

Disqualifying Linguistic Trammel: Comment on the case U.P Hindi Sahitya Sammelan v. State of U.P

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India is a country which is an epitome of the concept of “Unity in Diversity” as it includes within its lap, hundreds of cultures, traditions and languages. The present case is regarding such regional language issue in the state of Uttar Pradesh in the case, where the questions raised regarding the interpretation of the official language of the state under Article 345 of Constitution of India, where the court has settled the dispute as to state can adopted any such number of languages it requires to be needed and upheld the constitutionality of the U.P. Official Language (Amendment) (3rd) Ordinance, 1983 (U.P Ordinance of 1983). **Keywords** Constitutional, Hindi, Language, Official, Uttar Pradesh

Introduction

Language according to Oxford Dictionary¹ means “the method of human communication, either spoken or written, consisting of the use of words in a structured and conventional way”. And in regard to relation between a Sovereign and its people it plays an important role so it necessary element to decide the language which need to be used, as we all know,

“Ignorantia juris non excusat or ignorantia legis neminem excusat” is a Latin maxim which means ignorance of law excuses no one. So it is important for people in any country to know about the law which is applied to them, for better understanding of the law, the language does play a crucial role. So the official language in a state must be determined.

When it comes to India, Our constitution clearly mentioned in Part XVII about the official language. Which is further divided into four chapters each dealing with Language of the Union, Regional Languages, Language of Supreme Court, High Courts, etc. and Special Directives respectively from Article 343 to 351.

The present case is regarding such regional language issue in the state of Uttar Pradesh.

Subject Matter

Whether it is constitutionally valid for the UP legislative Assembly to declare Urdu as the second Official Language through 1989 Amendment Act, when already once it has declared Hindi as the Official Language in 1951 under Article 345 of Constitution of India?

Jurisdiction

In the present case the appellants have approached the Supreme Court under the ambit of Article 136, Special Leave Petition, which is read as,

136. *Special leave to appeal by the Supreme Court;*

(1) *Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India*

(2) *Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces*

Facts and Procedural History

On 27th September 1951, Uttar Pradesh State legislature had passed “Uttar Pradesh Official Language Act, which was later passed by UP Legislative Council on 29th September 1951 and had received the assent of the governor on 5th November 1951 and on 12th November 1951 as the Uttar Pradesh Official Language Act, 1951 (U.P. Act No.XXVI of 1951) (for short, ‘1951 Act’) was published in the Gazette Extraordinary and came into force. The Act is enacted by the state legislature to provide adoption of Hindi as the language to be used for the official purposes and other matters in the state of Uttar Pradesh.

The Section 2² of the act deals with the Hindi to be official language of the state, the section states,

2. *Hindi to be official language of the State.—Without prejudice to the provisions of Articles 346 and 347 of the Constitution, Hindi in Devanagari script shall, with effect from such date, as the State Government may, by notification in the official Gazette, appoint in this behalf, be the language used in respect of the following:—*

a) (i) *Ordinances promulgated under Article 213 of the Constitution.*

(ii) *orders, rules regulations and bye-laws issued by the State Government under the Constitution of India or under any law made by Parliament or the Legislature of the State, and*

¹ Oxford Dictionary, 3rd Edition, Oxford, 2010.

² Section 2 of Uttar Pradesh Official Language Act, 1951.

(b) All or any of the official purposes of the State; and different dates may be appointed for different purposes in clauses (a) and (b) aforesaid.

Later a proviso was inserted to the above section by Uttar Pradesh Act No.9 of 1969 which reads as-

“Provided that the State Government may by general or special order, in this behalf, permit the use of the international form of Indian numerals for any official purpose of the State.”

On 7th April 1982, an ordinance called Uttar Pradesh Official Language (Amendment) Ordinance, 1982 was promulgated by the Governor. The ordinance deemed Section 3 has been inserted after Section 2 which reads as-

“In the interest of Urdu speaking people, Urdu language shall be used as second language, in addition to Hindi for such purposes as are specified in the Schedule.”

And also a following schedule has been inserted after Section 3, which read as-

1. Entertaining application in Urdu presented by the members of the public.
2. Receiving documents in Urdu presented for registration with a Hindi copy thereof.
3. Publication of important Government Rules, Regulation and notifications.
4. Publication of important Government Advertisements.
5. Translation of Gazette in Urdu.

