
(1971) 01 MAD CK 0013

In the Madras High Court

Case No : Writ Appeal No. 119 of 1970 and Writ Petition No. 471 of 1970

Murasoli Maran

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Constitution of India, 1950 — Article 120, 343, 344, 345, 346
Official Languages (Amendment) Act, 1967 — Section 3(4)

Citation : AIR 1972 Mad 40 : (1971) 84 LW 422 : (1971) 2 MLJ 57

Hon'ble Judges : K. Veeraswami, C.J.; Gokulakrishnan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The writ appeal and writ petition raise a common question as to the validity of the President's Order dated 27-4-

1960, a Circular of the Ministry of Home Affairs, dated 3-3-1966, and the memoranda of the Railway Board as well as of the Posts and

telegraphs, dated respectively 27-6-1969 and 19-6-1968. The writ petition out of which this writ appeal arises, was filed by a Member of the

Parliament. Although Alagiriswami, J., held that the Circular orders contravened S. 3(4) of the Official Language (Amendment) Act, 1967, he

dismissed the petition on the ground that it was for persons aggrieved to approach the court in a proper case, and not for persons like the

petitioner who had no personal interest in the matter. The learned Judge was further of opinion that he could not accept the contention that the

Presidential Order became void because no second Language Commission was appointed as contemplated by Article 344 of the Constitution, but

he felt that quite possibly the petitioner may be entitled to maintain a writ of Mandamus for a direction to appoint a second Language Commission,

and not for quashing the Order and Circulars.

The question of the locus standi of the petitioner, who is the appellant, did not very much figure before us because in the other petition, the

petitioner as a non-Hindi knowing employee of the Posts and Telegraphs, is directly affected by the Presidential Order and the Circulars, and,

therefore, he is, beyond dispute, a person aggrieved. In fact, the learned Solicitor General for the Union of India mentioned at the outset of his

argument that he did not propose to take shelter under the ground of maintainability of the appeal filed by the Member of the Parliament, although

just before he concluded his arguments, he made reference to *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, , where it was held that a

shareholder, a depositor or a director might not be entitled to move a petition for infringement of the rights of the company, unless by the action

impugned by him, his rights were also infringed. We think that as the petitioner in W.P. 471 of 1970 is, by any test, a person aggrieved, the

question of the locus standi of the appellant is of no importance or consequence.

2. In the light of the report submitted by the Committee constituted in accordance with Article 344(4) of the Constitution and in exercise of his

powers under Article 344(6), the President made an order on 27-4-1960, which inter alia directed, by clause 5:

Training of administrative personnel in the Hindi Medium-

(a) In accordance with the opinion expressed by the Committee in-service training in Hindi may be made obligatory for Central Government

employees who are aged less than 45 years. This will not apply to employees below class III grade, industrial establishment and work charged

staff. In this scheme, no penalty should be imposed for failure to attain the prescribed standard by the due date. Facilities for Hindi training may

continue to be provided free of costs to the trainees.

The rest of the clause is not material for our purposes. The background for this order is this. The first Language Commission noticed certain pre-

requisites of a change over in the language for public administration, one of which was ""Training of Administrative personnel of different categories

in appropriate standards of linguistic competence for the purpose of using the new linguistic medium with the requisite efficiency and facility of

expression"". As to this the Commission's recommendation is.

The present arrangements made by the Government of India for training their employees on a voluntary basis in Hindi language are reviewed. If

experience shows that adequate results are not forthcoming under such optional arrangements, it would be legitimate and necessary for

Government to impose, in pursuance of their language policy, the obligatory requirement on Government servants to qualify themselves in Hindi

within a reasonable period, to the extent requisite for the discharge of their duties".

3. On this, the Committee was of opinion-

Government may prescribe obligatory requirements on Government servants to qualify themselves in Hindi". When the Language Commission

which was appointed in June 1955 was on its job, certain suggestions for the gradual replacement of English by Hindi appear to have been

discussed at an inter-departmental meeting in April 1954, and decisions arrived at. That resulted in the President's Order called "The Constitution

(Hindi Language for Official Purposes Order, 1955, Clause 2 of this order said that the official purposes of the Union, for which the Hindi language

may be used in addition to the English language shall be as specified in the schedule annexed to the Order. The schedule mentioned several items

which need not be detailed. They included correspondence with members of the public, correspondence with the State Governments which have

adopted Hindi as their official language, Government resolutions and legislative enactments, Treaties and agreements.

