

(1987) 04 MAD CK 0009
In the Madras High Court

M.N. Ravichandran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

Citation : (1988) 1 MLJ 97

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—This writ petition has been preferred as a public cause litigation. The petitioner in his affidavit states that he is a citizen of

India by birth. He knows only English and Tamil and no other language. He is an Advocate by profession practising in the High Court of Madras.

As, a responsible citizen of the country and to discharge his fundamental duty enshrined in Article 51-A of the Constitution, he is filing this writ

petition for a declaration that the Official Languages Act of 1963 is unconstitutional to the extent it authorises the use of regional Hindi as found in

Schedule VII as one of the Official languages by its vague definition of Hindi u/s 3 instead of authorising the Hindi of All India character as per the

requirement of Article 351 of the Constitution for the purpose of official use of the right type of Hindi as mentioned in Article 343(1) of the

Constitution. The Constitution of India has given a special directive under Article 351 as to how to develop, promote and spread Hindi so as to

serve as a common medium of expression for all the elements of the composite culture of India. In spite of this special directive, Hindi language had

not been developed by assimilation of different languages; nor was it developed by drawing words from other languages. According to the

petitioner, today's Hindi used by the Union of India is called "Kariboli" Hindi. It is this dialect which was arbitrarily chosen by the Union of Hindi

among other forms of dialects that are written in Devanagiri script.

2. It is this kind of regional Hindi's development and progress that was made the subject of scrutiny by the Official Language Commission that was

appointed on 7.6.1955. It is a pity that not even a work was mentioned in the terms of reference to the Commission to find out to what extent or

degree, the regional character of Hindi had taken place before ever it was found suitable for its use at, All India level as per the guidelines laid

down in Article 351 of the Constitution.

3. Article 343(3) empowers the Parliament, by law, to continue the use of English language alone for all the official uses as it was used before and

after the commencement of the Constitution during the first 15 year time-limit. English continues even after the expiry of 15 years. Therefore, it is

submitted that the introduction of continued bilingualism of undeveloped Hindi language of regional character and the continued use of English

language beyond the Constitution time - limit of 15 years linguistic change over by the enactment of the Official Languages Act of 1963 with a

vague definition of Hindi in Section 3(b) of the Act is unconstitutional.

4. The passing of the Official Languages Act of 1963 was for the purpose of replacing English. The word "may" used with reference to the

continuous use of English u/s 3 also give ample discretion to the Union of India whether to use English for all the purposes of the official use or the

Union or not in addition to Hindi on a future date. This has resulted in a great feeling of uncertainty and insecurity among the non-Hindi speaking

people.

5. The petitioner in his affidavit would aver that the enforcement of the Official Languages Act would be a real threat to National unity. After

averring so, he traces the history of socio-political condition in the context of the Indian Constitution. Ultimately in Article 343(1) it came to be laid

down that the official language of Union shall be Hindi in Devanagiri script. The word "shall" thereon, on a proper interpretation, would mean that it

is used in a directory sense. The framers of the Constitution had made a provision under Article 343(3) in tune with its main policy of mono-

linguism for official language to provide for a law to be made for the continuous

use of English notwithstanding anything contained in Article 343

only to meet a situation if Hindi is not fully developed as envisaged in Article 351. This only shows that they had their own serious doubt whether

an All India Hindi could be evolved within 15 years period. In so far as even after the 15 year period the continuous use of English was

contemplated, the framers of the Constitution empowered the Parliament to make laws to continue the use of English alone to serve the people of

India for ever. If the intention was to adopt official mono-linguistic policy, the enactment of Official Languages Act of 1963 introducing bilingualism

of Hindi along with English will be unconstitutional. It is on these averments, challenge to the Official Languages Act is made and the grounds of

attack against the Act as unconstitutional *Inter Alia*, are as follows:

(i) First of all, in the absence of an all India Hindi as per Article 351 by authorising English as an Associate Language along with undeveloped

regional Hindi of VIII Schedule it had facilitated as far as possible Hindi-speaking people to learn their mother-tongue Hindi alone, for all

progressive activities in life at All India level whereas in view of the uncertainty resulted by the Act with its ultimate object of elimination of

continuous use of English by providing such facilities in the Act itself, had burdened non-Hindi speaking people to acquire forcefully the knowledge

of both the languages, in the first place the knowledge of English for their very survival in the open competition at all India level temporarily till Hindi

replaces English and then in the second place the knowledge of Hindi for its permanent use in the future. In view of the word "may" used in Section

3(1) and Sub-section 3(5) read with Sections 5, 6, 7 and 8 of the amended Act, it will be clear that English will not remain for ever. This will

clearly constitute discrimination.

