

(1976) 03 PAT CK 0014
In the Patna High Court
Case No : A.F.O.O. No. 31 of 1976

Shree Alok Kumar Agrawal and Others	APPELLANT
Vs	
The State of Bihar and Another	RESPONDENT

Date of Decision : 22-03-1976

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 6
Bihar Public Land Encroachment Act, 1956 — Section 11
Constitution of India, 1950 — Article 348

Citation : AIR 1976 Patna 392

Hon'ble Judges : S.K. Choudhuri, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Basudeva Prasad, Radha Mohan Prasad and Renuka Sharma, for the Appellant; Ram Balak Mahto, Govt. Pleader No. 4, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, J.—This Miscellaneous Appeal filed u/s 11 of the Bihar Public Land Encroachment Act (Act 15 of 1956), is against an order elated the 9th of January, 1976, of the Sub-divisional Magistrate, Begusarai. When it was placed before us under the heading "Under Order 41, Rule 11, Civil Procedure Code", a question arose as to whether the appeal would still lie to this court in view of the Bihar Public Land Encroachment (Amendment) Ordinance, V 1975 (Bihar Ordinance No. 210 of 1975), by which the old Section 11 providing for appeals has been substituted by a new section, thereby taking away the appellate jurisdiction of this Court.

2. According to the old Section 11. an appeal against the final order of the Collector of a district lay to the High Court if the valuation of the subject-matter was Rs. 10, 000/- or above, and in other cases, to the District Judge. According to the amendment brought in by the Ordinance an appeal has now been provided to the Collector of the district if the order in question is passed by any officer other than the Collector, and to the Commissioner of the Division, if such an

order is passed by the Collector of the District. The Ordinance is dated the 4th December, 1975. Its Hindi version was published in the Bihar Gazette on the 5th December, 1975. (Extraordinary), but its English translation was published on the 22nd December, 1975. A question, therefore, arises as to whether in view of the amendment of Section 11 of the Act, taking away the appellate jurisdiction of this court by the amending ordinance, the appellants are entitled to maintain the present appeal in this court. The question was argued at some length and considering the importance of the question raised, we thought it desirable to pass a considered order at this very stage.

3. The argument of Mr. Basudeva Prasad appearing for the appellants is that the publication of the Hindi version of the amending Ordinance, which although became a law, would not be enforceable until its English version was published on the 22nd December 1975. On this basis he contended that as the proceeding in question was instituted on the 8th December, 1975, although subsequent to the publication of the Hindi version, but prior to the publication of the English version of the amending ordinance, the right of the appellants must still be governed according to the old Section 11 which must be deemed to be in existence on the date of the institution of the proceeding, and not according to the amend-ed Section 11.

4. In this connection reference was made to Section 6 of the Bihar and Orissa General Clauses Act, 1917, which provides for "Coming into operation of Acts". The relevant portion of the said section may be usefully quoted as under:

"(a) Where any Bihar Act is not expressed to come into operation on a particular day,— (i) xx xx xx (ii) in the case of a Bihar Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of a Governor or the President, as the case may require, is first published in the Official Gazette."

The Ordinance in question is not expressed to come into operation on any particular day. The Governor gave his assent to it on the 4th December, 1975. An ordinance promulgated by the Governor under Article 213 of the Constitution has the same force as an Act of a Legislature. Apparently, therefore, applying the provisions of Section 6 (1a) (ii) of the aforesaid General Clauses Act, the Ordinance came "into operation on the day on which the assent thereto of the Governor" was "first published in the Official Gazette", and as already said, the Hindi version was admittedly published on 5-12--1975 and the English version on 22-12-1975.

5. In this connection it will be necessary to refer also to some of the provisions of the Constitution of India. According to Article 345, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the Official purposes of that State, and until then, the English language is to continue to be used for such purposes within the State for which it was being used immediately before the

commencement of the Constitution. The Bihar Legislature passed an Act, namely, the Bihar Official Language Act, 1950 (Act 39 of 1950) Section 2 of the said Act provides :--

"Subject to the provisions of Articles 346, 347 and 348 of the Constitution of India, the language to be used for the official purposes of the State shall be Hindi in Devanagiri script."

The other relevant Article in this connection is Article 348, The relevant portion of this Article for the present purposes may be usefully quoted as under:--

"(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides--

(a)

(b) the authoritative texts

(i)

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii)

shall be in the English language.

(2)

(3) Notwithstanding anything in Sub-clause (b) of Clause (1), where the legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts, passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause a translation of the same in English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this Article."

6. It is not disputed that the Bihar Legislature has prescribed Hindi in Devanagari script as the language for use in Bills to be introduced in, or Acts passed by, the State Legislature, as also in Ordinances to be promulgated by the Governor of the State of Bihar, besides other matters, as provided in the first part of Clause (3) of the aforesaid Article. Mr. Basudeo Prasad laid stress on the fact that although it was permissible for a State Legislature to adopt any regional language (s) or Hindi as the language or languages to be used for all or any of the Official purposes of the State, it was the Parliament alone which could provide by law that Hindi would be the language in which Acts could be passed by the Legislature of a State and all Ordinances could be promulgated by the Governor of a State. Counsel, therefore, contended that inasmuch as the Parliament has not made any such provision by force of Article 348(1), the English language could be the only language in which an Act could be passed by

the Bihar Legislature or an Ordinance could be promulgated by the Governor of Bihar. He, therefore, contended that the amendment of Section 11 brought in by the Ordinance would have no application until its English version was published in the Gazette on 22-12-1975.

