

**(2006) 01 AHC CK 0162**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 9712 of 1998

Uttar Pradesh Urdu Development Organisation and Dr.  
Parwaz Ulum, Hony. General Secretary U.P. Urdu  
Development Organisation

**APPELLANT**

**Vs**

State Election Commissioner, State Election Commission and  
State of U.P.

**RESPONDENT**

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**Date of Decision :** 18-01-2006

**Acts Referred:**

Constitution of India, 1950 — Article 14

Uttar Pradesh Official Language Act, 1951 — Section 2, 3

Uttar Pradesh Panchayat Raj (Nirvachak Registrikarn), Niyamawali, 1994 — Rule 4, 5

**Citation :** (2006) 2 AWC 1302

**Hon'ble Judges :** Vikram Nath, J; Sushil Harkauli, J

**Bench :** Division Bench

**Advocate :** Parwaz Ulum, Party in Person, M.S. Haq and A.A. Kaleem, for the Appellant; P.K. Misra, S.M.A. Kazmal and Aditya Narayan, S.C., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sushil Harkauli, J.—This writ petition in the nature of Public Interest Litigation, has been filed with the following prayers:

(i) to issue a writ, order or direction in the nature of writ of certiorari quashing the Rule 4, Rule 5, and Rule 5 of U.P. Panchayat Raj (Nirvachak Registrikarn), Niyamawali, 1994; U.P. Nagar Nigam (Nirwachak Namawali ka Taiyar kiya Jana aur punrichan), Niyamawali, 1994 and U.P. Nagar Palika (Nirwachak Namawali ka Taiyar kiya Jana aur, punrichan), Niyamawali, 1994 respectively as ultravires to the U.P. Official Language (Amendment) Act 1989 as well Constitution of India.

(ii) to issue a writ, order or direction in the nature of writ of mandamus directing the respondent to implement the U.P. Official Language (Amendment) Act, 1989 and (Govt. Order dated 19.11,1990 issued thereunder in the Panchayat, Nagar

Nigam, Nagar Palika and other Local Bodies forthcoming elections.

(iii) to issue a writ, order or direction in the nature of writ of mandamus directing the respondents to prepare and publish the voter list, Nomination form and other relevant papers, documents in Urdu language (Second Official Language) also in Panchayat, and Local Bodies Elections which will be held in 1998 in future and provide appoint Urdu knowing persons as polling officers Urdu translator in every polling party at polling centers, and provide Urdu Voter list to the recognized political parties along with Hindi Voter list.

(iv) to issue a writ, order or direction in the nature of writ of mandamus directing the respondent to amend all the Meeting Rules, concerning to Election Panchayat and Local Bodies for implementation of U.P. Official Language (Amendment), Act 1989 and Rules, Govt. Orders issued thereunder.

(V) to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of this case.

(vi) To award the cost of petition to the petitioner against the respondent.

2. From the side of the petitioners the petition was argued by petitioner no. 2, appearing\* in person. Sri P.K. Misra Standing Counsel, argued the matter for respondent no. 1 and Sri S.M.A. Kazmi, Additional Advocate General, appeared for respondent no. 2.

3. By the U.P. Official Language (Amendment) Act, 1989 (U.P. Act No. 28 of 1989) the U.P. Legislature inserted the following Section 3 after existing Section 2 of the U.P. Official Language Act, 1951 :

3. In the interest of Urdu speaking people, Urdu language shall be used as second official language for such purposes as may be notified by the State Government from time to time.

4. Thus, the amendment mandated the use of Urdu language not generally for all purposes, but only for such purposes as notified by the State Government.

5. The U.P. Government issued a Notification dated 7.10.1989 exercise of powers under the aforesaid Section 3, The notification is quoted in the Government's letter dated 19.11.1990, a copy of which has been enclosed as Annexure "3" to the writ petition.

6. The notification is in Hindi. Its English translation is being given below.

7. The notification provided that Urdu will be used as second official language for the following purposes :

(I) Entertaining petitions and applications in the Urdu and replies thereof in Urdu.

(II) Receiving documents written in Urdu by the Registration office.

(III) Publication of important Government Rules Regulations and Notifications in

Urdu also.

(IV) Issuing Government Order and Circulars of public importance in Urdu also.

(V) Publication of important Government advertisement in Urdu also.

(VI) Publication of Urdu translation also of the Gazettee.

(VII) Exhibition of important signposts in Urdu.

8. The petitioners have prayed, during arguments, that Urdu translation of the, following 9 Rules/Regulations should be got published by the State Government:-

1. U.P. Kshetriya Panchayat Tatha Zila Panchayat (Sthano Aur Padon Ka Aarakshan Abantan) Niyamawali, 1994.

2. U.P. Kshetriya Panchayat Tatha Zila Panchayat (Sadassaon Ka Nirvachan) Niyamawali, 1994.

3. U.P. Kshetriya Panchayat Tatha Zila Panchayat (Saddashon Ke Nirvachan Ke Liye Pradeshik Nirvachan Kshetro Ka Parishiman) Niyamawali, 1994.

