
(2012) 10 AHC CK 0189

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54488 of 2012

Smt. Rajeshwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Constitution of India, 1950 — Article 225, 348, 348(2)

Citation : (2012) 9 ADJ 753 : (2013) 3 ALJ 174 : (2013) 1 UPLBEC 258

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Mahesh Kumar Tripathi, for the Appellant; Yashwant Verma ; V.P. Srivastava and Daya Shanker Mishra (invited by Court) for Assistance, for the Respondent

Final Decision : Disposed Of

Judgement

Hon''ble A.P. Sahi, J.—Heard Sri Mahesh Kumar Tripathi, learned counsel for the petitioner. This writ petition has been filed with Annexures in Hindi. The interim order of a learned Single Judge in writ petition No. 665 of 2007 dated 24th of July, 2012 and another interim order of a Division Bench dated 5th October, 2012 in writ petition No. 51172 of 2012 has been circulated by the Registrar General under the orders of the Division Bench and accordingly the aforesaid two orders have been placed before this Court which are quoted herein under for ready reference:

Hon''ble Sunil Hali, J.

Counter-affidavit filed by the Secretary, Madhyamik Shiksha Parishad be taken on record.

In paragraph 7 of the counter-affidavit, it is stated that all the original records and certified copies regarding the appointment in a sealed cover have been sent to the C.B.C.I.D. for providing necessary information in the matter.

Let the report be called from the Investigating Agency, i.e., C.B.C.I.C. indicating progress in the investigation.

Counter-affidavit has been filed by the State without providing translated copy of the same in English.

The Registry will not entertain any counter-affidavit which is in vernacular language unless translated copy thereof in English is also attached with it in future. The Joint Registrar (Listing) is directed to circulate this information to all concerned persons. Any omission in this behalf would be treated seriously.

List this matter on 8.8.2012.

A certified copy of this order shall be provided to the learned Standing Counsel for communication to the concerned parties on payment of usual charges.

Hon"ble Amitava Lala, Acting Chief Justice

Hon"ble Pradeep Kumar Singh Baghel, J.

Leave is granted to the learned counsel appearing for the petitioner to file translated copy of the writ petition by next date.

It has been decided by one of Hon"ble Judges of this Court sitting Singly (Hon"ble Mr. Justice Sunil Hali) by order dated 24.7.2012 in Writ C No. 665 of 2007 (Ritesh Kumar Trigunayat v. State of U.P. and others) that no affidavit will be filed in Hindi and if it is filed, a translated copy will be provided for the purpose of consideration of the same. The relevant part of the order is quoted herein:

"The Registry will not entertain any counter-affidavit which is in vernacular language unless translated copy thereof in English is also attached with it in future. The Joint Registrar (Listing) is directed to circulate this information to all concerned persons. Any omission in this behalf would be treated seriously.

Against this background, we are of the view that the observation of the Court has persuasive value. It should be applicable in case of writ petition, criminal and civil proceedings also.

This order will be circulated by the Registrar General to all concerned and in case of necessity the Allahabad High Court Rules may be amended to that extent.

Let it appear before appropriate Bench. Subject to filing of the translated copy of the writ petition, the matter will be heard."

2. It is on account of these orders that the Court found it necessary to deal with the matter as this Court finds that the relevant material in respect of court language including the High Court Rules and the judgments of this Court do not appear to have been placed either before the learned Single Judge or before the Division Bench in order to appreciate the entire controversy in correct perspective.

3. For the purpose of understanding the genesis of this dispute, that had arisen on account of the aforesaid orders, reference be had to Article 348 of the Constitution of India which is quoted herein under:

348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.--(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts--

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(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) of all orders, rules, regulations and bye laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language

(2) Notwithstanding anything in sub clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise 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 that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court

(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 the 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

4. The relevant provision which has to be understood in the light of what has come up before this Court would be sub-Article (2) of Article 348 of the Constitution of India.

5. The Allahabad High Court Rules, 1952 that have been framed under Article 225 of the Constitution of India make provisions for the filing of affidavits as also documents including translated copies thereof. Reference be had to Chapter IV Rule 8 of the said rules which is as follows:

Ch. IV- R. 8. Affidavits filed or presented in Court.--The provisions of Rules 5, 6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the

general heading:

"In the High Court of Judicature at Allahabad."

The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.

The affidavit shall contain no statement which is in the nature of an expression of opinion or argument.