(ii) The above Act by facilitating to introduce the undeveloped Hindi as the main language along with English under the guise of retention of English

to help the rest of non-Hindi speaking people who belong to different racial groups and places of birth in different non-Hindi speaking areas, the

Act had violated Article 15(1) which guarantees no discrimination against any citizens on grounds only of place of birth and race.

(iii) The Act violates Article 16(1) and (2) which guarantees no discrimination for all citizens in matters relating to employment or appointment to

any office under the State.

(iv) By the introduction of regional Hindi of Kariboli at the Union Official level along with English, the above Act had shattered the freedom of all

Indians to reside and settle in any part of the territory of India. As a result of the introduction of this Act most of the Hindi speaking people have

been given the impression that as English is going to be eliminated in course of time, there is no need for them to study that language and as a result

of that most of the Hindi-speaking people have not preferred to study English and the standard of English also had gone down considerably.

(v) It had also hampered the opportunities of enjoying the freedom of practising any profession or carrying on occupation, trade or business by all

the citizen of India.

(vi) The above said Act has deliberately violated the above said fundamental rights guaranteed under Article 29(1) by the introduction of the

undeveloped Hindi language of the regional character as the Official Language of India with an ultimate object of eliminating English. In reality it is

not a battle between English and Hindi, but between Hindi and other languages.

(vii) The Official Languages Act of 1963 is a piece of colourable legislation. From the foregoing circumstances now that it is made clear that even

though after the expiry period of 15 years of the commencement of the Constitution fixed for the development and promotion of the regional Hindi

and complete the task of eliminating English as envisaged by the framers of the Constitution, the Union of India had miserably failed to do so

because of its improper linguistic planning and engineering.

For these reasons, it is prayed that a writ of declaration may be issued as prayed for.

6. As an interim measure, the following is prayed for on the ground that the burning of a piece of paper in which Article 343 of the Constitution

was reproduced would not constitute an offence and therefore, the disqualification of the 10 M.L. As. will be bad:

... to stay the operation of the Notification of Tamil Nadu Government ordered by the Speaker of Tamil Nadu Legislative Assembly, the 7th

respondent herein and published by the 6th respondent in the Tamil Nadu Government Gazette Extraordinary No. 758, dated 22nd December

1986, Part II, Section 1, notifying the resolution of the Tamil Nadu Assembly

declaring the seats of the following members of the Legislative

Assembly as vacant (1) Tvl. K. Anbazhagan, No. 4, Park Town, Madras City; (2) S. Balan, No. 7, Egmore, (SC) Madras City; (3) A.

Selvarasan, No. 2, Harbour, Madras City; (4) P. Ponnurangam, No. 1, Royapuram, Madras City; (5) Parithi Elamvazhuthi, No. 5, Perambur

(SC), Madras City; (6) M. Ramanathan, No. 105, Coimbatore West, Coimbatore District; (7) R. Chinnaswamy, No. 82, Dharmapuri; (8) N.

Abraham, No. 19, Alandur, Chingleput District; (9) C. Arumugam, No. 23, Madurantakam, Chingleput District; and (10) Raju, No. 32,

Arakonam (SC), North Arcot District, pending disposal of the present writ petition.

7. The petitioner, in reiterating the submissions, would urge that the Official Languages Act of 1963 is a colourable piece of legislation for the

various reasons set out in the affidavit. In support of this submission, reliance is placed on K.C. Gajapati Narayan Deo and Others Vs. The State

of Orissa, .

8. In so far as according to Section 2(b) of the Official Languages Act of 1963, "Hindi" means Hindi in Devanagiri Script and since there is no

such Hindi this state of uncertainty cannot continue and an All India Hindi should have been developed. The provisions of the Constitution cannot

be construed in a narrow pedantic sense as laid down in AIR 1939 1 (Federal Court) .

9. The word "May" in the following cases has been construed as "shall"- Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , and AIR

1936 253 (Privy Council) .

10. In order to understand the intention from a particular context of the Constitution or a statute and as to how the various articles relating to

official language should be construed, reference is made to the decision in In Re: Presidential Poll, .

