
(2014) 4 CTC 821 : (2014) 3 LW 673 : (2014) 5 MLJ 257

Madras High Court (Madurai Bench)

Case No: W.P(MD)No. 2394 of 2010

Solai Subramanian

APPELLANT

Vs

The Chief Secretary

RESPONDENT

Date of Decision: July 1, 2014

Acts Referred:

Constitution of India, 1950 – Article 256, 257, 343(3), 344(1), 344(4) # Official Languages Act, 1963 – Section 7

Citation: (2014) 4 CTC 821 : (2014) 3 LW 673 : (2014) 5 MLJ 257

Hon'ble Judges: V.M. Velumani, J; V. Ramasubramanian, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

It is often said that life comes a full circle. That it is so is proved by the case on hand. Exactly about 30/32 years

ago, a group of lawyers challenged in the very same Court the introduction of Tamil as the language of all subordinate Courts, Civil, Criminal,

Tribunals and Rent and Revenue Courts. Today, lawyers have resorted to a series of agitations to reinforce Tamil as the language of the Court.

Similarly, a learned Judge of this Court held that exactly about 36 years ago [In Ramayee v. Muniyandi Konar reported in (1978)2 MLJ 442] that

a Judgment written by a District Munsif in Tamil, was no more than mere a waste paper. Today, estimation has changed completely reminding us

of the way history repeats itself and the way this come a full circle.

2. This is a writ petition filed in public interest challenging an office memorandum dated 05.01.1994 issued by the Registrar General of this Court,

permitting the Judicial Officers of the Subordinate Courts to write Judgments, Decrees, Awards and Orders in English.

3. Heard Mr.P.Rathnam, the second petitioner appearing in person, Mr.B.Pugalendhi, learned Special Government Pleader appearing for the first

respondent and Mr.D.Sivaraman, learned counsel appearing for the second respondent.

4. Before we proceed to consider the merits of the challenge, it is necessary to bring on record certain events that have taken place during the

pendency of this writ petition. This writ petition was originally filed by the first petitioner herein namely Mr.Solai Subramanian alias S.Subramanian,

who is also a practising Advocate. He challenged the circular issued by the Registrar General on 05.01.1994 on the ground that the said circular

violated the statutory prescription contained in the Official Languages Act.

5. The writ petition as it was originally filed by the first petitioner herein, was earlier dismissed by a Bench, by an order dated 22.02.2013 on the

short ground that the second proviso to Sub-section(1) of Section 4-B, enables the High Court to issue such a circular.

6. Thereafter, the second petitioner, who is an Advocate practising in this Court came up with an application in Review Application(MD)No.25 of

2014, seeking a review of the order dated 22.02.2013 by which the writ petition was dismissed. The review was sought on the ground that certain

statutory provisions have been omitted to be taken note of and that there was an error apparent on the face of the record. Accepting the said

contention, the review application was allowed by us by an order dated 03.06.2014. Consequently, the writ petition got restored for a fresh

hearing.

7. Thereafter by an order dated 26.06.2014, we directed the third party-review applicant to be impleaded as the second petitioner in the writ

petition. Accordingly, Mr.P.Rathnam, has been impleaded as the second petitioner in the writ petition and we have taken up the writ petition for

consideration on merits.

8. After the adoption of the Constitution with effect from 26.01.1950, the Legislatures of the States, became empowered to adopt, bylaw, any one

or more of the languages in use in the State. Chapter-I of Part-XVII of the Constitution deals with the Language of the Union. Chapter II deals

with Regional Languages. Chapter III of Part XVII of the Constitution deals with the language of the Supreme Court, High Courts, etc. Chapter

IV contains special directives.

9. Article 345 of the Constitution empowers the Legislature of a State, to adopt, by law anyone or more of the languages in use in the State. The

proviso of Article 345 stipulates that until the Legislature of the State otherwise provided by law, the English Language should continue to be used

for those official purposes within the State for which it was being used immediately before the commencement of the Constitution.

10. In pursuance of the power so conferred by Article 345 of the Constitution, the Legislature of the State of Tamil Nadu passed the Act known

as the Tamil Nadu Official Language Act, 1956 [Tamil Nadu Act 39 of 1956]. It received the assent of the Governor on 19.01.1957 and

published in the Gazette on 23.01.1957.