6. This rule clearly provides that the affidavit filed before the High Court will be in the language of the Court.

7. In order to avoid any misgiving or misunderstanding on the part of the litigant who generally is not conversant with the language of the Court, a specific rule has been introduced, namely, Rule 15 of the Chapter IV which runs as follows:

Ch. IV-Rule 15. Contents to be explained to deponent.--The person before whom an affidavit is sworn shall ask the deponent if he has read the affidavit and understands the contents thereof. If the deponent states that he has not read it or appears not to understand the contents or does not know the language thereof he shall read and explain it or cause another person to read and explain it to such person in his presence. Until he is satisfied that the deponent fully understands its contents he shall not allow the affidavit to be sworn.

8. The said rule clearly provides that the deponent of the affidavit will be made known the contents of the affidavit if he does not know the language of the affidavit, and after he fully understands the same and gives his consent thereto, his satisfaction shall be noted and the concerned person verifying the affidavit will record it accordingly. Thus there is a complete safety mechanism provided for the litigant in order to enable him to understand the contents of the affidavit. Even though, in regular practice such affidavits are sworn on papers signed by the litigant the contents whereof are presumed to be known. This issue relating to the filing of an incorrect affidavit vis-a-vis acquaintance with the English Language came up in a matter arising out of a contempt proceeding in which a Division Bench of this Court in Contempt Application (Criminal) No. 10 of 2012 disposed off on 27.8.2012 reported in 2012(9) ADJ 377 (DB) has noted this practical aspect of the matter as follows:

4. We may not be meant to castigate it, but the system runs on some of the realities which may not be 100 percent as per rules and expected procedures and if the deponent, i.e., present respondent has stated in his written statement that being an illiterate fellow he was not acquainted with any nuances of the language English, then we may not be finding fault with him by recording that he was creating a false defence in a contempt proceeding. We accept, to some extent, that he might not be well versed in English. But the counsel has noted down in one of the paragraphs that the contents of affidavit were read over by him and explained to the deponent also.

5. The man is present before us in the court room, and we have looked at his face and we find that he might not be aware of as to what we are doing presently in the present proceeding and what we are dictating presently which could be deciding his fate in respect of the present proceedings. This could probably be summing up the incidental facts, past and present which could be relevant for the present purposes.

9. It is thus clear that the High Court Rules clearly provide for the filing of affidavits in the Court language which has to be understood in the light of the aforesaid judgment.

10. The provisions relating to translation of documents, as this Court could discover, are contained in Chapter VIII Rule 36 of the Allahabad High Court Rules which is as follows:

Ch. VIII - R. 36. Transliteration or translation of document filed in Court.-- (1) Where a document filed by a party in Court in any case or proceeding is not in Hindi written in the Devanagri character or in the language of the Court, it shall, subject to any general or special orders of the Chief Justice or the Court, file therewith if the document is in Hindi but is not written in Devanagri character, a transliteration thereof in such character or if the document is in another language a translation thereof in the language of the Court.

(2) Such transliteration or translation shall be verified to the correct by the Advocate of the party filing it or by the person making it. In the latter event such person shall give his full name and address with such particulars as may be sufficient to identify him and verify such transliteration or translation in the following manner, namely--

"I, A, B, do declare that I read and understand the language and character of the original and that the above is a true and accurate transliteration/ translation thereof."

Such transliteration or translation shall, if so ordered by the Court, be revised and certified as correct by [the Section Officer of the Translation Department, may be filed in court alongwith the document].

(3) In lieu of the method indicated in the foregoing sub-rule the party required to file a transliteration or translation of a document may on application to the Registrar have such document transliterated or translated, as the case may be, by a translator on the establishment of the Court and such transliteration or translation certified to be a true transliteration or translation by [the Section Officer of the Translation Department] may be filed in Court alongwith the document.

(4) The charges for the transliteration or translation of documents under this Rule shall be such as may be fixed from time to time by the Registrar. Where by these rules a transliteration or translation may be certified as correct by [the Section Officer of the Translation Department] the person applying for such

certificate shall pay such charge as may be prescribed by the Registrar nor exceeding sixty per cent of the charges prescribed for the transliteration or translation of such document. If the transliteration or translation is so defective that the work or revising and correcting if practically amounts to transliteration or translating it afresh the full charges may at the discretion of the Registrar be charged for such work.

11. A further provision is made in relation to filing of appeals under Chapter XIV Rule 15 of the said rules which is quoted herein under:

Ch. XIV - R. 15. When party to provide transliteration or translation of a document--Where the question of construction of a document is desired to be raised by a party in an appeal from an appellate decree or order, the Advocate of the party concerned shall provide a sufficient number of copies of such document or, if so required, of a transliteration or translation thereof to enable a copy to be placed on each copy of the paper-book. Such copies shall be supplied not less than one week before the hearing of the appeal.

