

(1989) 12 RAJ CK 0037
In the Rajasthan High Court
Case No : .C.W.P. No. 2876/87

Narendra Kumar

APPELLANT

Vs

Rajasthan High Court and Others

RESPONDENT

Date of Decision : 05-12-1989

Acts Referred:

Constitution of India, 1950 — Article 225, 344, 344(6), 348
High Court of Judicature for Rajasthan Rules, 1952 — Rule 125, 126
Official Languages Act, 1963 — Section 7
Rajasthan High Court Ordinance, 1949 — Section 46, 47

Citation : AIR 1991 Raj 33 : (1990) 1 RLW 582 : (1990) 1 WLN 397

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Advocate : G.L. Acharya, N.L. Jain, A.S. Chaturvedi and U.K. Chaturvedi, for the Appellant; Dinesh Chand Swami, General and Prem Asopa, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—In the present writ petition a question of far-reaching importance is involved as to whether in view of Section 47 of the Rajasthan High Court Ordinance, 1949 (for short "the Ordinance") all the proceedings in this Court including the judgments, orders and decrees should only be written in Hindi Devnagari Script, which has been declared as Official Language of the Court?

2. Section 47 of the Ordinance reads as under:

"47. Language of the Court -- All proceedings in the High Court shall be in Hindi written in Devnagari Script which will be the language of the Court.

Provided that where a Judge hearing a case is not familiar with Hindi the proceedings may be conducted by him in English."

Section 46 of the Ordinance vests power in the High Court to make the Rules consistently with the laws for the time being in force to regulate the sittings of

the court, and in exercise of the aforesaid powers and the powers conferred under Article 225 of the Constitution of India and all other powers enabling in that behalf the High Court of Judicature for Rajasthan made the Rules of the High Court of Judicature for Rajasthan, 1952 (for short "the Rules"). Under Rule 125 of the Rules every memorandum of appeal or objection and every application, other than an application made in any case pending in the Court, shall be in the language of the Court and shall bear the particulars mentioned therein. Under Rule 126 of the Rules every application made in a case pending in the Court shall be in the language of the Court and shall state, the section and the Act or the Rule under which it is made. As already stated earlier, u/s 47 of the Ordinance, Hindi Written in Devnagari Script is language of the Court. Assuming for the sake of arguments that the words "all proceedings" in Section 47 of the Ordinance includes judgments, orders and decrees, in our opinion, this position could continue till the coming into force of the Constitution of India. So far as Part XVII of the Constitution of India is concerned, it is the relevant part in so far as Official Language of the Union including language to be used in the Supreme Court and High Courts is concerned. It came into force on January 26, 1950, which day has been referred as the day of commencement of the Constitution of India. After coming into force of the Constitution of India the provisions of the Constitution shall prevail and all provisions of any existing law in so far as they are inconsistent with the provisions of the Constitution of India will have no application. Therefore, when Part XVII of the Constitution of India came into force on January 26, 1950, and its Chapter III and more so its Article 348 provides for the use of (sic) language to be used in the Supreme Court and High Courts, the provisions of Section 47 of the Ordinance including Rr. 125 and 126 of the Rules framed u/s 46 of the Ordinance, could not be applicable and Clause (1) of Article 348 of the Constitution which starts with non-obstante Clause became applicable and all the proceedings in the Supreme Court and High Courts could only be in the English language unless so far as the High Court of the State is concerned, the Governor of the State with the previous consent of the President authorises under Article 348(2) of the Constitution of India the use of the Hindi language or any other language used for any official purposes in the State in proceedings in the High Court having its principal seat in that State. But in view of the proviso to Clause (2) of Article 348 of the Constitution of India nothing in that Clause shall apply to any judgment, decree or order passed or made by such High Court. We, therefore, find no substance in the argument of the learned counsel for the petitioner and other counsel who were allowed to intervene that in view of Section 47 of the Ordinance even after coming into force of Part XVII of the Constitution of India as aforesaid all proceedings including judgments, decrees and orders of the High Court have to be in Hindi written in Devanagari Script. We are of the opinion that after coming into force of the aforesaid part of the Constitution of India so far as language of this Court is concerned, the relevant Chapter referred to earlier will apply and not Section 47 of the Ordinance and Rules 125 and 126 of the Rules framed thereunder.

