

Union of India and Others

Vs

Murasoli Maran

Union of India and Others

Vs

G. Lakshmanan

Civil Appeal Nos. 1448 and 1587 of 1971

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

06.12.1976

JUDGMENT

RAY, C.J. –

1. These appeals are by certificate against judgment and order dated January 29, 1971 of the High Court of Madras.
2. The respondents filed writ petitions in the High Court for a declaration that the Presidential Order dated April 27, 1960, the Railway Board Orders dated January 25, 1962, Memoranda or Orders of the Ministry of Home Affairs dated March 3, 1966 and the Posts and Telegraphs Department Orders dated February 6, 1965, December 4, 1965, September 23, 1967, June 19, 1968 and February 9, 1970 are void.
3. The Presidential Order dated April 27, 1960 was inter alia as follows :
 5. Training of administrative personnel in the Hindi Medium -
 - (a) In accordance with the opinion expressed by the Committed, in-service training in Hindi may be made obligatory for Central, Government employees who are aged less than 45 years. This will not apply to employees below Class III Grade, industrial establishments and work-charged staff. In this Scheme, no penalty should be imposed for failure to attain the prescribed standard by the due date. Facilities for Hindi training may continue to be provided free of costs to the trainees.
 - (b) Necessary arrangements may be made by the Ministry of Home Affairs for the training of typists and stenographers employed under the Central Government in Hindi typewriting and stenography.
 - (c) The Ministry of Education may take early steps to evolve a standard keyboard for Hindi typewriters.

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7. Recruitment to local offices of Central Government Department :

(c) The Committee has agreed with the recommendation of the Commission that the Union Government would be justified in prescribing a reasonable measure of knowledge of Hindi language as a qualification for entering into their services provided a sufficiently long notice is given and the measure of linguistic ability prescribed is moderate, any deficiency being made good by further in-service training.

This recommendation may be applied for the present in regard to recruitment in the local offices of the Central Government Departments in the Hindi speaking areas only and not in the local offices in non-Hindi speaking areas.

The directions under (a), (b) and (c) above will not apply to offices under the Indian and Audit and Accounts Department....

4. The Railway Board Notification dated January 25, 1962 inter alia stated as follows :

The progress of Hindi training of staff on the Railways is very slow and the facilities provided by the Government are not being utilized properly. Immediate steps should be taken to correct the position and ensure that the facilities offered by the Government are not misused. Since training in Hindi is obligatory and is being imparted during working hours, wilful absence from Hindi classes should be treated as absence from duty and dealt with as such.

5. The Home Ministry Memorandum dated March 3, 1966 inter alia stated as follows :

In-service training in Hindi was made obligatory for all Central Government employees below 45 years of age, excluding employees below Class III Grade, industrial establishments and work-charged staff. The programme for facilitating the progressive use of Hindi should be completed by March, 1966. Steps for the fuller use of facilities under the Hindi Teaching Scheme were being laid down. The facilities indicated that employees working in a Ministry should get themselves enrolled in the Hindi classes and failure to attend these classes should be discouraged and the obligatory training should include their appearance at the examinations.

6. One of the Posts and Telegraphs' Orders referred to above is set out as a type. This Order provides teaching facilities and free training in Hindi during office hours.

7. One of the petitioners in the High Court was Murasoli Maran. He described himself as a sitting Member of Parliament and stated that he had duty to represent the people. The locus standi of the petitioner was challenged in the High Court. The High Court rightly held that the petitioner could not maintain the petition in the High Court.

8. The petitioner in the other writ petition described himself as Assistant Manager in the Office of the Post-Master General, Madras. His locus standi was not challenged.

9. The petitioners contended in the High Court that the Presidential Order ceased to have any effect because the Second Language Commission was not appointed as contemplated under Article 344 of the Constitution. The second contention was that the Presidential Order and other orders, circulars

and memoranda issued pursuant thereto were inconsistent with Section 3 of the Official Languages Act, 1963, as amended, inasmuch as they placed persons like the petitioners in a disadvantageous position on account of their having no proficiency in the Hindi language.