11. As seen from the Preamble, it is an act to provide for the adoption of Tamil as the language to be used for the official purposes of the State of

Tamil Nadu. Section 2 of the Act declares the official language of the State to be Tamil. Section 3 declares that notwithstanding anything contained

in Section 2 and without prejudice to the provisions of Articles 346 and 347, the English language shall continue to be used for all official purposes,

until the State Government by notification under Section 4, otherwise directed. Section 4 of the Act, empowered the Government by notification to

direct that Tamil shall be used in respect of such official purposes as may be specified in the notification.

12. By an amendment under the Tamil Nadu Official Language (Amendment) Act 41 of 1976, two provisions were incorporated into the original

Act. One was Section 4-A and another was Section 4-B. Under Section 4-A, it was declared that notwithstanding anything contained in Sections

2 to 4 of that Act or in the Code of Civil Procedure or in the Code of Criminal Procedure, Tamil shall be the language of all Civil and Criminal

Courts, Subordinate to the High Court. It should be the language of all Tribunals as well as Rent Courts and Revenue Courts for the purpose of

recording evidence in all proceedings.

13. The first proviso to Section 4-A prescribes that the Presiding officer of any such Court or Tribunal may in recording evidence in Tamil, employ

English words and phrases wherever it is necessary to bring out the exact purport and meaning. However, by the second proviso to Section 4-A,

the High Court is empowered, by general or special order to permit any class of Presiding Officers of Civil or Criminal Courts or Tribunals to

record evidence in English in such circumstances and for such period as may be specified in such order. Similarly, the third proviso empowered the

Board of Revenue by general or special order to permit any class of Presiding Officers of Rent Courts or Revenue Courts to record evidence in

English in such circumstances and for such period as may be specified in such order. Section 4-A can be usefully extracted for easy appreciation of

its scope and ambit:

4-A. Declaration of Tamil as the language of Courts for recording evidence in all proceedings.- Notwithstanding anything contained in sections 2,3

and 4 of this Act or in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or in the Code of Criminal Procedure, 1973 (Central Act 2 of

1974), Tamil shall be the language of all-

(i)civil and criminal courts subordinate to the High Court;

(ii)tribunals; and

(iii)rent courts and revenue courts;

for the purpose of recording evidence in all proceedings:

Provided that the Presiding Officer of any such court or tribunal may, in recording evidence in Tamil, employ English words and phrases, wherever,

he feels necessary to bring out the exact purport and meaning:

Provided further that the High Court may, by general or special order, permit-

(i) any class of Presiding Officers of civil or criminal courts, or tribunals, or

(ii) any Presiding Officer of any such court or tribunal to record evidence in English in such circumstances and for such period as may be specified

in such order:

Provided also that the Board of Revenue may, by general or special order, permit-

(i) any class of Presiding Officers of rent courts or revenue courts, or

(ii) any Presiding Officer of any such court, to record evidence in English in such circumstances and for such period as may be specified in such

order.

Explanation.- In this section and in section 4-B, ""rent court"" or ""revenue court"" shall mean any Court presided over by an officer of the Revenue

Department.

14. Under Section 4-B, it was declared that notwithstanding anything contained in Sections 2 to 4 or in the Code of Criminal Procedure or Civil

Procedure, Tamil shall be the language of all Civil Courts subordinate to the High Court, all Criminal Courts subordinate to the High Court as well

as Tribunals and Rent and Revenue Courts for the purpose of writing Judgments and Decrees. Section 4-B(1) also contains three provisos, which

are actually in pari materia with the three provisos to Section 4-A.

15. The only difference between the scope of Section 4-A and Section 4-B is that while the former deals only with recording of evidence, the latter

deals with the writing of Judgments, Decrees and Orders.

16. Therefore, it is clear that after the insertion of Section 4-A and 4-B, it became mandatory for all Civil and Criminal Courts subordinate to the

High Court, to record evidence in Tamil and also to have the Judgments, Decrees and Orders written in Tamil. Section 4-B can be usefully

extracted as follows:

4-B. Declaration of Tamil as the language of courts for writing judgments, decrees and orders.- (1)Notwithstanding anything contained in sections

2,3 and 4 of this Act or in the Code of Criminal Procedure, 1908 (Central Act 5 of 1908) or in the Code of Criminal Procedure, 1973 (Central

Act 2 of 1974), and subject to the provisions of sub-section(2), Tamil shall be the language of all-