11. In order to appreciate the various contentions raised by the petitioner, I will first refer to the relevant provisions of the Indian Constitution.

Article 343 states as follows:

343. (1) The official language of the Union shall be Hindi in Devanagiri script. The form of numerals to be used for the official purposes of the

Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in Clause (1), for a period of 15 years from the commencement of this Constitution, the English language shall

continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of

the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this Article, Parliament may by law provide for the use, after the said period of 15 years; of

(a) the English language, or

(b) the Devanagiri form of numerals, for such purposes as may be specified in the law.

The purport of the Article is that in no uncertain terms it states that the official language of the Union shall be Hindi. But, for the 15 years from the

commencement of the Constitution, the English language shall continue to be used for official purposes of the Union as before the Constitution. This

period of 15 years may be extended by Parliament by law under Clause 3(a) of Article 343. It is for this purpose, the Official Languages Act of

1963 was enacted in May, 1963. Section 3 of the Act reads as follows:

3.(1) Notwithstanding the expiration of the period of 15 years from the commencement of the Constitution, the English language may, as from the

appointed day, continue to be used, in addition to Hindi,

(a) for all the official purposes of the Union for which it was being used immediately before that day; and

(b) for the transaction of business in Parliament:

Provided that the English Language shall be used for purposes of communication between the Union and a State which has not adopted Hindi as

its Official Language:

Provided further that where Hindi is used for purposes of communication between one State which has adopted Hindi as its Official Language and

another State which has not adopted Hindi as its official language, such communication in Hindi shall be accompanied by a translation of the same

in the English language:

Provided also that nothing in this subsection shall be construed as preventing a State which has not adopted Hindi as its official language from using

Hindi for purposes of communication with the Union or with a State which has adopted Hindi as its official language, or by agreement with any

other State, and in such a case, it shall not be obligatory to use the English language for purposes of communication with that State.

(2) Notwithstanding anything contained in Sub-section (1), where Hindi or the English language is used for purposes of communication-

(i) between one Ministry or Department or office of the Central Government and another;

(ii) between one Ministry or Department or office of the Central Government and any corporation or company owned or controlled by the Central

Government or any office thereof;

(iii) between any corporation or company owned or controlled by the Central Government or any office thereof and another;

a translation of such communication in the English language or, as the case may be, in Hindi shall also be provided till such date as the staff of the

concerned Ministry, Department, office or corporation or company aforesaid have acquired a working knowledge of Hindi.

(3) Notwithstanding anything contained in Sub-section (1) both Hindi and the English languages shall be used for

(i) resolutions, general orders, rules, notifications, administrative or other reports or press communiques issued or made by the Central Government

or by a Ministry, Department or office thereof or by a corporation or company owned or controlled by the Central Government or by any office of

such corporation or company;

(ii) administrative and other reports and official papers laid before a House or the House of Parliament;

(iii) contracts and agreements executed, and licences, permits, notices and forms of tender issued, by or on behalf of the Central Government or

any Ministry, Department or office thereof or by a corporation or company owned or controlled by the Central Government or by any office of

such corporation or company.

4. without prejudice to the provisions of Sub-section (1) or Sub-section (2) or Sub-section (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.

5. The provisions of Clause (a) of Sub-section (1), and the provisions of Sub-section (2), Sub-section (3) and Sub-section (4) shall remain in force

until resolutions for the discontinuance of the use of the English language for the purposes mentioned therein have been passed by the Legislatures

of all the States which have not adopted Hindi as their official language and until after considering the resolutions aforesaid, a resolution for such

discontinuance has been passed by each House of Parliament.

Thus, it will be seen that Section 3 of the Act provides for the continued use of English language in addition to Hindi for all official purposes of the

Union for which it was being used immediately before 26th January, 1965.

12. In the statement of objects and reasons, it is stated as follows:

It is, however, considered necessary to give statutory recognition to assurances as the non-Hindi speaking people did not desire a change. It is also

proposed to provide for obligatory use of Hindi language in addition to Hindi in certain cases.

As stated above, the 15 years period set-out in Article 343 could be extended by law. The extension came to be done by enacting the Official

Languages Act of 1963, hereinafter referred to as the "Act". The result is that English is still being used in addition to Hindi for the official purposes

of the Union.