4. U.P. Kshetriya Panchayat (Anarhata Ka Hataya Jana Aur Anarhata Aur Saddashata Se Sambhadit Vibado Ka Niptara) Niyamawali, 1994.

5. U.P. Zila Panchayat (Saddashata Se Sambhandhit Vibado Ka Niptara) Niyamawali, 1994.

6. U.P. Kshetriya Panchayat Tatha Zila Panchayat (Adhyaksha Ya Pramukh, Aadi Ke Pad Ki Shapath) Niyamawali, 1994.

7. U.P. Kshetra Panchayat (Prakukh Tatha Up-Pramukh Ka Nirwachan Aur Nirwachan Viabado Ka Niptara) Niyamawali, 1994.

8. U.P. Kshetriya Panchayat Tatha Zila Panchayat (Adshyakh Ya Pramukh Aadi Ke Pad Ki Sapath) Niyamawali, 1994.

9. U.P. Zila Panchayat (Adshyakh Tatha Upadhyaksha Ka Nirwachan Aur Nirwachan Vibado Ka Niptara) Niyamawali, 1994.

9. This prayer is covered by item no. 3 of the notification dated 7.10.1989, translated and quoted above.

10. The State Government is bound by the statutory mandate of the amended Official Language Act read with the notification issued u/s 3 to get the aforesaid Rules/Regulations published in Urdu.

11. Therefore, a mandamus is issued to respondent No. 2 to get the Urdu publication done unless already done, of each of the aforesaid 9 Rules/Regulations in the official Gazette within 6 months of the date on which a certified copy of this order is presented before respondent no. 2.

12. The petitioners have also made a prayer, during arguments, that the

following documents relating to the proposed elections of the Local Bodies should also be published in Urdu :-

1. Voters List,
2. Ballot papers,
3. Nomination Forms,
4. List of Polling Centres, &
5. List of contesting candidates.

None of the aforesaid 5 documents are covered by any of the 7 items, mentioned in the Notification dated 7.10.1989. Therefore, no such mandamus can be issued.

13. The petitioners rely upon a decision of the State Government based upon the directive of the Election Commission to publish voters list etc. in Urdu also in respect of 27 districts of the State of U.P. where the respondents have found the population of Urdu knowing people to be 20% and above.

14. A mandamus can be issued to enforce statutory or public obligations. However, if something has been done by a policy or decision of the Government beyond the statutory obligations, that cannot form a basis for issuing a mandamus to do similar acts in respect of other matters also. Even Article 14 of the Constitution does not come to the rescue of the petitioners inasmuch as the decision of the State Government based on the recommendation/directive of the Election Commission that in the districts where Urdu knowing population is 20% or more the documents relating to elections may be published in Urdu also, is a decision in which we do not find any discrimination or arbitrariness. Different treatment can amount to discrimination only when meted out to similarly situated persons. The districts, where Urdu knowing population is higher, do not stand on the same footing as, other districts. Therefore, we decline to issue the mandamus on this ground also.

15. The first prayer of the writ petition, quoted above, seeks a declaration that certain rules, referred to in that prayer, are ultra vires the U.P. Official Language Act (as amended). A rule can be ultra vires of the Act under which it has been framed. Rules cannot be challenged as being ultra vires of another different Statute. Therefore, the prayer is absolutely misconceived. It is one thing to say that the statutory obligation under the U.P. Official Language Act should be enforced by a mandamus issued to the State Government, but it is a totally different thing to say that rules framed under one Statute should be struck down as they do not comply with another distinct Statute.

16. The said first prayer also seeks declaration that the rules referred therein are ultra vires the Constitution of India without mentioning any specific provision of the Constitution which can be said to be violated. Thus the prayer is baseless.

17. The second prayer in the writ petition is vague. It vaguely seeks a Mandamus

to the respondents to implement the U.P. Official Language Act and its notification in the Local Body elections. For this reason, we had required the petitioner to be more specific and to give a list of the documents relating to the said elections which the petitioners wanted to be published in Urdu also. We have already referred above to such list and the reason why we are not inclined to issue a mandamus for their publication in Urdu.

18. The first part of the third prayer, which is the same second prayer, is also rejected due to the above reasons.

19. The second part of the third prayer that in nature Urdu knowing persons should be appointed as Polling Officers at the Polling Centres is again misconceived as it is not supported by any such statutory obligation and is accordingly rejected.

20. The fourth prayer requiring amendment of the Rules relating to election on Local Bodies for implementing the U.P. Official Language Act is again misconceived. The U.P. Official Language Act does not cast any such obligation on the rule making authority. The only obligation is to get Urdu version of the Rules published which we have already directed above.

21. In view of above, the writ petition is finally disposed of.