3. It was contended that in view of Article 343 of Chapter I of the Constitution, the Official Language of the Union shall be Hindi in Devanagari Script. The form of numerals to be used for the official purpose of the Union shall be the international form of Indian numerals and English language could continue to be used for official purposes of the Union for which it was being used immediately before such commencement for a period of fifteen years from January 26, 1950, and after the expiry of the period as aforesaid i.e. January 26, 1965, only Hindi in Devanagari Script could be the official language. It is also contested that after the expiry of 15 years of such commencement i.e. from January 26, 1965 and thereafter at the expiry of 10 years from such commencement the President of India under Article 344(1) may constitute Commission and the Commission so appointed could make recommendations to the President and the recommendations were made as to the language to be used in all or any of the purposes mentioned in Article 342 of the Constitution of India, which purpose include the use of the language in Supreme Court and High Courts and the President after considering the report of the committee appointed to examine the recommendations of the Commissions issued directions under Clause 6 of Article 344 of the Constitution of India. The aforesaid directions had been issued by the President under order made on April 24, 1960. The order has been made by the President and the law could be made by the Parliament in exercise of the powers conferred by Clause (1) of Article 348 of the Constitution of India in terms of the aforesaid Presidential order. It is also contended that in the aforesaid Presidential order while permitting optional use of Hindi written in Devanagari Script in the judgment, decree or orders of the High Court, it was not provided that the said judgments, decrees and orders shall be accompanied by a translation of the same in English Language issued under the authority of the High Court. Therefore, in Section 7 of the Official Languages Act 1963 (for short, "the OL Act"), it could not have been so provided.

4. It may be stated that in the writ petition there is no challenge to Section 7 of the OL Act, but during the course of arguments a submission was made by the learned counsel for the petitioner and some of the advocates who were allowed to intervene we will have the occasion to examine this argument at the later stage but for the present suffice it to say that it is within the powers of the President under Article 344 of the Constitution of India to appoint commissions as mentioned therein, to appoint committees to examine the recommendations of the Commission/Commissions and to issue directions under Clause (6) of Article 344 of the Constitution of India after consideration of the reports of the committee as aforesaid and these powers are distinct and separate than the powers of the Parliament to legislate under Clause (1) of Article 348 of the Constitution of India. As already stated earlier Clause (1) of Article 348 of the Constitution of India starts with non-obstante Clause and provides that notwithstanding anything in the provisions of Part XVIII, until Parliament by law otherwise provides, all proceedings in the Supreme Court and in every High Court shall be in English language. Therefore, despite a Presidential direction

under Clause (6) of Article 344 of the Constitution of India, the Parliament has power by law to provide that all proceedings in the Supreme Court and in every High Court shall be in English language. Unless the Parliament so provides by law, all the proceedings in the Supreme Court and all the High Courts have to be in English language alone. The Supreme Court in the case of Union of India (UOI) and Others Vs. Murasoli Maran, said that Article 344(6) of the Constitution of India takes into account the objective and is intended to determine the pace of progress and to achieve the same. 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. The Court further said that the Official Language Act merely continues the use of the English language in addition to Hindi and 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 Court, in para 39 of the judgment said that (at page SC 271 AIR 1977):

"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 changes 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 fifteen years. The Presidential Order on the other hand is to provide for the progressive use of the Hindi language."

It will therefore be clear that the Presidential Order and Official Language Act cover different fields. That apart as shall be seen presently there appears to be no inconsistency in the Presidential Order of 1960 and Section 7 of the Official Language Act. Clause 12 of the Presidential Order is as under:

12. Language of the Supreme Court and High Courts :--

The Official Language Commission recommended that so far as the language of the Supreme Court is concerned, Hindi eventually, should be language of the Supreme Court when the time comes for the change over. The Committee has accepted the recommendation.

In regard to the language of the High Courts the Commission considered the pros and cons of the regional and Hindi languages and recommended that when the time for the change-over arrives, the language of judgments, decrees and orders of High Court should be the Hindi Language in all regions, but the Committee has expressed the opinion that in the High Courts provision may be made by introducing necessary legislation for the use optionally of Hindi and Official Languages of States for purposes of judgments, decrees and orders of High Courts with the previous consent of the President.