There was also an earlier Presidential Order dated 27-5-1952, which had authorised the use of Hindi in addition to the English Language for

Warrants of appointments of Governors and Judges, both of the Supreme Court and High Courts. In the Presidential Order of April 1960, the

directive was given, following the suggestion of the Committee constituted under Article 344(4) that the Ministry of Home affairs might take action

for the preparation and implementation of plan of action for the progressive use of Hindi as the official language of the Union. The broad outline of

the plan or programme for progressive use of Hindi was thus indicated:

The Committee has suggested that the Union Government should prepare and implement a plan of action for the progressive use of Hindi as the

official language of Union. No restrictions are to be imposed for the present, on

the use of the English language for any of the official purposes of the Union. Necessary action may be taken accordingly by the Ministry of Home Affairs for the preparation and implementation of a plan or programme which will be concerned with the preparatory measures for facilitating the progressive use of Hindi for the Union Administration, and for promoting the use of Hindi in addition to English for various purposes of Union as provided in clause (2) of Article 343 of the Constitution. Again, the extent to which Hindi gets used in addition to English will depend largely on the effectiveness of the preparatory measures. The plan for actual use of Hindi in addition to English will need to be reviewed and adjusted from time to time in the light of experience.

On 3-3-1966 the Home Ministry issued an office Memorandum which referred to paragraph 5 of the Presidential Order dated 27-4-1960, namely, the making of the in-service training in Hindi obligatory for all Central Government employees below 45 years of age, excluding certain classes of employees, and observed that although a programme of facilitating the progressive use of Hindi for Union official purposes had been circulated to all Ministries in March 1961, which required that the Hindi training of Administrative personnel should be completed by March 1966 a review of the progress made till then in the training of administrative personnel in Hindi had shown that a large number of employees had to undergo this training. The Ministry, therefore, decided upon certain steps to be taken up so that fuller use was made of the facilities available under the Hindi teaching scheme. The steps were these:

- (i) It should be ensured that 20 per cent of the employees working in a Ministry and in its attached and subordinate offices, who are required to receive this training, are deputed to attend the Hindi classes every year;
- (ii) It should be ensured that the employees so deputed should get themselves enrolled in the Hindi classes;
- (iii) Failure to attend these classes regularly should attract penalties as in the case of absence from duty without adequate reason (refusal on the part of the immediate superiors to relieve employees should be severely discouraged): and
- (iv) The obligatory training of administrative personnel should also include their appearance at the examinations"".

The Home Ministry then in the Official Memorandum requested that the Ministry of Finance etc. might issue necessary instructions to all attached and subordinate offices.

4. Accordingly, the Postmaster-General, Madras under the directions of the Director General of Posts and Telegraphs, issued a memorandum in

October 1967, which referred to the Presidential Order of April 1960 and the order of the Home Ministry making in-service training in Hindi

compulsory for all Central Government employees who were aged less than 45 as on 1-1-1961 outlined the facilities and incentives provided for

the Hindi teaching which included awards and prizes, free books and travelling allowance. Specific mention was made that attendance in Hindi

classes was compulsory and was treated as part of duty, and that "wilful and repeated absence and refusal to join those classes" is treated as non-

compliance of Government orders and breach of discipline. This of course would not apply to employees who were learning Hindi outside their

duty hours. Instructions to this effect were sent out by the department to the Heads of Postal services. In the railways, similar circulars were issued

which among other things pointed out that training in Hindi was obligatory, and there was no question of granting any exemption from attendance of

in-service Hindi classes as such attendance was considered as part of duty.

5. The Petitioner in W.P. 471 of 1970 is an Assistant Manager, Returned Letter officer of the Postmaster General, at Madras, and a Central

Government employee. He says that he is a South Indian and his mother tongue is Tamil, that he is qualified in English, and right from his

appointment, he had been carrying on his duties only in that language, that he has not studied Hindi and has not qualified himself in any examination

in Hindi, and that he has, therefore, no proficiency in the Hindi language to any extent. He complains that on account of the Presidential Order of

1960, and the Circulars, he is compelled to attend the in-service Hindi classes during office hours, but he is unable to do so since he cannot learn

Hindi and according to him, he did not learn Hindi in view of the Official Languages Act and the law relating to the matter. He points out that failure

to attend Hindi classes would attract penalties as in the case of absence from duty without adequate reasons. This again, the petitioner says, is in

derogation of the provisions of the Official Languages Act.