12. So far as civil proceedings are concerned, Rule 23 of Chapter XV clearly defines the powers of the Court in matters of procedure where it has powers to issue necessary instructions. The same is quoted herein under:

Ch.XV-R. 23. Court's power to give directions in matters of practice and procedure.--The Court may in any suit or proceeding to which this chapter applies, give such directions in matters of practice and procedure as it shall consider just and expedient.

13. It is thus clear that the High Court in exercise of its powers under Article 225 has framed the aforesaid mentioned rules in conformity with the provisions of Article 348 of the Constitution of India referred to hereinabove. Needless to observe that procedure is a handmaid of justice and not an obstructor thereof. Language is the vehicle of communication and is the best and most powerful method developed by civilized man to understand the entire creation to which he belongs. The simpler and easier to communicate, the better results can be expected. The language of the Courts is also for the litigant whose interest is supreme. The procedural language should therefore be to the advantage of those for whom justice is to be dispensed.

14. The issue relating to filing of petitions and documents in court language came up for consideration before a Division Bench of this Court in the case of Prabandhak Samiti and another v. Zila Vidyalaya Nirikshak, Allahabad and others, AIR 1977 All 164 where the notification issued by His Excellency the Governor in exercise of powers under Article 348(2) of the Constitution of India was interpreted and it was held that a writ petition filed in the Hindi Vernacular Language would be a competent writ petition. The issues relating to the language to be used in the High Court was discussed threadbare and it was ultimately ruled as follows in paragraph 16:

Paragraph 16. Thus, on a proper interpretation of the notification dated 5th September 1969 made under Article 348 (2) there can be no manner of doubt as to the legality of a writ petition being drafted in Hindi in Deo Nagri script and filed for adjudication in the High Court in the State of Uttar Pradesh. In fact, the language of the notification is wide enough to cover all pleadings, including complaints, written statements, writ petitions and also other documents which are required to be filed in such proceedings. It is also clear from the various measures already taken to which we have referred in our judgment that the law as it now stands does not empower a Judge of our High Court while hearing a case to stop a litigant or his Advocate from making the arguments in Hindi, if he so desires. It is also equally clear that it is open to a Judge of the High Court hearing a case to pass his judgment or decree or order in Hindi, if he so chooses, but he cannot be compelled to do so. In case, however, he passes an order or decree etc. in Hindi, the only limitation still imposed upon him is that it must be accompanied by a translation of the same in the English language issued by the authority of the High Court. This sums up the present legal position with regard to the use of Hindi in proceedings in the High Court.

Therefore, we hold that a writ petition presented in Hindi in Deo Nagri script in the High Court is competent and the petitioner is entitled to ask for its adjudication.

15. Thus, so far as this Court is concerned, the matter is no longer res-integra and is concluded by the aforesaid Division Bench judgment. In the aforesaid circumstances, it appears that the learned Single Judge and the Division Bench who passed the orders on 24th of July, 2012 and 5.10.2012 were not informed of the aforesaid correct position of law.

16. However, in practice, this Court also finds that usually counter-affidavits filed on behalf of the State are in Hindi presumably because the para wise narratives received from the concerned department are also in the same language and therefore exactly reproduced in the counter-affidavit that causes inconvenience to the lawyer and the court both. It appears that it is in this context that the learned Single Judge passed the order on 24th of July, 2012 to set the house of the State in order so that the counter-affidavits filed on behalf of the State may henceforth ordinarily conform to the language of English which is used in courts. The learned Chief Standing Counsel informs that in compliance of the said directions dated 24th of July, 2012 and 5.10.2012 has issued administrative instructions to all the Standing Counsels of the State to present the affidavits appropriately as per the office circular reproduced herein under:

OFFICE CIRCULAR All the State Law Officers

I have to bring to your attention the order passed by a Division Bench of Hon''ble Court in Writ Petition No. 51172 [Arun Kumar Singh v. State of U.P. and others] in which referring to an order rendered by the learned Single Judge of the Court, the Bench presided over by Hon''ble the Chief Justice has been pleased to direct

that all pleadings including counter-affidavits, if filed in vernacular language would also have to be accompanied with a translated copy thereof in English.

The aforesaid direction of the learned Single Judge has been made applicable and extended to writ petition, criminal and civil proceedings also by the Division Bench of this Hon'ble Court.

Accordingly, it is directed that all pleadings including counter-affidavits filed on behalf of the State be in English and in case they are in vernacular, translated copies thereof may be supplied alongwith the same to be filed in Court.

(Yashwant Verma) Chief Standing Counsel High Court Allahabad

17. The order of the Division Bench dated 5.10.2012 has treated the order of the learned Single Judge to be of a persuasive value and has extended the said rule to all proceedings of civil and criminal nature as well as writ proceedings.