13. The power of the Parliament under Clause (3) includes the power to specify only particular purposes for which English shall continue to be

used by the Union after 26th day of January, 1965 having as the official language. In this connection it is necessary for me to refer to the important

observations of the Supreme Court found in paragraphs 31 to 39 in Union of India (UOI) and Others Vs. Murasoli Maran, , which are extracted

below. In that case, the question arose whether the Presidential Order dated 27.4.1960, the Railway Board orders dated 25.1.1962 and the Posts

and Telegraphs Department Orders making "in-service training in "Hindi" compulsory for all Central Government Employees below 45 years are

valid. In reversing a judgment of this Court in *Murasoli Maran Vs. Union of India and Others*, , the Supreme Court observed as follows:

Paragraph 31 : In the forefront stands Article 343 which states that the official language of the Union shall be Hindi in Devanagiri script. Article 351

states 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 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. The original calculation of the

framers of the Constitution was that for a period of 15 years the English language should be used for all official purposes. That is why two

Commissions were contemplated under Article 344-one in 1955 and one in 1960. The provisions of Article 344 indicate that it shall be the duty of

the Commission to make recommendations to the President as to the progressive use of the Hindi language. The provisions of the Constitution

indicate the progress towards the use of Hindi language.

Paragraph 32 : It is in this context that Article 344 is enacted for the purpose of achieving the object of replacing English by Hindi within a period

of 15 years. Article 343(3) states that Parliament may by law after the period of 15 years provide for the use of English language. Although the

Constitution considered the period of 15 years for replacing English the Constitution also found that it might not be possible to complete it.

Therefore, Article 343(3) provides merely for extension of time for the use of English language after the period of 15 years. The progressive Use of

the Hindi language is thereby not to be impaired. Extending the time for the use of the English language does not amount to abandonment of

progress in the use of Hindi as the official language of the Union.

Paragraph 33 : Comparing Cls. (2) and (3) of Article 343 it will be noticed that while English is permitted to be continued for all official purposes

for which it was being used Clause (3) contemplated that having regard to the

progress made Parliament, if necessary, will choose the purpose for which the use of the English language might be continued.

Paragraph 34 : Article 344(6) provides that notwithstanding anything in Article 343, the President may, after consideration of the report of the

Committee referred to in Clause (5), issue directions. The Non Obstante clause in Article 344(6) does not operate only against Article 344(1) and

(2) but against the entire Article 344 for the reason that so far as transition is concerned the directions under Article 344(6) may continue. Arts.

343 and 344 deal with the processes of transition. The ultimate aim is provided in Article 351 which fulfils the object of the spread and

development of the Hindi language and enrichment of the composite culture of India. Article 344(6) takes into account this objective and is

intended to determine the pace of progress and to achieve the same.

Paragraph 35 : The provision in Article 344 indicates that if there is a second Commission at the expiration of 10 years from the commencement of

the Constitution, the President may, after consideration of the report, issue directions at the end of 15 years. The provisions contained in Article

344(6) are not exhausted by using it once. The President can use it on more than one occasion. Further the effect of the power used cannot be

said to be exhausted on the expiry of 15 years. The Presidential Order which was issued in 1960 continues to be in force and cannot be said to

have exhausted itself at the end of 15 years from the commencement of the Constitution. It would be strange that the steps necessary for the

change should be given up at the expiry of 15 years because what is said to be a switch over from English to Hindi has not been possible and

Parliament provided by law for the continued use of the English language for particular purposes specified in that law.

Paragraph 36 : The Presidential Order keeps in view the ultimate object to make the Hindi language as official language, but takes into account the

circumstances prevailing in our country and considers it desirable that the change should be a gradual one, due regard should be given to the just

claims and the interests of persons belonging to the non-Hindi speaking areas. The purpose of the Presidential Order is to promote the spread of

the Hindi language and to provide the Central Government employees the facilities to take training in Hindi language when they are in service.

Paragraph 37 : The Presidential Order was validly made and there has been and can be no challenge to it. It is erroneous to suggest that the

Presidential Order of 1960 became invalid after the passing of the Act. The High Court failed to see the sequence of the Presidential Order and the Act.

Paragraph 38 : The Act merely continues the use of the English language in addition to Hindi. The Act does not provide anything which can be interpreted as a limitation on the power of the President to issue directions under Article 344(6) of the Constitution. The Presidential Order has no inconsistency with the Act. The Non Obstante provisions in Article 344(6) empower the President. Therefore, the Presidential Order is paramount.