7. In my considered opinion, there is no substance in this contention of Mr. Basudeva Prasad as the contention is based on an entirely erroneous construction of Article 348 of the Constitution. The provision relied upon by the learned counsel does not support Ms plea. It simply provides that the English version of an Act or Ordinance, etc., is to be treated as the authoritative text in case of any conflict or divergence between the English version and the Hindi version or other languages. Clause (3) of Article 348 has got an overriding effect over Clause (1) and recognises the right of a State contained under Article 345 to adopt any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State. Reading the provision contained in Clause (3) of Article 348, it cannot be legitimately contended that it is not permissible to a State Government to prescribe any language other than the English language for use in its official business until the Parliament made any such law. The Constitution itself has bestowed the discretion in the Legislature of a State to adopt by law any one or more of the regional languages in use in the State concerned or Hindi as the language(s) to be used for all or any of the official purposes of that State, and once any State by-law adopts any such language, that would be the official language or languages, as the case may be, of that State for all or any of the official purposes of that State. Section 2 of the Bihar Official Language Act, quoted earlier, has adopted Hindi in Devanagari script as the language to be used for the official purposes of the State of Bihar without any qualification. The only purport of Clause (3) of Article 348 is to authorise the use of Hindi as the official language of a State and although notwithstanding a State law adopting Hindi or regional languages for the official purposes of a State English can be continued to be used for such purposes until there is an express legislative provision against such use. In my opinion, by no stretch of imagination it can be lawfully contended that the publication of the English translation is a condition precedent for the enforcement of any Act or Ordinance, etc., made in the State language. The only consequence of the absence of an English translation will be that there will be no authoritative text, but on that account it cannot be held that in the absence of the publication of the authoritative translation, the ordinance itself will not be effective. The English translation provided under Clause (3) of Article 348 is not meant to satisfy the requirement of Clause (1) that such an Ordinance must be in the English language alone. It is, no doubt, true that if the English translation is published, then in case of any conflict between the State language and the English translation, the latter will prevail, and if the English translation is published, it will be considered as a valid piece of legislation and both the Hindi and the English publication can be looked into. In my judgment what is meant by Clause

(1) of Article 348 in making a law by Parliament is that unless the Parliament by law otherwise provides, the authoritative texts of all Bills, Acts or Ordinances of a State Legislature cannot be in a language other than the English language. The power to declare that the authoritative text of any bill, Act or ordinance of a State Legislature shall be in language other than the English language has been vested exclusively in Parliament but it does not mean that the authority of a State Legislature to adopt any language other than the English language can be given only by a law made by the Parliament. It is therefore clear that the assumption on which the argument is founded is completely misplaced.

8. In the case, of Pyarelal Shivprasad Agarwal and Others Vs. Secretary, Indore Mill Mazdoor Sangh, it was observed as follows:

"The mandatory provisions in Clause (b) of Article 348(1) providing for the use of English language is intended only for the limited purposes of having the authoritative text. It does not forbid laws being passed in languages other than English. It only requires that the authoritative text of the law shall be in English. This also has been relaxed in respect of the State laws by authorising the State Legislatures by Clause (3) of Article 348 of the Constitution to prescribe any other languages in use in the State for the purposes of Clause (1) (b) of the said Article. By Clause. (3) it is provided that if an English translation of the laws made by the Legislature or of the rules framed by the Government is published under the authority of the Rajpramukh, it shall also be recognised as an authoritative English text for the purposes of Article 348(1)(b)".

The above observation was recently quoted with approval by a Bench of this court in the case of Mathura Prasad Singh and Others Vs. The State of Bihar and Others, in which case the vires of the Bihar Co-operative Societies (Second Amendment) Ordinance, 1975, (Bihar Ordinance No. 35 of 1975) which replaced the Bihar Co-operative Societies (First Amendment) Ordinance, 1974 (Bihar Ordinance No. 173 of 1974) was under challenge. The situation in that case was that the English translation of the impugned Ordinance was not published, and that was one of the grounds of challenge, namely, that the English translation having not been published, there was no authoritative text of the Ordinance, and in the absence of the said publication, the Hindi version must be deemed to be non est. This contention was repelled by this court on consideration of a large number of decisions. It was very clearly held by this court in the said case that all ordinances made in Hindi, where the Legislature has so authorised, will be a valid piece of legislation even without its English translation. I feel myself in respectful agreement with the above view. As all the relevant decisions on the point have been noticed by this Court in the above decision, I do not feel any necessity to refer to those cases and unnecessarily lengthen this order.

9. From the discussion in the foregoing paragraphs, it is manifest that on 8-12-1975, when the proceeding in question was initiated against the appellants by the Sub-divisional Magistrate, Begu-sarai the Bihar Public Land Encroachment Act, 1956, had already been amend-ed by the Amending Ordinance aforesaid,

thereby prescribing different forum for appeals against the orders passed u/s 6, of the Act and thus taking away the appellate jurisdiction of this court. It must, therefore, be held that no appeal lies to this court against the impugned order.

10. Before parting with the case. I would like to make it clear that the order of dismissal of this appeal is being passed only on the question of its maintainability without in any way applying our mind to its merits.

11. In the result, this appeal is dismissed.

S.K. Choudhuri, J.

12. I agree.