

(2010) 09 AHC CK 0390

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8376 of 1986

Virendra Shah Sodh

APPELLANT

Vs

P.A. and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Constitution of India, 1950 — Article 348, 349

Citation : (2010) 09 AHC CK 0390

Hon'ble Judges : Sabhajeet Yadav, J

Final Decision : Dismissed

Judgement

Sabhajeet Yadav, J.—This petition was drafted in Sanskrit language and has been filed 24 years ago for adjudication before this Court along with a copy of writ petition in Hindi Deo Nagri script. On 2.7.1986 this court has admitted the aforesaid writ petition and issued notices to the opposite parties. The order admitting the writ petition was passed by Hon"ble Mr. Justice B.L. Yadav (as he then was) in three languages i.e. in Sanskrit language, in Hindi Deo Nagri script and in English language.

2. Today the case has been taken up for hearing. Learned counsel for the petitioner has been asked to inform the court as to whether a writ petition drafted in Sanskrit language can be presented for adjudication before this Court or such writ petition can be entertained and adjudicated by this Court or not? In reply thereto learned Counsel for the petitioner has pointed out only this much that about 2425 years ago a decision was rendered by Hon"ble Justice Late B.L. Yadav in Sanskrit language therefore he has submitted to decide instant writ petition on merit, which has been drafted and presented in Sanskrit language. In support of his aforesaid submission he has neither cited the aforesaid decision rendered by this court in Sanskrit language nor can point out any provision of law under which such petition can be presented for adjudication in Sanskrit language before the High Court. Contrary to it a preliminary objection has been raised by learned Standing counsel about the maintainability of the instant writ

petition presented before this Court in Sanskrit language. Thus in given facts and circumstances of the case, now question arises for consideration is that as to whether a writ petition presented in the Sanskrit language can be adjudicated or this court can refuse to entertain and adjudicate such writ petition?

3. In this connection, it is to be noted that Part XVII of the Constitution of India deals with the official language and Chapter I of which consisting of Articles 343 and 344 deals with the language of the Union, Chapter II consisting of Articles 345, 346 and 347 deals with the regional language and Chapter III consisting of Articles 348 and 349 deals with the language of Supreme Court and High Courts etc., out of which Article 348 specifically deals with the language to be used in proceeding before the Supreme Court and High Courts and for Acts, Bills etc. whereas Article 349 provides special procedure for enactment of certain laws relating to language.

4. Thus it would be appropriate to refer the provisions of Article 348 of Constitution of India in extenso, which specifically deals with the language to be used in Supreme Court and High Courts, as under :

"CHAPTER III

LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

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 byelaws 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 subclause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorize 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 subclause (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 byelaw referred to in paragraph (iii) of that subclause, 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."

5. From a plain reading of Article 348 (1) (a) of the Constitution of India it is clear that the provisions of said Article open with nonabstante clause to the effect that notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides all proceedings in the Supreme Court and in every High Court, shall be in the English language. It means that despite anything contained in the foregoing provisions of Part XVII of the Constitution until Parliament by making/enacting a law otherwise provides, all proceedings in the Supreme Court and in every High Court, shall be in English language. Clause (2) of Article 348 of the Constitution again opens with similar nonabstante clause to the effect that notwithstanding anything in subclause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorize 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. It means that the Governor of a State with the previous consent of the President, can authorize the use of Hindi language or any other language used for any official purposes in that State, in the proceedings in the High Court of that State.

6. Article 348 (2) of the Constitution is further controlled by a proviso appended to it which stipulates that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court. Before further proceeding with the case, it would be useful to refer a decision of Hon"ble Apex Court in S. Sundaram Pillai Vs. V. R. Pattabiraman, AIR 1985 S.C. 582, wherein Hon"ble Apex Court has dealt with the functions, purpose and object of the proviso appended to any statute by referring several authoritative books and juristic opinions and earlier decisions in para 27 to 42 of the decision which are extracted as under :

"27. Craies in his book "Statute Law" (7th Edn.) while explaining the purpose and import of a proviso states at page 218 thus :

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it..... The natural presumption is that, but for the proviso, the enacting part of the section would have included the subjectmatter of the proviso."

