

(1953) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 304 of 1953

L.M. Wakhare

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 29-12-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 137
Constitution of India, 1950 — Article 14, 19(1), 226, 227, 245
Criminal Procedure Code, 1898 (CrPC) — Section 558
Madhya Pradesh Official Language Act, 1957 — Section 3(2)

Citation : AIR 1959 MP 208 : (1959) 4 MPLJ 478

Hon'ble Judges : B.P. Sinha, C.J;G.P. Bhutt, J

Bench : Division Bench

Advocate : B.R. Mandlekar and R.V.S. Mani, for the Appellant; T.P. Naik, Addl. Govt. Pleader, for the Respondent

Judgement

This petition under Article 226 of the Constitution calls in question the validity of the Notification No. 587-1305-XXVII, dated 13-8-1953, which has been issued by the Madhya Pradesh Government prescribing the languages to be used within the State for official purposes.

Article 345 of the Constitution empowers the Legislature of a State to adopt any one or more of the languages in use in that State or Hindi as the language or languages to be used for all or any of the official purposes of that State. Under the proviso to this article, it is directed that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution. This Article is subject to Articles 346 and 347 of the Constitution which, however, are not pertinent to the present case.

The Madhya Pradesh Official Language Act, 1950 (XXIV of 1930), was passed by the State Legislature by virtue of the powers vested in it under Article 345 of the

Constitution. It received the assent of the Governor on 27--10-1950 and came into force with effect from the date of its publication, namely 3-11-1950. Section 3 of the Act is reproduced below:

"3 (1). Subject as hereinafter provided, Hindi and Marathi shall be the official languages of the State for all purposes.

(2). The State Government may, by notification, direct that in any specified area and with effect from any specified date Hindi or Marathi or both shall be used in respect of such official purposes as may be specified in the notification."

The notification which is challenged was issued by the State Government under Sub-section (2) of Section 3 of the Act and also u/s 558 of the Code of Criminal Procedure, 1898, and Section 137(2) of the Code of Civil Procedure, 1908, which are reproduced below:

"553. The State Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than any High Court for a Part A State."

"137(2). The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written."

Besides challenging the validity of the notification, the vires of Section 3 of the Madhya Pradesh Official Languages Act is also impugned in these proceedings. It is contended that the said section offends against Article 345 itself under which it has been enacted and is repugnant to Articles 19(1)(a) and 850 of the Constitution. As regards the notification, it is contended that it is hit by the doctrine *delegata potestas non potest delegare* i.e., a delegated power cannot be delegated and offends against the equality before the law guaranteed under Article 14. It is also contended that since it trenches on items 2 and 13 of the concurrent list, it is invalid to the extent that it is repugnant to the provisions of the Codes of Criminal and Civil Procedure.

The petition, which is made by an advocate, is mainly directed against the use of Hindi and Marathi as the official languages of the Courts functioning within the State. It is urged that the sudden and enforced introduction of the regional languages in Court work has created tremendous difficulties in the way of litigants in the conduct of cases. It is mainly to remove this grievance that the petition has been made.

Sub-section (3), Section 137, of the Code of Civil Procedure, permits the use of English by a party in any matter which the Code requires or allows him to do in writing, subject to his giving to the opposite party, unacquainted with English, a translation in the language of the Court, if he so desires. This is the only matter in which a party has a choice.

Rule 8(b) of the Rules and Orders (Civil) gives discretion to the presiding Judge

to permit any advocate or pleader to address the Court in English, when the opposite party is represented by counsel or is acquainted with that language and consents to this being done. This, however, gives no right to a party in the matter. As regards the recording of evidence, Order 18, Rule 5 of the Code directs it to be done in the language of the Court.

Rule 9 *ibid* permits the use of English in this connection if all the parties to the suit appearing in person and their pleaders do not raise any objection. In this regard, Section 138 of the Code empowers the High Court to direct with respect to any specified Judge to record evidence in appealable cases in the English language. However, none of these provisions create any right in any party to a litigation to insist that the evidence should be recorded in English.

As regards judgments and orders, the matter is covered by Section 137(3) of the Code and is in the discretion of the Court. In this connection Chapter 9 of the Rules and Orders (Civil), when it directs the use of English equivalents for vernacular expressions in judgments, only covers a case where the presiding Judge, in his discretion, writes a judgment in English and does not create any right in a party to get the judgment written in that language.