As to the Presidential Order of 1960, it is stated that it had outlived itself and on account of the fact that the second Language Commission was not appointed, the order is no longer effective, and, therefore, the Home Ministry's Circular based on the Presidential Order and which is also the origin of the circulars issued by the various Ministries, has ceased to have force. He contends that the Presidential Order and the circulars are also inconsistent with the provisions of the Official Languages Act and are, therefore, illegal and void. The Union denies that the Presidential Order and the circulars are, in any way, void or of no effect and contends that they are consistent with the provisions of the Official Languages Act and that the Union, as the employer, is entitled by executive instructions to determine what duties should be assigned to its employees and prescribe penalties for failure to perform the duties. The union also submits that having regard to the provisions of the Constitution, it is the duty of the Union to promote Hindi and replace English by Hindi as National language for all official purposes.

6. We have, therefore, to decide whether the Presidential Order of April 1960 and the circulars based on it, are unenforceable or illegal, because

(1) of the failure to appoint a second Language Commission; and (2) they are contrary to, or inconsistent with the Official Languages Act, as amended by Act 1 of 1968.

7. The Constitution by Part XVII deals with the official language of the Union. Article 343(1) says that the official language of the Union shall be

Hindi in Devanagari script, and the form of numerals to be used for the official purposes of the Union shall be the international form of Indian

numerals. But this declaration is, however, controlled by clauses (2) and (3) of Article 343. Clause (2) is to the effect that notwithstanding anything

in clause (1), English shall continue to be used for a period of 15 years from the commencement of this constitution for all the official purposes of

the Union for which it was being used immediately before such commencement. But the President, by virtue of the proviso to clause (2), is

empowered to authorise the use during the period of 15 years of the Hindi language in addition to the English language for any of the official

purposes of the Union. Even after expiry of the period of 15 years, notwithstanding anything in Article 343. Parliament may, by law provide for the

use of the English language for such purposes as may be specified in the law.

The next Article provides for appointment of Commission and Committee of Parliament of Official language, as well as for directions to be given

by the President after consideration of the Committee's report, Clause (1) of the Article contemplates two Commissions to be appointed, one at

the expiration of five years from the commencement of the Constitution and the second at the expiration of ten years from such commencement.

The clause also indicates the composition of the Commission and for laying down the procedure to be followed by the Commission. Clause (2)

prescribes the scope of the recommendations to be made by the Commission. The recommendation should be as to the progressive use of the

Hindi language for the official purposes of the Union, for restrictions on the use of the English language for all or any of the official purposes of the

Union, the language to be used and the extent to which it should be used in the Supreme Court and High Courts, the form of numerals to be used

for any one or more specified purposes of the Union and any other matter referred to the Commission by the President as regards the official

language of the Union, and the language for communication between the Union and a State or between one State and another and their use. As

directed by clause (3), in making the recommendations the Commission should have due regard to certain matters including the just claims and the

interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

The fourth clause of Article 344 is concerned with the constitution of a Parliamentary Committee, its strength and composition. The Committee, by

clause (5), is enjoined with the duty of examining the recommendations of the Commission, and to report their opinion to the President. By clause

(6), the President notwithstanding anything in Article 343 may, after consideration of the report of the committee, issue directions in accordance

with the whole or any part of that report. The provisions so far mentioned in Articles 343 and 344 are contained in Chapter I of Part XVII.

Chapter II is concerned with the regional languages. Subject to Articles 346 and 347 relating respectively to official language for communication

between one State and another or between a State and the Union, and the special provision relating to the language spoken by a section of the

population of a State, the legislature of a State may, under Article 345, by law adopt anyone 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. But until such law is made, 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. Chapter III contains provisions relating to the language of the Supreme Court, and the High Courts. Until the Parliament by law

otherwise provides, all proceedings in the Supreme Court and every High Court shall be in the English language. So too, the authoritative texts of

all Bills, Acts, Orders, Rules, Regulations and bye-laws, shall be in the English language until Parliament by law otherwise provides. This provision

is to prevail notwithstanding anything in Articles 343 to 347.

There are further provisions in Art. 348(2) giving power to the Governor of a State to authorise, with the previous consent of the President, the use

of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in

the State, but this provision does not apply to any judgment, decree or order passed or made by a High Court. Where the legislature of a State has

prescribed any language other than the English language for use in Bills, Acts, Ordinances, Order, Rule, Regulation or bye-law, a translation of the

same in the English language published under the authority of the Governor of the State in the official gazette shall be deemed to be the authoritative

text thereof in the English language. This is provided by clause (3) of Article 348. The power of the Parliament to provide otherwise under Article

348(1) is subject to the rider under Article 349, namely, that the Parliament cannot introduce any Bill or amendment without the previous sanction

of the President, who shall not give his sanction until after he has taken into consideration the recommendations of the Commission constituted

under Article 344(1), and the report of the Committee constituted under Article 344(4). There is then Chapter IV relating to special directives, of

which Article 351 says that it shall be the duty of the Union to promote the spread of the Hindi language.