Paragraph 39 : Parliament is legislating in a different field. The field is the permissive use of English language in addition to Hindi during the period following 15 years because the change to Hindi could not be complete. The transitional period has exceeded 15 years. The Presidential Order keeps in view the steps to replace the use of English language. The operation of the Act and the Presidential Order is in different fields and has different purposes. The Act is to continue the use of English language after the expiry of 15 years. The Presidential Order on the other hand is to provide for the progressive use of the Hindi language.

As far as the legislative competency is concerned, List I of Entry 97 which is the residuary power clearly takes within it this piece of legislation. In

so far as the law does not relate to any of the matters enumerated in List II or List III, this will come under this Entry as laid down in Union of India

v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) , and State of Karnataka Vs. Union of India (UOI) and Another, . Therefore, there is no question of any colourable legislation.

15. As to what is meant by "colourable legislation" has been laid down in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , wherein it has been observed as follows:

If the constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked

out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to

whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed

the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is

to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements.

Such a situation is not obtainable here. Therefore, this argument has to be rejected.

16. As to how Hindi came to be accepted as the official language can be gleaned from the following passage of Seervai's Constitutional Law of

India occurring in page 2142.

... a compromise formula called the "Munshi-Ayyangar formula" was evolved and was accepted without dissent. It was a half-hearted

compromise, for it gave to neither party what it wanted. Pandit Jawaharlal Nehru told the Constituent Assembly, that he would not have accepted

Hindi as the official language if express provision had not been made that Hindi did not exclude Hindustani, that it was not to be the language of a

learned coterie and that Hindi was to be based on the composite culture of India assimilating words from all languages. A period of 15 years was

provided during which English was to continue but this was a flexible limit, for Parliament could extend it. The battle over numerals was settled in

favour of the international form of Indian Numerals"-a euphemism for Arabic numerals, with a proviso that after 15 years Parliament might by law

provide for the use of the Devanagiri form of numerals for such purposes as may be specified.

Hence, the argument that Hindi is only a regional language is untenable.

17. Then again, the distinction between English and Hindi on the one hand and the other languages mentioned in Schedule VIII is this:

The Constitution and the Official Languages Act have continued the use of English for official purposes of the Union of India. Therefore, English

stands in a class by itself not only on account of historical reasons but also on account of constitutional and legislative provisions. Equally, Hindi

also occupies a position by itself. It is the official language of the Union of India. The Constitution contemplates that it should gradually replace

English. Therefore, Hindi is also a class by itself while the other languages

mentioned in Schedule VIII stand on a different footing. It is this distinction which the argument of the petitioner tends to overlook. As a matter of fact, in *Dayabhai Poonambhai and Another Vs. Natwarlal Sombhai Talati and Others*, , it was held that the effect of the proviso to Article 345 is that even after the adoption by the State of any of the regional language or Hindi as the official language, the English language can continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution, until the Legislature of the State otherwise provides by law. In other words, such a legislation must expressly exclude the use of English.

18. Our Constitution has established a single Indian citizenship throughout India. Article 19 guarantees to every citizen the fundamental right to move freely throughout the territory of India, and to settle, acquire, hold and dispose of property in any part of that territory. As the Supreme Court observed in *A.K. Gopalan Vs. The State of Madras*, , these provisions are meant to remove provincial barriers and to establish that the citizens of India are all citizens of one country, free to move, work, live and settle in any part of the country. The equality provisions of Article 15 of our Constitution forbid discrimination against citizens on the ground of religion, race, caste, sex and place of birth. Language is not included in this list, but a discrimination on the ground of language is opposed to the basic concept of the unity of India to which a common Indian citizenship and a common country testify. Therefore, the argument that it is violative of Arts. 15 and 16 cannot be accepted. Nor again is there any infringement of Article 21.

19. If the Constitution is to function in the spirit in which it was conceived, it is imperative that one common language should take the place which English occupied before independence and continued to occupy during the first fifteen years after the Constitution was enacted. Arts. 343 and 344 deal with the process of transition to the use of Hindi for all the official purposes of the Union while the ultimate aim is what is found in Article 351. The said Article categorically lays down 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 a medium of expression for all the elements of the composite culture of India and to secure its enrichment. Article 344(6) takes into

consideration this objective and is intended to determine the pace of progress and to achieve the same.

20. For all these reasons, I hold that the writ petition is without merit and is hereby dismissed.