The opinion of the Committee regarding the functioning of the Supreme Court eventually in Hindi is acceptable in principle and will require appropriate action

only when the time comes for a change-over.

In respect of the language of the High Courts the Ministry of Law may in due course undertake necessary legislation to provide for the use optionally of Hindi and other official languages of States for purposes of judgments, decrees and orders with the previous consent of the President, as suggested by the Committee in modification of the recommendation of the Commission."

It appears that in order to give effect to the aforesaid Presidential Order the Official Language Act was made by the Parliament in the year 1963 and Section 7 which is to the following effect was introduced which reads as under:

"As from the appointed day or any day thereafter the Governor of a State may with the previous consent of the President authorise the use of Hindi or the Official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment decree or order is passed or made in any such language (other than the English language) it shall be accompanied by a translation to the same in the English language issued under the authority of the High Court."

Merely because under the order of the Governor issued with the previous consent of the President optional use of Hindi is authorised in addition to English language for the purpose of judgment, decree or order passed or made by the High Court and it is provided that in such a case the judgment, decree or order shall be accompanied by a translation of the same in English language, it cannot be said that Section 7 is inconsistent with the Presidential order in so far as optional use of Hindi in the judgments, decrees and orders in the High Court are concerned. In our opinion, it is not the duty of the Bench which give a judgment, decree or order in Hindi or other official language of the State in terms of the aforesaid Governor order to translate the judgment, decree or order in English and all that is required is that if judgment, decree or order is passed or made in Hindi under the Governor order as aforesaid it shall be accompanied by the translation of the same in English language issued under the authority of the High Court. It shall be the duty of the High Court to create a translation department with qualified persons and the High Court authorises its officer to authenticate the translation and any such translation will be sufficient compliance with the provision of Section 7 of the Official Language Act. In the case of *Prabhandhak Samiti and Another Vs. Zila Vidyalaya Nirikshak, Allahabad and Others*, a petition had been presented in Hindi in Devanagari Script in the High Court under Article 226 of the Constitution of India. A question arose whether such a petition could be adjudicated by the High Court. In that case the question was not in respect of passing of the judgment or decree or order in accordance with the Government order made under Clause (2) of Article 348 of the Constitution, but the question was only in respect of the adjudication of the petition presented and written in Hindi. The court posed a question as to whether the language can be employed for the use of the courts and that the matter

cannot rest on Arts. 343 and 345 of the Constitution and must ultimately be decided on the basis of the provisions of Article 348 of the Constitution. The Court has examined the scope of Clause (2) of Article 348 of the Constitution and said that it is clear from its terms and until the Parliament enacts a contrary law the proceedings in the Supreme Court and the High Court are enjoined to be in the English language. The Court said that as regards the High Court Clause (2) empowers the Governor to permit the use of Hindi in pleadings and arguments and the documents filed and once the Governor issued such a notification an individual can file a petition written in Hindi under Article 226 of the Constitution of India, under Clause (2) of Article 348 of the Constitution, therefore, the Governor of a State with the previous consent of the President could authorise the use of Hindi language in the proceedings in the High Court but this power of the Governor was not extended to any judgment and decree passed or made by the High Court and therefore it is only in accordance with the provisions of OL Act and more so its Sections 6 and 7 that the optional use of Hindi written in Devanagari Script has been permitted. Therefore, in our opinion after coming into force of the OL Act, it is permissible that judgments, decrees or orders could be in Hindi written in Devanagari Script, but as and when it is done the judgment passed or decree or order made has to be accompanied by a translation of the same in English language issued under the authority of the High Court. It may be stated that in Chapter I to Part XVII of the Constitution so far as Official language of the Union is concerned it 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 the English language was to continue for 15 years from the commencement of the Constitution for all official purposes of the Union for which it was being used immediately before such commencement and even for the period as aforesaid the President by order could authorise the use of Hindi language in addition to English language and Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purpose of the Union, but Clause (3) of Article 343 of the Constitution which again starts with non-obstante Clause authorises the Parliament to provide for the use after the said (or after expiry of the?) period of fifteen years of the English language for such purposes as may be specified in law. The OL Act was also made under Clause (3) of Article 343 of the Constitution of India.