10. The two relevant Articles in the Constitution are Articles 343 and 344. Broadly stated, Article 343 provides as follows :

The official language of the Union shall be Hindi in Devanagari script. For a period of 15 years from the commencement of the Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement. The proviso to Article 343(2) is that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language. Parliament may by law provide for the use, after the said period of 15 years, of the English language for such purposes as may be specified in the law.

11. Article 344 is as follows :

The President shall, at the expiration of five years from the commencement of the Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission. It shall be the duty of the Commission to make recommendations to the President as to (a) the progressive use of the Hindi language for the official purposes of the Union; (b) restrictions on the use of the English language for all or any of the official purposes of the Union; (c) the language to be used for all or any of the purposes mentioned in Articles 348.

12. Article 344 further provides that a Committee shall be constituted and it shall be the duty of the Committee to examine the recommendations of the Commission constituted under Article 344(1) and to report to the President their opinion thereon.

13. Article 344(6) provides that notwithstanding anything in Article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

14. Article 351 provides that it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India.

15. In exercise of the powers conferred on the Parliament by Article 343(3) of the Constitution, the Parliament passed the Official Languages Act, 1963. Section 3 of the Act provided as follows :

Notwithstanding the expiration of the period of fifteen years from the commencement of the Constitution, the English language may, as from the appointed day, continue to be used, in addition to Hindi, -

(a) for all the official purposes of the Union for which it was being used immediately before that day, and

(b) for the transaction of business in Parliament.

16. In 1968, the Parliament amended the Official Languages Act, 1963 and sub-section (4) was added to Section 3. Sub-section (4) as introduced by amendment in 1968 is as follows :

Without prejudice to the provisions of sub-section (1) or sub-section (2) or sub-section (3), the Central Government may, by rules made under Section 8, provide for the language or languages to be used for the official purpose of the Union, including the working of any Ministry, Department, Section or Office, and in making such rules, due consideration shall be given to the quick and efficient disposal of the official business and the interests of the general public and in particular, the rules so made shall ensure that persons serving in connection with the affairs of the Union and having proficiency either in Hindi or in the English language may function effectively and that they are not placed at a disadvantage on the ground that they do not have proficiency in both the languages.

17. On June 7, 1955, the Official Language Commission was appointed by the President under Article 344(1) of the Constitution. The Commission submitted its report in which the arrangements made by Government of India for training their employees on Voluntary basis in Hindi language was reviewed. The Commission was of opinion that if experience showed that no adequate results were forthcoming under such optional arrangements, necessary steps should be taken by the Government of India making it obligatory on Government servants to qualify themselves in Hindi within the requisite period, to the extent requisite for the discharge of their duties.

18. The recommendations of the Official Language Commission were placed before a Committee of the Parliament as envisaged under Article 344(4) of the Constitution. The Committee was of the opinion that the Government should prescribe obligatory requirements on Government servants to qualify themselves in Hindi language.

19. The President of India after considering the report of the Committee, issued the Presidential Order dated April 27, 1960 to which reference has already been made. Training in Hindi was made obligatory for employees.

20. Pursuant to the Presidential Order of April 27, 1960, the Home Ministry issued an Office memorandum dated March 3, 1966. Reference has already been made to that order. The Home Ministry Order made it obligatory for Government employees below 45 years of age excluding certain classes of employees to have, what is described as "in-service training in Hindi". The Memorandum stated that 20 per cent. of the employees should be deputed to attend the Hindi classes every year. The Memorandum also stated that failure to attend these classes should attract penalties. The obligatory training was to include their appearance at the examinations.

21. Pursuant to the Home Ministry instructions, the Post-Master General, Madras, under the directions of the Director-General of Posts and Telegraphs, issued a Memorandum referring to the Presidential Order of April 27, 1960 and the Home Ministry Order dated March 3, 1966. The Posts and Telegraphs Memorandum made "in-service training in Hindi" compulsory for all Central Government employees who were aged less than 45 as on January 1, 1961. The Memorandum further outlined the facilities and incentives provided for the Hindi teaching. Specific mention was made that attendance in Hindi class was compulsory and was treated as part of duty. Non-compliance with Government Orders was to be treated as breach of discipline.

