashisth that in its order dated 26.9.2009, the Information Commission has directed that the public information officer as well as the appellate authority of the High Court should be personally present before the Information Commission on the date of hearing. Order dated 26.9.2009 has been perused which has been annexed as Annexure No. 7 to the writ petition.

37. A perusal of the order dated 26.9.2009 shows that the notices have been sent to both the public information officer as well as the appellate authority to be present before the Information Commission with the entire records of the case. Learned Counsel for the High Court Sri Arvind Vashisth states that the present appellate authority of the High Court is a judicial officer of the rank of Additional District Judge and it is also possible that in a given situation, the public information officer of the High Court may also be a judicial officer. The order of the Information Commission directing these judicial officers to be present before the Commission in person with out there being any plausible explanation for the same is not proper. This Court finds force in the contention of the Petitioner. Since the aforesaid controversy has, however, been set at rest in the terms and conditions stated in the order and since there is no further justification for the

public information officer and the appellate authority to be present before the Information Commission, to that extent it is directed that they need not be present in person before the Information Commission as the controversy in the present case has already stand resolved and the High Court has been directed to furnish the information in "Hindi", subject to the exceptions which have been stated in the aforesaid order. However, in the interest of justice, it is directed that unless and until a situation so warrants, that is to say where the personal presence of judicial officers so nominated under the Act as the public information officer or the appellate authority, as the case might be is required for his statement or his personal examination they shall not be summoned in a routine manner. As already noted, there can always be just exceptions.

38. Subject to the aforesaid observations, the writ petition stands dismissed as already stated above. No order as to costs.