It may be seen, therefore, that elaborate provisions have been made by the Constitution which underlie great caution and circumspection in the

matter of making Hindi as the official language of the Union, and in providing for a pragmatic approach to the problem, having special regard to the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services. For 15 years from the commencement of the Constitution, the English language should continue to be used for all the official purposes of the Union for which it had been used immediately before such commencement, though of course, the President may authorise for use during the period of the Hindi language, in addition to the English language for any of the official purposes of the Union. The Parliament also has been given the power under Article 343(3) to make a law authorising the use of the English language for any of the purposes specified in such a law, beyond the period of 15 years from the commencement of the Constitution. The Presidential directions under Article 344(6) in respect of matters mentioned in Article 344(2), could only be issued after consideration of the report of the Commission and the Committee constituted respectively under clauses (1) and (4) of Article 344, and that too, only in respect of the matters covered by Article 344(2), in respect of which the Commission and committee have made reports. As to the time factor, on an analysis of the structure and scope of Articles 343 and 344, it appears to us that the directions of the President under Article 344(6) are to be issued not at any time, but only when the first Commission, and following it, the first Committee, have made their reports and have been considered by the President, and similarly in respect of the second Commission and the Committee, and their reports. Also, it appears to us that the directions of the President are not in the nature of a law, or rule having the force of a law, but are merely administrative directions authorised by the Constitution. They are, therefore, valid and are bound to be obeyed, applied or followed.

But in our opinion, the directions of the President under Article 344(6) cannot override or prevail over a law made by the Parliament under Article 343(3). or in exercise of its residuary powers. That also implies that the Presidential directions to have continued force, should be in conformity with the law made by the Parliament, and to the extent of inconsistency with such a law, the Presidential directions cannot prevail, and will cease to have force. But we do not, however, find any justification for the view pressed upon us that on failure to appoint the second Commission as

required by Article 344(1), the Presidential directions under Article 344(6) would cease to operate. There is no indication in Articles 343 or 344, or any other provision of the Constitution, placing a time limit for the continued operation of the Presidential directions under article 344(6) made after consideration of the reports of the first Language Commission and of the first language Committee, nor do we think that there is any time limit for appointment of the second Commission. All that Art. 344(1) says is, that the second Commission should be appointed at the expiration of ten years from the commencement of the Constitution, the President shall appoint second Commission. The power of the President is but directory, and not obligatory. The President may, or may not, appoint a second Commission, as the circumstances warrant. We are unable, therefore, to accept the contention for the appellant and the petitioner that, on failure at the expiration of ten years from the commencement of the Constitution, to appoint a second Language Commission, the Presidential directions under Art. 344(6) made on the basis of the reports of the first language Commission and the Committee, have ceased to have force.

8. But we are inclined to accept the view as valid that the Presidential directions under Article 344(6) cannot prevail over, or can be inconsistent with a law made by the Parliament, either under Article 343(3) or within its residuary powers. For instance, under Article 343(3) the Parliament may make a law providing that English language shall continue to be used even beyond the period of 15 years, from the commencement of the Constitution for any of the official purposes specified by it. If the Presidential directions under Article 344(6) had been to the contrary, they will have no force the moment such Parliamentary law commences to operate. The learned Solicitor General if we understood him aright, did not contend that the Presidential directions would have force, or continue to have force, even though they are contrary to, or inconsistent with a law made by Parliament providing for continued use of the English language for any of the official purposes of the Union.

9. In our view, therefore, the Presidential Order of April, 1960 which was issued after consideration of the report of the first Language Commission, and the opinion of the Committee constituted under Article 344(4), did not cease to operate, or become invalid or illegal, on account

of the failure to appoint a second Language Commission as contemplated by Article 344(1). But whether the Presidential Order has become void and illegal because it is inconsistent with any law made by parliament will depend upon the view to be taken of the effect of the provisions of the Official Languages Act, 1963, as amended by the Official Language (Amendment) Act, 1967. We shall, therefore, proceed to scrutinise the provisions of these Acts.