5. So far as the use of Hindi language in proceedings in the High Court, except the passing of the judgments, decrees or orders, is concerned, there is no dispute that there has been an order of Governor with the previous consent of the President and the said order has been extracted in para 15 at page 11 of the writ petition which reads as under :

"Government of Rajasthan

Judicial Department,

Notification

F-3(ii)Jud/50

Jaipur February 14, 1950.

In pursuance of Clause (2) of Article 348 of the Constitution of India, His Highness the Rajpramukh is pleased to authorise, with the previous consent of the President of India, the use of Hindi Language in proceedings in the High Court of Rajasthan to the extent permissible under the provision of the said clause.

By order of

H. H. The Rajpramukh,

Secretary to the Government

of Rajasthan, Judicial

Department."

The aforesaid order does not relate to nor could relate to the passing of judgment, decree or orders and is only confined to all other proceedings in the High Court. It is clearly mentioned therein that the use of Hindi language in proceedings of the High Court of Rajasthan to the extent permissible under the provision of the said clause. Similarly, after the commencement of the OL Act and more so after coming into force of Section 7 of OL Act, which came into force on March 7, 1970, an order was made on February 17, 1971, by the Governor after previous consent of the President permitting the optional use of Hindi in judgment, decree or orders of this Court in addition to English, but it is also provided that if so made, it shall be accompanied by a translation of English language authorised under the authority of the High Court.

6. We are of the opinion that so far as the language of the High Court is concerned, as the OL Act has been made by the Parliament, the optional use of Hindi is permissible and it cannot be said that the judgments have to be passed or decrees or orders have to be made "only in English language.

7. Before parting with this case, we would like to observe that Clause 12 of the Presidential order of April 27, 1960, which has been referred to in the earlier part of this order, so far as recommendations of the Commissions are concerned, a recommendation has been made that when the time for the change-over arrives, the language of judgments, decrees and orders of High Courts should be the Hindi language in all regions, but the Committee has expressed the opinion that in the High Courts provision may be made to introducing necessary legislation for the use optionally of Hindi and Official Languages of States for purposes of judgments, decrees and orders of High Court, with the previous consent of the President. The President made the order that the Ministry of Law may in due course undertake necessary legislation to provide for the use optionally of Hindi and other official languages of States for purposes of judgments, decrees and orders with the previous consent of the President and the OL Act was introduced

to give effect to the aforesaid Presidential Order. But permitting the optional use of Hindi written in Devanagari Script and not providing for exclusive use, will not help the progressive use of Hindi in the judgments, decrees and orders in the High Court not only in the near future but for all times to come. But the Constitution itself in Clause (1) of Article 348 provides for the use of English language in all proceeding in the High Court and its Clause (2) only permits the use of Hindi written in Devanagari Script or any other language in all proceedings except judgments, decrees or orders. If the Parliament would not have made the OL Act, even the optional use of Hindi in judgments, orders and decrees in the High Court would not have been permissible. It can therefore not be denied that this measure and other measures taken from time to time for the use of Hindi in the High Court has no doubt contributed to a great extent in the use of Hindi language in the High Court, but unless there is a political will to permit in Hindi speaking States for the use of Hindi language or Hindi written in Devanagari Script, in judgments, decrees or orders and suitable legislation is brought in respect of Hindi it will never be the only language for the aforesaid purpose of the High Courts in the Hindi Speaking States of India. It is for the law makers to apply their mind and take suitable remedial measures so that Hindi takes its due place in accordance with the spirit of the Constitution of India at least in the High Courts of Hindi speaking States. We may also say without hesitation that there is lack of will and sincerely on the part of such of us who know Hindi and can give Judgments in Hindi to give judgments in that language. If any of us does not know Hindi to the extent of giving judgments in that language the matter is different. It suits all such of us who know Hindi to give judgments in English and only if by suitable legislation use of Hindi is made compulsory for such of us who can give judgment in that language and not only optional, only then at least in Hindi speaking States much can be done for the progress of Hindi.

8. Consequently, as stated earlier, we are of the opinion that the use of Hindi as optional language in judgments, decrees and orders of this Court in addition to English cannot be said to be in contravention of any provision of the Constitution of India, rather it is in accordance with Official Language Act which has been made by the Parliament which had the authority to make it. The writ petition is dismissed with no order as to costs.