Later, the above Ordinance was replaced by the U.P. Official Language (Amendment) (3rd) Ordinance, 1983 (U.P Ordinance of 1983). The Constitutionality of the above Ordinance was challenged in Allahabad High Court, Lucknow Bench in Writ Petition No.285 of 1984 by the present appellant U.P. Hindi Sahitya Sammelan. That writ petition was dismissed by the Division Bench of Allahabad High Court, through separate judgements. Then, on 7th October 1989, the Uttar Pradesh Official Language (Amendment) Act, 1989 (U.P. Act No.28 of 1989) came into effect, which was enacted by the U.P. Legislature to amend 1951 Act. By this Amendment Act, Section 3 was inserted after Section 2 in 1951 Act providing Urdu language as second official language for such purposes as may be notified by the State Government from time to time. As said above, the State Government issued a notification on 7th October 1989 notifying use of Urdu language as second official language for the following seven purposes:

1. Entertaining petitions and applications in Urdu and replies thereof in Urdu.
2. Receiving documents written in Urdu by the Registration office,
3. Publication of important Government Rules, Regulations and Notifications in Urdu also,

4. Issuing Government orders and circulars of public importance in Urdu also,
5. Publication of important Government advertisements in Urdu also,
6. Publication of Urdu translation also of the Gazette,
7. Exhibition of important signposts in Urdu.

Then, the appellant, U.P. Hindi Sahitya Sammelan (Civil Appeal No.459 of 1997), which had filed Writ Petition No.285 of 1984 before the Allahabad High Court challenging the constitutionality of U.P. Ordinance No.44 of 1983. Further, another Writ Petition was filed before the Allahabad High Court, Lucknow Bench challenging the 1989 Amendment and Notification dated 7th October 1989. The petition was heard by a Division Bench, consisting of Justice S.N.Sahaya and Justice D.K. Trivedi who gave two different opinions. Where, on one hand Justice S.N.Sahaya held to the validity of the 1989 Amendment and Notification as challenged in the Writ Petition as *ultra vires* and liable to struck down.

On the other hand, Justice D.K. Trivedi, held that the 1989 Amendment and Notification as valid and to dismiss the writ petition. Because of the difference in opinion the case was further laid before the Chief Justice of Allahabad High Court for following questions for a Third Judge Opinion-

1. Whether the impugned enactment can be said to be a valid piece of legislation within the meaning of Article 345 of the Constitution?
2. Whether the challenged notification suffers from the vice of the excessive delegation?
3. Whether the impugned enactment and the impugned notification are constitutional or *ultra vires*?

The then Chief Justice referred the matter to the Justice Brijesh Kumar and he answered the above questions as following:

1. That while enacting the law, to officially recognise a second language for the use in the state, the State legislature shall have to consider the provisions of Articles 345 and 347 of the Constitution by reading them together, the impugned enactment is, however, valid piece of legislation in the view of the judgement of the Division Bench in the Writ Petition No. 285/84.
2. The impugned enactment does not suffer from the vice of excessive delegation.
3. In view of the answers given on questions No. (1) And (2), I find that the impugned enactment as well as the notification are valid and constitutional.

In the view of above answers given by the third Judge, the Division bench by its Order on 16th August 1996, dismissed the Writ Petition. Aggrieved by the judgement and the order of the Allahabad High Court, the petitioner (later shall be referred as Appellant) had

filed an appeal in Supreme Court under the Article 136 of the Constitution for Special Leave Petition.

Which after being passed on from a 2 bench Judge and then to a 3- Judge Bench and later heard by a 5- Judge Bench as it involved substantial question of law as to interpretation of Articles 345 and 347 of the Constitution.

Arguments of Appellants

According to the learned counsel for the appellant, Mr. Shyam Divan argues that-

- As Hindi Language is given special status in the Constitution, where the State Legislature adopts it as Official Language, two things would follow-
 1. The State Legislature is precluded from de-recognising Hindi as an Official Language and
 2. The State Legislature is precluded from adopting any other language as its official language.

As per his arguments, it would mean, the text of Article 345 give only two options to the state legislature. They are-

1. Adoption of any one or more of the languages in use in the State
2. And the other, Hindi

And if the second option is exercised, the power of state legislature is exhausted.

- Later, he argues that Chapter II of Part XVII engrafts a unique dichotomy involving the State Legislature at the State level and the Union Executive (President) at the Central level. It provides two routes for designating a language as an official language in a State. They are:
 1. The adoption by law by the legislature of the State; and
 2. A direction by the President of India.

These two rules are complementary and he draws an inference that where the State Legislature has adopted a language as the official language, and there is a demand for the recognition of another language as official language, the Constitution provides only one method for designating another language as official language, which is through a Presidential direction under Article 347.

So, which means that the power of the state legislature under Article 345 gets exhausted after single use.

Analysis of the law discussed: Ambit of the Article 345 and 347

Article 345 of the Constitution has been discussed which is read as:

345. Official language or languages of a State.-

Subject to the provisions of articles 346 and 347, 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:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

As per the judgement, nothing in this Article bars declaring one or more languages in use in the State, in addition to Hindi, as the second official language. The significance of the word 'or' occurring before "Hindi" is to dispense with the requirement of Hindi being "in use", while the requirement of being "in use" for any other language to be declared official language has to be satisfied for exercise of power by the State legislature under Article 345.