10. As the 15 years period was drawing to a close, there was a countrywide agitation involving great violence and disorder on the part of the vast

non-Hindi speaking population of the country against the introduction of Hindi language for use for all official purposes of the Union, and so, the

then Prime Minister Pandit Nehru, in the course of his speech in the Lok Sabha, on 7-8-1959, on Mr. Frank Antony's resolution for inclusion of

English in the eighth Schedule to the Constitution, and again in his speech in Lok Sabha on 4-9-1959, during the debate on the Report of the

Parliamentary Committee, stated that "English should be "an associate additional language", "alternate-language" for as long as the people,

particularly the non-Hindi speaking people, required it, and the decision for that should be left not with the Hindi speaking people but with non-

Hindi speaking people." That was the genesis for the Official Languages Act, 1963. There were further agitations by the non-Hindi speaking

people subsequently, and the assurances of Pandit Nehru were reiterated by the last Prime Minister Sri Lal Bahadur Shastri. The Official Languages

Act, 1963 came into operation from 10-5-1963. The Act, however, provided that Section 3 should come into force on 26-1-1965 and the

remaining provisions of the Act should come into force on such dates as the Central Government may, by notification in the Official Gazette,

appoint. The Act was intended to provide for the languages which may be used for the official purposes of the Union, for transaction of business in

Parliament, for Central and State Acts and for certain purposes in High Courts. Sec. 3 stated that 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 for all the official purposes of the Union for which it was being used immediately before that day, and for the transaction of business in

Parliament, the appointed day being, as we said, 26-1-1965. So far as Section 3 related to the transaction of business in Parliament, apparently

the enactment was made in view of Article 120 as well. Inasmuch as the Act continued the use of the English language beyond 15 years from the

commencement of the Constitution for all the official purposes of the Union for which it was being used immediately before that day, the law was

one within the contemplation of Article 343(3).

Section 4 provided for appointments of a Committee on official Language after 26-1-1965. Such a Committee is to be constituted on a resolution

to that effect being moved in either House of Parliament with the previous sanction of the President and passed by both Houses. The composition

of the Committee is to be the same as contemplated by Article 344(4). Sub-section (3) of Section 4 says that it should be the duty of the

Committee to review the progress made in the use of Hindi for the official purposes of the Union and submit a report to the President making

recommendations thereon and the President should cause the report to be laid before each House of Parliament and sent to all the State

Governments. The next sub-section is to the effect that the President may, after consideration of the report referred to in sub-section (1), and the

views, if any, expressed by the State Governments thereon, issue directions in accordance with the whole or any part of that report. Section 5

authorises Hindi translation of Central Acts etc., Section 6 authorises Hindi translation of State Acts in certain cases and Section 7 provides for

optional use of Hindi or other official languages in judgments etc. of High Courts. Section 8 authorises the Central Government to make rules for

carrying out the purposes of the Act.

In view of the further agitation on the part of the non-Hindi speaking people of the country, the Official Languages (Amendment) Act, 1967, was

passed which came into force on 8-1-1968. The Amending Act substituted Section 3 in the old Act by the new Section. Sub-section (1) of the

new Section 3 is the same as the old Section 3 except for the provisos. There are three provisos, the first of which says 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. The second

proviso requires that where one State has adopted Hindi as its official language,

and another has not done so, the communication as between them in Hindi shall be accompanied by a translation of the same in English language. But this would not prevent, as the third proviso indicates, the 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, and in such a case an English translation of the communication is not obligatory. A translation in English or Hindi, as the case may be, of the communication is also provided for in sub-section (2) of Section 3 in the Amending Act, for purposes of communication between one Ministry or Department or office of the Central Government and another or 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, or between any corporation or company owned or controlled by the Central Government or any office thereof and another. But this provision will hold good only till such date as the staff of the concerned Ministry, Department, office or corporation or company aforesaid have acquired a working knowledge of Hindi.

Sub-section (3) further says that notwithstanding anything contained in sub-section (1), both English and Hindi language 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 Houses 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 corporation or company owned or controlled by the Central Government or by any office of such

Corporation or company.

11. Then come sub-section (4) and (5):--

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 to 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.

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.

Section 3 of the Amending Act adds a proviso to sub-section (4) of Section 4 of the principal Act, which is:

provided that the directions so issued shall not be inconsistent with the provisions of Section 3.