As regards the Code of Criminal Procedure, Section 265 (1) requires the records in non-appealable cases and judgments in appealable cases tried summarily, to be written either in English or in the language of the Court. This discretion, however, vests in the presiding Officer and not in any party, In trials before the Sessions Judge or Magistrates (other than Presidency Magistrates) under Chapter XII (Disputes as to Immovable Property) or Chapter XVIII (Inquiry into Cases triable by the Court of Session or High Court), Section 356 requires the evidence to be recorded in the language of the Court.

It is only the State Government that may, under the proviso to Section 357, direct the Sessions Judge or Magistrates to record the evidence in English in such cases. It is in pursuance of this power that Rule 180 of the Rules and Orders (Criminal) has been framed by the State Government. This again does not give any right to a party to get the evidence recorded in English,

In the matter of judgments, Sections 367, 371 and 372 of the Code permit the use either of English or the language of the Court at the discretion of the presiding Officer. Even so the accused has been given the right to be supplied with a translation of the judgment in his own language, if practicable, or in the language of the Court.

In this connection, Chapter 9 of the Rules and Orders (Criminal) is analogous to corresponding Chapter of the Rules and Orders (Civil) and is intended to cater to a case where the presiding Officer elects to write the judgment in English. Under the Code of Criminal Procedure, therefore, no party has the right to use the English language for Court Work.

The impugned notification, so far as is relevant for the instant case, is

reproduced below:

"(1) Subject to the provisions of Clause (2) of this Notification, Hindi or Marathi or any of them shall, with effect from the 1st day of September 1953, be used throughout Madhya Pradesh in respect of all official purposes of the State except in respect of matters specified in Schedule I below.

(2) With effect from the 1st of September 1953, Hindi and Marathi shall be the languages of all Criminal and Civil Courts in Madhya Pradesh:

Provided that --

- (a) the recording of charge against an accused;
- (b) the charge to the jury;
- (c) depositions of medical and other expert witnesses; and
- (d) judgments and orders; may be in English.

(3) * * * * *

SCHEDULE I

I. All correspondence with the Central Government or any of their departments and any other State with which there is no agreement under Article 346 of the Constitution.

(2) All proceedings in the High Court and the Board of Revenue.

Accounts, all matters pertaining thereto and all matters of correspondence with the Accountant-General.

Work in treasuries and Sub-treasuries.

Such matters of statistical data or technical matter as the State Government may by order specify from time to time.

Medical prescriptions, post-mortem reports, reports in medico-legal cases and any other technical matter in the Medical department as the State Government may, by order, specify from time to time."

It will be observed that the notification does not in term reserve the right which is given to a party u/s 137(3) of the Code of Civil Procedure. This is the only matter that can be complained of by the petitioner who has no right under the existing law in other matters covered by the notification. The Additional Government Pleader who appeared for the State of Madhya Pradesh, respondent No. 1, however, made it clear that Government never intended to affect by the notification the scope and authority of Section 137(3) of the Code of Civil Procedure. In all other matters where a party to a litigation has no right to question the language used by the Court, he has obviously no locus standi to maintain a petition under Article 226 of the Constitution.

It is not, therefore, necessary to consider whether the notification has virtually legislated on matters covered by items 2 and 13 of the concurrent list and is, therefore, void under Article 254 to the extent that it is repugnant to the existing provisions of the Code of Civil and Criminal Procedure and the rules and orders framed thereunder. It may, however, be mentioned that proviso (i) to Rule 180 of the Rules and Orders (Criminal) which directs the recording of evidence in English in trials of cases covered by Section 356 of the Code of Criminal Procedure, is not consistent with the terms of the notification which may require amendment.

This should suffice for the purpose of the present petition but we may consider whether Section 3 of the Madhya Pradesh Official languages Act is ultra vires the Constitution and the notification is void on account of the doctrine delegata potestas non potest delegare or Article 14 of the Constitution. As regards Section 3 of the Act, it was contended that it offends against Articles 345, 350, 14 and 19(1)(c) of the Constitution. We shall consider these contentions separately.

Article 345: This Article empowers the Legislature of a State to adopt by law any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State. It was contended that since Hindi is raised under Articles 343, 344 and 351 to the status of the national language of the country, it is taken out of the category of regional languages contemplated by Article 345.