18. Learned counsel for the petitioner states that the aforesaid direction of the Division Bench has been made applicable in relation to all proceedings which widely affects the practice and procedure of this Court and in effect has been done without noticing the Division Bench judgment in the case of Prabandhak Samiti (supra) and the relevant rules that have been enforced in the High Court and have been noted hereinabove.

19. His submission therefore is that this petition should be entertained alongwith its Hindi Annexures and orders be passed accordingly.

20. Since the aforesaid dispute had wide ramifications the court under Chapter 22 Rule 5-A of the Allahabad High Court Rules has heard the learned Chief Standing Counsel Sri Yashwant Verma, the President of the Bar Association Sri V.P. Srivastava and the Ex-President of the Bar Association Sri Daya Shanker Mishra who have invited the attention of the Court to another judgment of the learned Single Judge of this Court in the case of Balraj Misra and another Vs. Hon'ble Chief Justice of High Court, Allahabad and others, . They further contend that this High Court is in the Hindi Heartland of the State of Uttar Pradesh and in the aforesaid circumstances and in view of the notification already issued by the State Government, it would not be appropriate to compel the litigants or the lawyers to present the writ petitions in English Language. They further contend that the translation of the Hindi should also not be a compulsion. They urge that the applicability of the Division Bench order in all proceedings is therefore not in conformity with law in relation thereto nor is it feasible in practice as it brings about great hardship to the litigants and the lawyers alike.

21. Apart from whatever has been noticed by this Court and the aforesaid facts, the Court finds it appropriate to mention the judgment of the Supreme Court as pointed out by Sri D.S. Mishra in the case of Dr. Vijay Laxmi Sadho v. Jagadish, AIR 2001 SC 600 where also this issue has been dealt with in paragraph 18 after discussing the issue of court language as provided for under Article 348(2). The said judgment also directly supports the stand of the petitioner.

22. It is clear that the Supreme Court has held that the rules or procedure framed under Article 225 would be subject to the constitutional provisions and therefore they will have to abide by the notifications issued by His Excellency the Governor under sub Article (2) of Article 348. The issue therefore to my mind is fairly covered by settled law.

23. However, looking to the convenience of the Court, this Court is also of the opinion that there are few Hon''ble Judges who come to this court by way of transfer from other States where the Vernacular is not Hindi and as a result whereof they have difficulty in understanding the documents which are in Hindi. In such special circumstances, the Allahabad High Court Rules can be invoked as noted above that provides for the translation of documents if required for a particular proceeding before an Hon''ble Judge who is facing any difficulty in himself translating or understanding the document. Therefore, in view of the provisions of Rule 36 of Chapter VIII readwith Rule 15 of Chapter XIV, the concerned lawyer can be requested to provide the translated copies so that this difficulty may not be faced by the presiding Hon''ble Judge who is not conversant with the Hindi Vernacular Language. Such translations shall be subject to the provisions made under the High Court Rules.

24. Having said so, this Court puts on record that the order of the learned Single Judge and the Division Bench are only interim orders and therefore applying the principles laid down in the case of Rana Pratap Singh and others v. State of U.P. and others, 1995 ACJ 200, this court would be prima facie bound by the same, but the same principles which have been referred to therein including the rule of per incuriam, bind this Court equally by the Division Bench judgment in the case of Prabandhak Samiti (supra), and therefore, this Court does not find it necessary to compel the petitioner to file a translated copy of the Annexures which have been filed alongwith the writ petition. A copy of this order shall be circulated by the Registrar General to all concerned forthwith. It had become imperative to pass this order as a commotion had spread due to some confusion amongst the members of the Bar and also in the Reporting Section of the High Court.

25. The learned Chief Standing Counsel will however continue to abide by the Office Circular dated 10.10.2012 so long no further rules are framed or directions are issued by the High Court.

26. The petitioner claims that under the Government Order dated 28.6.2011, there is a provision made for the operation of the Account of a Primary School keeping in view the provisions of the Compulsory Education Act. The petitioner alleges that she was elected as a Member of the Vidyalaya Samiti as contained in Annexure 3 to the writ petition whereafter she has also been elected as the Chairman and Adhyaksh of the said Committee, and therefore, she is entitled to operate the Account of the Institution jointly with the Head Master of the Institution.

27. Learned counsel for the petitioner contends that even though the Institution is a government run institution yet it is governed by the provisions of the said Government Order. There is however nothing on record to indicate that the petitioner was elected as Chairman of the Vidyalaya Samiti. He prays time to file a supplementary affidavit bringing on record the said document. The matter shall be listed on 30.10.2012.