28. Odgers in "Construction of Deeds and Statutes" (Fifth Edn.) while referring to the scope of a proviso mentioned the following ingredients :

P.317 "Provisos These are clauses of exception or qualification in an Act, excepting something out of or qualifying something in, the enactment which, but for the proviso, would be within it."

P.318 "Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment."

29. Sarathi in "Interpretation of Statutes" at pages 294-295 has collected the following principles in regard to a proviso :

"(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subjectmatter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended,

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the later intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision."

30. In the case of Local Govt. Board V. South Stoneham Union, 1909 AC 57, Lord Macnaghten made the following observation :

"I think the proviso is a qualification of the preceding enactment, which is expressed in terms too general to be quite accurate."

31. In *Ishverlal Thakorelal Almaula V. Motibhai Nagjibhai*, (1966) 1 SCR 367 : (AIR 1966 SC 459) it was held that the main object of a proviso is merely to qualify the main enactment. In *M & S.M. Railway Co. Ltd. V. Bezwada Municipality*, AIR 1944 PC 71, Lord Macmillan observed thus :

"The proper function of a proviso is to except and to deal with a case which

would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

32. The above case was approved by this Court in *Commr. of Income Tax, Mysore, V. Indo Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : (AIR 1959 SC 713), where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In *Shah Bhojraj Kuverji Oil Mills & Ginning Factory V. Subhash Chandra Yograj Sinha*, (1962) 2 SCR 159 : (AIR 1961 SC 1596), Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus :

"As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule."

33. In *West Derby V. Metropolitan Life Assurance Co.* 1897 AC 647 while guarding against the danger of interpretation of a proviso, Lord Watson observed thus :

"a very dangerous and certainly unusual course to import legislation from a proviso wholesale into the body of the statute."

34. A very apt description and extent of a proviso was given by Lord Oreburn in *Rhodda Urban District Council V. Taff Vale Railway Co.* 1909 AC 253 where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in *Jennings V. Kelly* 1940 AC 206, where it was observed thus :

"We must now come to the proviso, for there is, I think, no doubt that in the construction of the section the whole of it must be read and a consistent meaning if possible given to every part of it. The words are "provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place." There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section."

35. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

36. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to

amount to a substantive provision itself.

37. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects and elements of a proviso. In *State of Rajasthan V. Leela Jain* (1965) 1 SCR 276 : (AIR 1965 SC 1296), the following observations were made :

"So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."

38. In the case of *Sales Tax Officer, Circle I, Jabalpur V. Hanuman Prasad* (1967) 1 SCR 831 : (AIR 1967 SC 565), Bhargava, J. observed thus :

"It is wellrecognized that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded."

39. In *Commr. of Commercial Taxes V. R.S. Jhaver* (1968) 1 SCR 148 : (AIR 1968 SC 59), this Court made the following observations :

"Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognized that in exceptional cases a proviso may be a substantive provision itself."

40. In *Dwarka Prasad V. Dwarka Das Saraf* (1976) 1 SCC 128 : (AIR 1975 SC 1758), Krishna Iyer, J. speaking for the Court observed thus :

"There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.

If the rule of construction is that *prima facie* a proviso should be limited in its operation to the subjectmatter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso.

A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

41. In *Hiralal Rattanlal V. State of U.P.* (1973) 1 SCC 216 : (AIR 1973 SC 1034) this Court made the following observations :

"Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called

proviso has substantially altered the main section."

42. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes :

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

7. Thus in view of the legal position stated herein before, in given facts and circumstances of the case, it is clear that the proviso appended to the Article 348(2) of the Constitution carves out exception to the main enacting provisions of the Article 348(2) of the Constitution resulting which even if the Governor of a State with the previous consent of the President of India authorizes the use of Hindi language or any other language used for any official purposes in that State, in proceedings in the High Court of that State, even then, it would not be obligatory upon the High Court i.e. a Judge of the High Court to deliver his judgment and pass a decree or order in Hindi language or such other language used for any official purposes in that State. Therefore, in my considered opinion the Judges of High Court of any State are not bound to deliver the judgment and pass the decree or order in Hindi language or any other language used for any official purposes in that State rather it is still open for them to deliver the judgment pass decree or order in English language, despite authorization of use of Hindi language or any other language used for official purposes of the State in proceeding before the High Court.

8. In this connection, it would be useful to refer a decision of Division Bench of this Court in *Prabhandhak Samiti and another Vs. Zila Vidyalaya Nirikshak, Allahabad and others*, AIR 1977 Allahabad 164 wherein this Court has dealt with various measures taken by the State of U.P. in respect of use of Hindi Deo Nagri script for official purposes in the State as well as in the proceedings in the High Court of the State of U.P.. The pertinent statement of facts and observations made by this Court in this regard in para 13,14 and 16 of the aforesaid decision are as under:

" 13. We shall now briefly refer to the salient measures taken within the ambit of Article 348 in this context. In 1963 the Parliament of India passed the Official Languages Act, 1963 (No. XIX of 1963) enabling by its Section 7, the use of Hindi or other official language of the State in the High Court of the State in its

judgments, decrees and orders, provided the Government of the State concerned, with the previous consent of the President of India, issued a notification to that effect. This was a major step in the endeavour to get over the hurdle created by the proviso to clause (2) of Article 348. Two important features of Section 7 are however, noteworthy. In the first place, it provides that where any judgment, decree or order is passed or made by the High Court in a language other than English, it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court. Secondly, Section 7 of the Official Languages Act was not brought into force forthwith and it was left to the Union Government to fix by a notification an appointed date on which that section was to come into force. So by a notification of the Home Ministry (No.2/1/66O.L., dated 26th February, 1970) the Union Government fixed the seventh day of March, 1970 as the appointed date for the purpose of Section 7 of the Official Languages Act, 1963. Thus, after the 7th March, 1970 the Governor of a State was empowered with the previous consent of the President of India, to permit the use of Hindi in addition to English in the High Court of the State concerned in its judgments, decrees and orders. To further promote its progress the Governor of Uttar Pradesh after consulting the High Court of Allahabad by a notification dated 28th October, 1970, in exercise of the power under Section 7 of the Official Languages Act, 1963, with the previous consent of the President, authorized the use of Hindi in addition to the English language for the purposes of any judgment, decree or order passed or made by the High Court of Allahabad. It, however, provided that when any judgment was passed or made in Hindi it was to be accompanied by a translation of the same in the English language issued under the authority of the High Court. So the present position is that a Judge of the High Court of Allahabad is free to pass or make his judgments, decrees and orders in Hindi but it has to be accompanied by a translation of the same in the English language issued under the authority of the High Court. In this manner the inhibition imposed by the proviso to Clause (2) of Article 348 has been substantially overcome but not completely demolished.

14. We have so far been dealing only with the judgments, decrees or orders of the High Court. We now proceed to examine the important steps which were taken with regard to the use of Hindi for purposes of conducting the proceedings in the High Court in the State of Uttar Pradesh. It will be noticed in this connection that under the scheme of the Constitution of provisions of Article 348 (2) are to prevail over those of Article 348 (1). This is clear from the non obstante clause with which Article 348 (2) opens. It is thus made possible to permit the use of Hindi language for proceedings in the High Court by an appropriate order of the Governor of the State under Article 348 (2) despite the provisions of Article 348(1). Accordingly by a notification made under Article 348(2) in the year 1961 the Governor of Uttar Pradesh permitted the use of Hindi language for purposes of arguments in criminal cases. By a similar order made in 1966 the Governor had permitted the use of Hindi languages for the purpose of arguments in civil cases as well. But the most notable step in this direction was

the order dated 5th September, 1969 issued by the Governor of U.P. with the previous consent of the President under Article 348 (2). The crucial provision of the order is contained in paragraph 4 thereof which is reproduced below:

Translated into English paragraph 4 would read as under :

"4. The question of progressive use of Hindi in the proceedings of the Allahabad High Court was again considered. Now, under Article 348(2) of the Constitution of India, the Governor of Uttar Pradesh is pleased to order with the prior consent of the President, that the Hindi may be used in the affidavits to be filed and in the statements and documents to be included in the paper books prepared for the use of the Allahabad High Court, subject to the following conditions :

(1) If the Bench so desires, it may make special order that the affidavits, statements and documents in Hindi be translated into English, and

(2) If some extract of pleadings, statements and documents in Hindi is incorporated in any documents in Hindi is incorporated in any judgment, English translation thereof may be made immediately thereafter."

The above order clearly permits the use of Hindi in Deo Nagri script in the affidavits filed in the High Court and in the statements and documents to be included in the paper books prepared for use in the proceedings of that Court. Paragraph 4, however, provides that the Bench concerned with any proceedings in the High Court may in its discretion make a special order that the affidavits and documents presented in Hindi be translated into English and if any judgment contains any extracts from the pleadings, statements and documents etc., an English translation thereof should be made immediately thereafter. Paragraph 4 of the order, no doubt, refers in terms only to the affidavits, statements and documents required to be included in the paper book in the proceedings instituted in the High Court. Therefore, the question which falls for consideration is as to whether the language of paragraph 4 is wide enough to include the writ petition itself and other pleadings presented in Hindi in proceedings before the High Court. The object of the notification dated 5th September, 1969 is clearly stated in its preamble and furnishes a clue to the interpretation of the main provision contained in paragraph 4 thereof. The preamble says that in the year 1947 Hindi had been declared the official language of Uttar Pradesh and at the same time it had also been declared to be the language of the Courts subordinate to the High Court and that since then the use of Hindi had been made progressively in the proceedings of the Courts as also in the administrative work. It is, therefore, obvious that the object of the Governor in issuing the said notification was to make possible the use of Hindi in the proceedings before the High Court also. It would be wholly repugnant to the purpose of the order if its language is given a rigid and literal interpretation and the use of Hindi is confined to affidavits, depositions and documents. On a reasonable interpretation the order would surely include pleadings of the parties, including the writ petition, the replies and the counter replies and other documents filed as annexures to the

affidavits exchanged between the parties. It must be presumed that these things can also be filed in Hindi, otherwise the policy clearly disclosed in the preamble of the order and consistently followed by the Governor since 1947 would be defeated.

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."

9. Thus as indicated in the aforesaid decision of Division Bench of this Court, it is clear that various measures have been taken for use of Hindi language for official purposes in the State of U.P. as well as in proceeding before the High Court and Subordinate courts. Thus the law as it now stands clearly permits the use of Hindi language in every proceeding of the High Court including drafting of affidavits, counter affidavits and rejoinder affidavit, the appeals, revisions, review and writ petitions and arguments, hearing of cases despite simultaneous use of English language in such proceedings and now it is not open for 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. However, it is still open to a Judge of our High Court hearing a case to deliver his judgment or pass a decree or order in English language despite use of Hindi language in proceeding before this Court and at the same time he can also deliver his judgment or pass order or decree in Hindi Deo Nagri script, if he so chooses, but he cannot be compelled to do so. In case, he passes an order or decree etc. in Hindi language, the only limitation still imposed upon him is that it must be accompanied by a translation of the same in the English language under the authority of the High Court. But there is nothing to indicate that any such law permits the use of Sanskrit language in any proceedings of the High Court. Therefore in my opinion a writ

petition drafted and presented in the Sanskrit language before this Court can neither be adjudicated nor arguments can be advanced nor any judgment, order or decree can be passed in Sanskrit language.

10. Thus, in my view, the above noted writ petition presented in Sanskrit language was liable to be rejected out rightly without entertaining the same. Accordingly the writ petition is hereby dismissed without going into its merit.