In this view, it was urged that the State Legislature can either adopt Hindi or alternatively one or more of the regional languages, and cannot combine Hindi with a regional language, as has been done by Section 3 of the Madhya Pradesh Official languages Act. This argument, in our opinion, is not sound. What Articles 343 and 344 prescribe is the official language of the Union, which is not the same thing as the national language of the country.

It is Article 351 which contemplates the development of the Hindi language so that it may serve as a medium of expression for all the elements of the component culture of India, i.e., as the national language of the country. This language, when developed, will, however, bear no analogy with the Hindi language to be used for official purposes, which, by the way, finds a place among the regional languages specified in the Eighth Schedule of the Constitution and cannot, therefore, be deemed to be taken out of the category of the regional languages contemplated by Article 345.

Article 345, as worded, is intended also to cover cases of those States where Hindi may not be one of the languages in use. This, however, does not mean that Hindi has to be distinguished from regional languages in those States where it is itself in use in the State. In this view, the State Legislature of Madhya Pradesh was entitled to adopt both Hindi and Marathi as the official languages since both of them are in use in the State.

Article 350. This Article entitles every person to submit a representation for the

redress of any grievance to any officer or authority of the Union or of a State in any of the languages used in the Union or in the State, as the case may be. The languages contemplated by this Article have obvious reference to the languages specified in the Eighth Schedule of the Constitution which does not contain the English language. No person can, therefore, claim to make a representation in English by virtue of this Article.

Moreover, the expression "any officer or authority" is not intended to cover Courts of law since the Constitution has used the word "Courts" when it intended to refer to Courts of law. (See for instance Article 227). This Article, therefore, does not deal with such legal matters as are covered by Section 3 of the Madhya Pradesh Official Languages Act, and consequently there is no repugnancy between the two provisions.

Article 19(IXa): This Article guarantees to every citizen the right to freedom of speech and expression. The substantive part of the Article is obviously the expression of one's own thoughts and the use of a language for this purpose is only an incidental matter. This Article, therefore, is not intended to cover the question of official languages which is separately dealt with under Part XVII of the Constitution from Article 343 onwards. It cannot, therefore, be contended that Section 3 of the Madhya Pradesh Official Languages Act offends against the spirit or letter of Article 19(1)(a).

This brings us to the question of the validity of the notification. It was contended in this connection that since the State Legislatures in enacting laws only exercise the power which is delegated to them by the Constitution, Sub-section (2), Section 3, of the Madhya Pradesh Official Languages Act, which in effect, delegates the legislative function to the State Government is ultra vires.

Reliance was placed in this connection on AIR 1949 175 (Federal Court) This case has been fully considered by the Full Bench of this Court in *Laxmibai v. The State* ILR (1951) Nag 563: (AIR 1951 Nag 94) in which Hidayatullah J., delivering the judgment of the majority, has adverted at length to the legislative powers of the Parliament in the United Kingdom, the American Legislatures, and the Legislatures of the Dominions as well as or India under the Government of India Act, 1935.

It is not necessary to decide in these proceedings what position the Legislatures in India have since the enactment of the Constitution. Even applying the analogy of the American Legislatures whose supremacy is curtailed by the Constitution, it is clear that what has been delegated to the State Government in the instant case is not any legislative function. The Act itself lays down the policy of the law and prescribes the limits for the use of Hindi and Marathi as the official languages of the State.

Sub-section (2) of Section 3 only gives administrative power to the State Government to achieve the object of the Act according to the circumstances prevailing in the State. This was not the case in 1949 FCR 595: AIR 1949 175

(Federal Court) That such power can be conferred by the Legislature to an outside agency is clear from the following observations in *Panama Refining Co. v. Ryan* (1935) 293 U. S. 388.

"Since legislation most often be adopted to complex conditions involving a host of details with which the legislature cannot deal directly the constitutional inhibition against delegating legislative authority does not deny to the legislature the necessary resources of flexibility and practicability enabling it to lay down policies and establish standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature shall apply. Without this power, legislature would often be faced with the anomaly of possessing a power over a given subject, but being unable to exercise it."

These observations are cited with approval in ILR (1951) Nag 563 at p. 583: (AIR 1951 Nag 94 at p. 100) (*supra*) by Hidayatullah J., and the principle laid down therein is also accepted by Mudholkar J. on p. 637 of the report (ILR Nag): (at p. 120 of AIR).