This requirement of Hindi was meant that the particular State Legislature must sacrifice its power in promoting other languages within the State. The purpose of using the Hindi separately is to facilitate adoption of Hindi across the States whether or not Hindi is in use in a particular State.

There isn't any indication that the power can be exercised by the state legislature only once and that power gets exhausted if the State Legislature adopts Hindi as the Official language of the State. As there are many State Legislatures who have adopted other officially recognized languages in addition to Hindi such as Bihar, Haryana, Jharkhand, Madhya Pradesh and Uttarakhand. Obviously, this would have been possible but for the constitutional permissibility.

Article 345 also enables the State Legislature to adopt any number of languages which are in use in the State for all or any of the official purposes of the State. It is not necessary there must be demand made on that behalf to the State Government or if there is demand, the State Legislature cannot make law adopting a language in use in the State as second official language.

The word 'may' in Article 345 is not without significance. It indicates that State has discretion in adopting the language or languages in use in the State and so also Hindi. Such discretion can be exercised any number of times by the State Legislature as it deems proper.

The expression "subject to the provisions of the Articles 346 and 347" effect is that any law made by the State Legislature is subject to directions existing, if any, issued by the President under Article 347 when the State Legislature exercises its power under Article 345. Once the direction is issued by the President under Article 347, it is not open to the State Legislature to tinker with such direction in any manner.

Hence, the only restriction to the legislative power in the Article 347 to the legislative power is that the exercise of the power by the State Legislature should not be in conflict in any manner with the directions that may have

been issued by the President under Article 347. Absence of such direction, the State Legislature is not prevented from any manner in exercising its power under Article 345.

Article 347. Special provision relating to language spoken by a section of the population of a State.-

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

There has been a comparison drawn between Article 345 and Article 347, which the former deals with the power of the State Legislature and the latter deals with the power of the President. The two provisions describe a different procedure for making law or issuing directions for recognising a language as official language. The requirement, "a substantial portion of population of a State desire the use of any language spoken by them to be recognized by the State" in the Article 347 is not requirement under the Article 347 for the State Legislature to enact law adopting the language as official language of the State, which is in use in the State.

The State Legislature cannot declare any language as official language if such language is not used in the State. However, there is no rest for the State Legislature to declare Hindi to be official language even if Hindi is not "in use" in Karnataka.

It is not right that the only method for designating another language as the official language is through Article 347. Because such interpretation would curtail the powers of the State Legislature under Article 345 which isn't constitutionally sound.

Ratio Decidendi

As finally decided on 4th September 2014 by the 5-bench Judge of the Supreme Court consisting of, the then Chief Justice R.M.Lodha, Justice Dipak Mishra, Justice Madan B.Lokur, Justice Kurian Joseph and Justice S.A. Bodde, it was held that the neither the Section 3 in the 1989 Amendment Act, which makes Urdu an second official language in the State of Uttar Pradesh nor the Notification in pursuance of the above provision which provides even purposes where Urdu can be used is unconstitutional and the appeal was dismissed with no order as to costs.

Obiter Dicta

The judges have discussed the importance of declaring Hindi as an official language in the country and also how various eminent people of legal expressed their displeasure over the drafting committee's decision which was done by Munshi and Gopalaswami Ayyangar as a half-hearted compromise.

As according to them, then their view was promoting Hindi as it would help in the national integrity and unity.

Judicial Precedents

The present case hadn't been mentioned in any cases as of now. The judges haven't mentioned any precedents as such in the case. The only other case which has been discussed is Sri Nasiruddin v. State Transport Appellate Tribunal (1975) 2 SCC 671 has no application for the purpose of construction of Article 345. Where the interpretation of the word "or" has been discussed and held it cannot be read as "and". If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration.

Criticism

The criticism about the present case, I would state is it was well established that many Legislatures in the country which have adopted other officially recognized language(s) in addition to Hindi such as in Bihar, Haryana, Jharkhand, Madhya Pradesh, Uttara khand and Delhi which would not have been possible but for the constitutional permissibility. Delhi has adopted Punjabi and Urdu as other officially recognized languages in addition to Hindi. So re-discussing an issue and delay in deciding such already well established principle was dally of time.

Conclusion

The whole case discusses the ambit of Articles 345 and 347 of the Constitution of India and also the limitations to the Article 345. The difference between those articles and how constitution provides two different provisions to declare any particular language as an official language in any particular State.

Because of the present case the disputed issue of whether employing Hindi as an official language or not is settled as it is not a compulsion on part of any state legislature to make Hindi as official language and can choose any language. This puts end on the language tiff in various southern Indian states regarding the choice of language.