The amendments so made to the principal Act appear to give fuller effect to the assurances of the two Prime Ministers, Pandit Nehru and Sri Lal

Bahadur Sastri made on the floor of the Lok Sabha merely, that the English language should be an associate additional language, alternate language

for as long as people, particularly, the non-Hindi speaking people required it, and the decision for the should be left not with the Hindi-speaking

people, but with non-Hindi speaking people. By Section 3, the English language may be continued to be used beyond 26-1-1965, in addition to

Hindi for all the official purposes of the Union, for which it was being used immediately before that date, and for the transaction of business in

Parliament. The provisos to sub-section (1) of Section 3, consistent with the main part of the sub-section, provided for English translation of

communications in correspondence between Union and as between the States and their respective Ministries, departments and offices. No doubt,

such translation is to be provided till such date as the staff of the concerned

Ministry, department, office or corporation or company, have acquired a working knowledge of Hindi, and both Hindi and the English language should be used for the purposes mentioned in sub-section (3) of Section

3.

But it seems to us that sub-sections (4) and (5) of Section 3 have more far-reaching effect and consequence. As we mentioned, u/s 8 of the

principal Act the Central Government is authorised to make rules for carrying out the purposes of the Act. In making such rules, the Central

Government may, through them, provide for the language or languages to be used for the official purposes of the Union, including the working of

any Ministry, Department, section or office giving due consideration to the quick and efficient disposal of the official business and the interests of

the general public. The rules so made should also ensure that employees of the Union who have proficiency either in Hindi or English language may

function effectively, and that they should not be placed at a disadvantage on the ground that they do not have proficiency in both the languages.

This means that rules should safeguard that a Central employee does not suffer disadvantage because he is proficient only in English, but not in

Hindi, or proficient only in Hindi, but not in English. So, an employee who knows, and has proficiency in one of the two languages should be in a

position to function effectively, and cannot be placed at a disadvantage, because he is not proficient in one or the other of the two languages. This

provision has to be read side by side with the provisos of sub-section (1) or sub-sections (2) and (3) of Section 3, for the rules made u/s 8 should

be without prejudice to the provisions of these sub-sections. It follows that while the English language may continue, in addition to the Hindi

language for all the official purposes for which it was being used immediately before 26-1-1965, not having proficiency in the Hindi language

should not place the non-Hindi knowing Central employee at a disadvantage.

Discontinuance of the use of the English language cannot take place until resolutions therefore 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, a resolution for such discontinuance has been

passed by each House of Parliament. That clearly means that without the concurrence of the Legislatures of all the States which have not adopted

Hindi as their official language, the English language for the official purposes of the Union, and for communication as between the Union and the

State, and as between the States, as also for purposes of the working of the various Central Departments inter se and as between them and those

of corporations and companies owned or controlled by the Central Government cannot be discontinued. In the light of the above provisions we

think that compulsory in-service training in Hindi to Union Government employees below the specified age during office hours as part of their duty,

and treating failure to attend such training as a breach of duty, or absence from duty or attendance, involving penal consequence in the form of

disciplinary proceedings will amount to placing them at a disadvantage on the ground that they do not have proficiency in both the languages.

The learned Solicitor-General said that employees of the Government are whole time servants and the Government are entitled to prescribe their

duties and that further either by rules made under Article 309 or by Administrative directions provided for, regulate and compel discipline with

penal consequence for breach of discipline. That is, of course, true. But in doing so, the Central Government, or for that matter any other authority,

cannot overlook the safeguards provided by the Official Languages Act, particularly Section 3 as amended by Central Act I of 1968. The learned

Solicitor General also sought to make a distinction between not having proficiency in both languages and not having working knowledge in both the

languages, and contended that sub-section (4) of Section 3 mentioned only not having proficiency in both the languages, and that the Circular

Orders and the memoranda issued only aimed at equipping non-Hindi Central Government employees with working knowledge. We are unable to

accept this contention. Proficiency in a language includes undoubtedly a working knowledge. To our minds, the whole scheme, purpose and effect

of the Official Languages Acts are against compulsion with a penal consequence of failure in the matter of in-service training, or teaching in Hindi.

12. On that view, it follows that the Presidential Order of April, 1960 and the impugned Circulars and official memoranda are inconsistent with the

provisions of Section 3 of the Official Languages Act, 1963, as amended by Central Act I of 1968, and are, therefore, invalid to the extent they

make in-service training for Central Government employee obligatory and provide the penal consequences, for failure to attend the training. They

are accordingly quashed to that extent and the writ appeal as well as the writ petition are allowed with costs in each. Counsel's fee Rs. 250/- in each.

13. Petition and Appeal partly allowed.