In *Sheoshankar v. The State* ILR (1951) Nag 646 : (AIR 1951 Nag 58) (FB) the question arose as to the validity of Section 29(2) of the C. P. and Berar Prohibition Act, 1938, which is reproduced below:

"The Provincial Government may, by notification, either wholly or partially and subject to such conditions as it may think fit to impose, exempt any person or class of persons from all or any of the provisions of this Act, or of all or any of the rules made under this Act either throughout the province or in any specified area, or for any specified period or occasion."

Clause (a) of Section 32 of the Act empowers the Provincial Government to make rules authorising the Prohibition Commissioner or any Officer empowered by him to grant permits for the issue of licenses. It was contended that these provisions were in derogation of the inhibition against delegating legislative authority to an outside agency. Repelling this argument Mangalmurti and Mudholkar JJ., delivering the judgment of the majority, observed as below:

"Another contention of the learned counsel is that Section 29(2) and Clause (a) of Section 32 amount to delegation of legislative power. We do not think that the power delegated by these provisions is a legislative power. This is merely a power to determine the circumstances in which the law shall be applied or to what areas its operation shall be extended or the particular class of persons to whom it shall be applied. This is what has been held by the Privy Council in a long line of cases right from the *Queen v. Burah* (1878) 3 AC 889 : LR 5 I A 178 to AIR 1945 48 (Privy Council) These cases and *Baxter v. Ah Way* (1909) 8 CLR 626, to which we have already referred, directly support our view. In the last mentioned case, the power conferred upon the Governor-General in Council to declare by proclamation what goods shall be prohibited from import was challenged on the ground that it amounted to delegation of legislative power. The

quotation we have already given from the judgment of O'Connor J. contains the reason upon which the delegation so made was held not to be that of a legislative power at all and so valid."

It will thus appear that the contention urged against the validity of the notification is not well-founded.

It was further contended that the notification offends against Article 14 of the Constitution, inasmuch as it makes a distinction between the High Court and the Board of Revenue on the one hand and the inferior Courts on the other, between the medical and expert witnesses and other witnesses and between one language and another as the official languages of the Courts. Reliance was placed, in this connection, on *Syed Qasim Razvi Vs. The State of Hyderabad and Others*,

In that case their Lordships of the Supreme Court were considering the validity of the Hyderabad Special Tribunal Regulation (V of 1358 F) under which a Special Tribunal was set up by the Military Governor for the trial of the accused. The Regulation authorised the Tribunal to conduct the proceedings in English, whereas, in practice, Urdu is used before the ordinary courts in Hyderabad Bose J. considered this question in these terms:

"The most glaring instance of this lies in that fact that the proceedings were conducted in the English language whereas Urdu is the language of the Courts in Hyderabad, at any rate in practice. One of the appellants knows English but at least one does not and a third has only a smattering knowledge of it. That of course would not have mattered much had the Court language in that area been English, for in that event there would have been no discrimination. It would only have been one of the accidents of fortune which befall many an accused who is tried in an area where the Court language is one which he does not understand. But when the de facto language of the Courts is his own mother tongue and all other Urdu knowing persons in that area are tried in the language which they and he understand and he alone is discriminated against by being sent for trial to a Court whose proceedings are conducted in a language which he does not know, or, at best, understands but imperfectly, the matter assumes a very different hue."

The above view was not shared by the majority of the Judges composing the Bench, who were of the opinion that the provision of the Regulation did not violate the equal protection clause in the Constitution. However, even Bose J. held that the Regulation would not have mattered had the Court language been English. This makes all the difference.

In the State of Madhya Pradesh English was never adopted as the Court language, and was only permitted to be used in certain circumstances. Its exclusion from the Court work cannot, therefore, be objected to in matters in which the litigants had no right to use it. As regards other distinctions complained of, they do not affect any legal rights and cannot, therefore, be

deemed to be a discrimination as contemplated by Article 14 of the Constitution.

Although the notification does not in terms refer to the reservation of the rights of the parties to a litigation u/s 137(3) of the Code of Civil Procedure, it is not necessary, as was contended by the learned counsel for the petitioner, to quash the entire notification. It is sufficient to direct that this notification will not be used so as to affect the rights under the provisions of Section 137(3) of the Code. Subject to this direction the petition is rejected. In the circumstances of the case, however, there will be no order as to costs. The petitioner shall be entitled to refund of the outstanding amount of the security.