22. Solicitor General contended on behalf of the appellant that the instructions were aimed at

promoting the policy of the Constitutional provisions that Hindi should be the official language of the Union. It was said that with a view to achieving the objective the employees of the Government of India ought to be trained in Hindi language. It was also said that no one was placed at a disadvantage even if one could not qualify oneself in Hindi because no penalty was prescribed for an employee who did not attain any particular standard. It was submitted that the Government was within its rights to issue orders obliging its employees to take training in the Hindi language, so that ultimately when Hindi became the language of the Union, they could perform their duties in an efficient and smooth manner.

23. The High Court upheld the contention of the respondents and held that the directions were inconsistent with Section 3 of the Official Languages Act, 1963. The High Court held that the penal consequences which followed if a Government employees absented himself from Hindi Classes had the effect of putting such an employee at a disadvantage.

24. Counsel for the respondents contended first that under Article 343(3). Parliament may by law provide for the use, after the period of fifteen years, of the English language for such purposes as may be specified in the law. Emphasis was placed on Article 343 of the Constitution to submit that Article 343 is transitional and directions of the President are limited to the period of 15 years from the commencement of the Constitution. The following reasons were advanced.

25. The fact that the Commission has to be constituted under Article 344 at the expiration of five years from the commencement of the Constitution, namely, 1955 and thereafter at the expiration of ten years from the commencement of the Constitution, namely, 1960 and not thereafter, would show that the directions issued by the President under Article 344(6) are limited to the period of fifteen years from the commencement of the Constitution. The position which would prevail after 1965 would not be within the knowledge of the Commission of the years 1955 and 1960 because the Parliament has to decide the same. The recommendations of the Commission and the directions of the President cannot relate to the period after 1965.

26. By reason of Article 344(2)(a) and (b) the recommendations of the Commission as to be progressive use of the Hindi language and the restrictions on the use of the English language are matters to come within the period of fifteen years from the commencement of the Constitution.

27. Article 344(3) of the Constitution which requires the Commission to have due regard to the claims of non-Hindi speaking persons in public services, indicates that these claims can be protected only when both English and Hindi languages continue.

28. Article 344(6) which states that notwithstanding anything in Article 343, the President may issue directions should be related to purposes of sub-clauses (a) to (e) of Article 344(2).

29. Counsel for the respondent relied on Article 349 in support of the contention that the effect of Article 349 is that after fifteen years from the commencement of the Constitution, if Parliament desires to substitute Hindi for English it can do so under unfettered discretion but during fifteen years it can substitute Hindi for English language by Presidential directions.

30. The second broad contention on behalf of the respondent was that the Official Languages Act, 1963 (referred to as the Act) occupies a field covered by parliamentary legislation. Reference was made to Objects and Reasons of the Official Languages Act, 1963, to show that acquiring of proficiency in Hindi is the principal purpose. Section 3(4) of the Act which was introduced and

inserted by Amendment in 1968, was said by the respondent to cover that area and inasmuch as the Official Languages Act speaks of rules and the same being laid before Parliament that is the only mode of directions. In other words, it was said that the Presidential Order would not have any effect when the Official Languages Act occupied the field.

31. The third head of submissions was that the Presidential Order is inconsistent with Section 3(4) of the Act. It was said in the High Court that if the Presidential Order was inconsistent with Section 3(4) of the Act it would to that extent be void. It was stressed that under Section 3(4) of the Act, persons were not to be placed at a disadvantage on the ground that they do not have proficiency in both the languages, namely, English and Hindi.

32. In the forefront stands Article 343 which states that the official language of the Union shall be Hindi in Devanagari script. Article 351 states that it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule. The original calculation of the framers of the Constitution was that for a period of fifteen years the English language should be used for all official purposes. That is why two Commissions were contemplated under Article 344 - one in 1955 and one in 1960. The provisions of Article 344 indicate that it shall be the duty of the Commission to make recommendations to the President as to the progressive use of the Hindi language. The provisions of the Constitution indicate the progress towards the use of Hindi language.

33. It is in this context that Article 344 is enacted for the purpose of achieving the object of replacing English by Hindi within a period of fifteen years. Article 343(3) states that Parliament may by law after the period of fifteen years provide for the use of English language. Although the Constitution considered the period of 15 years for replacing English the Constitution also found that it might not be possible to complete it. Therefore, Article 343(3) provides merely for extension of the time for the use of English language after the period of 15 years. The progressive use of the Hindi language is thereby not to be impaired. Extending the time for the use of the English language does not amount to abandonment of progress in the use of Hindi as the official language of the Union.

34. Comparing clauses (2) and (3) of Article 343 it will be noticed that while English is permitted to be continued for all official purposes for which it was being used clause (3) contemplated that having regard to the progress made Parliament, if necessary, will choose the purpose for which the use of the English language might be continued.

35. Article 344(6) provides that notwithstanding anything in Article 343, the President may, after consideration of the report of the Committee referred to in clause (5), issue directions. The non-obstante clause in Article 344(6) does not operate only against Article 344(1) and (2) but against the entire Article 344 for the reason that so far as transaction is concerned the directions under Article 344(6) may continue. Articles 343 and 344 deal with the process of transaction. 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. Article 344(6) takes into account this objective and is intended to determine the pace of progress and to achieve the same.

36. The provisions in Article 344 indicate that if there is a second Commission at the expiration of ten years from the commencement of the Constitution, the President may, after consideration of the

report, issue directions at the end of fifteen years. The provisions contained in Article 344(6) are not exhausted by using it once. The President can use it on more than one occasion. Further the effect of the power used cannot be said to be exhausted on the expiry of fifteen years. The Presidential Order which was issued in 1960 continues to be in force and cannot be said to have exhausted itself at the end of 15 years from the commencement of the Constitution. It would be strange that the steps necessary for the change should be given up at the expiry of 15 years because what is said to be a switch-over from English to Hindi has not been possible and Parliament provided by law for the continued use of the English language for particular purposes specified in that law.

37. The Presidential Order keeps in view the ultimate object to make the Hindi language as official language, but takes into note the circumstances prevailing in our country and considers it desirable that the change should be a gradual one and due regard should be given to the just claims and the interests of persons belonging to the non-Hindi speaking areas. The purpose of the Presidential Order is to promote the spread of the Hindi language and to provide the Central Government employees with the facilities to take training in Hindi language when they are in service.

38. The Presidential Order was validly made and there has been and can be no challenge to it. It is erroneous to suggest that the Presidential Order of 1960 became invalid after the passing of the Act. The High Court failed to see the sequence of the Presidential Order and the Act.

39. The Act merely continues the use of the English language in addition to Hindi. The Act 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 Presidential Order has no inconsistency with the Act. The non-obstante provisions in Article 344(6) empower the President. Therefore, the Presidential Order is paramount.

40. 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 change 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.

41. The contention of the respondent that persons are placed at a disadvantage is incorrect. The Presidential Order confers an additional qualification on those who learn Hindi. The Presidential Order does not take away anything from the Government employees. Prizes are offered and there may be increase in pay. These are incentives. The measures taken for enforcement of provisions for learning Hindi by providing for absence from classes as breach of discipline and insisting on appearance at the examinations are steps in aid of fulfilling the object of what is described as "in-service training in Hindi language". Such enforcement of attendance at examinations for proficiency is necessary for completion of training. The contention that the Presidential Order conflicts with Section 3(4) of the Act is unsound. The "in-service training" of the employees is during hours of duty and free of cost. Even if they fail there is no penalty. There is no treatment of unequals alike.

42. For the forgoing reasons, the judgment of the High Court is set aside. The presidential Order and other Orders challenged in the writ petitions are upheld. The appeals are accepted. The writ petitions are dismissed. Parties will pay and bear their own costs.

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