(i)civil courts subordinate to the High Court;

(ii)criminal courts subordinate to the High Court;

(iii)tribunals; and

(iv)rent courts and revenue courts;

for the purpose of writing judgments, decrees and orders:

Provided that the Presiding Officer of any such court or tribunal may, in writing judgments, decrees and orders in Tamil, employ English words and

phrases, wherever, he feels necessary to bring out the exact purport and meaning:

Provided further that the High Court may, by general or special order, permit-

(i)any class of Presiding Officers of civil or criminal courts, or tribunals, or

(ii)any Presiding Officer of any such court or tribunal to write judgments, decrees and orders in English in such circumstances and for such period

as may be specified in such order:

Provided also that the Board of Revenue may, by general or special order, permit-

(i)any class of Presiding Officers of rent courts or revenue courts, or

(ii)any Presiding Officer of any such court, to write judgments and orders in English in such circumstances and for such period as may be specified

in such order.

(2)the provisions of sub-section(1) shall come into force on such date as the State Government may, by notification appoint and different dates

may be appointed in respect of-

(i)civil courts subordinate to the High Court;

(ii)criminal courts subordinate to the High Court;

(iii)tribunals; and

(iv)rent courts and revenue courts"".

17. The Parliament also came up with a similar enactment known as Official Languages Act, 1963, with a view to provide for the languages which

may be used for the official purposes of the Union, for the transaction of business in Parliament, for Central and State Acts and for certain

purposes in High Courts. A careful look at the statement of objects and reasons for the Central Enactment namely the Official Languages Act,

1963 would show that in pursuance of Article 344(4) of the Constitution, a Committee was constituted to examine the recommendations of the

Commission constituted under Article 344(1). The Committee expressed the opinion that the complete change over of Hindi was not practicable

and that provision should be made in pursuance of Article 343(3) of the Constitution for the continued use of English even after 1965. Therefore,

the Bill actually sought to make provision by law, for certain other matters such as authorised Hindi translation of statutory enactments, etc.

18. Under Section 7 of the Central Enactment namely Official Languages Act, 1963, the Governor of a State is entitled, with the previous consent

of the President, to authorise the use of Hindi or the official language of the State in addition to the English language for the purposes of any

Judgment, Decree or Order passed or made by the High Court for that State.

19. The Tamil Nadu Official Language Act, 1956, was actually followed by another Act known as Madras State Legislature (Continuance of use

of English Language) Act, 1964, providing for the continuance of English language for the transaction of business in the Legislature of the State of

Madras. Thereafter, a notification is issued in G.O.Ms.No.5630 of 1969, Public Department, dated 13.11.1969, in exercise of the power

conferred under Section 4 of the Tamil Nadu Act 39 of 1956, adopting Tamil as the official language in all subordinate Courts, with effect from

14.01.1970, for the purpose of recording evidence.

20. It is only thereafter that the Tamil Nadu Official Language (Amendment) Act, 1976, was passed inserting Section 4-A and 4-B in the original

Act. It may be of interest to note that this Tamil Nadu Act 41 of 1976 was not passed by the State Legislature. It was issued by the President in

exercise of the power conferred by Tamil Nadu State Legislature (Delegation of Powers) Act, 1976, passed by the Parliament, when the State of

Tamil Nadu came under the President's Rule by virtue of a proclamation issued under Article 356(1) of the Constitution on 31.01.1976.

Subsequently, the Act received the approval of both Houses of Parliament on 20.06.1977 and 22.06.1977 respectively. Since the 1976

Amendment Act was not repelled or re-enacted by the State Legislature, it has now come to stay.

21. The 1976 Amendment Act came into force on 12.11.1976. Immediately, the State issued an order in G.O.Ms.No.191, Law Department,

dated 13.11.1976, making Tamil the language in which Judgments, Decrees or Orders, are to be written by the subordinate Criminal Courts.

Subsequently, another notification is issued in G.O.Ms.No.9, Law Department, dated 18.01.1982 appointing 1st February, 1982 as the date on

which the provision of Section 4- B(1) of the Act should come into force in respect of all Civil Courts subordinate to the High Court and all the

Tribunals, Rent Courts and Revenue Courts. This notification also received the approval of the State Assembly as well as Legislative Council on

22.03.1982 and 23.03.1982 respectively.

22. Immediately thereafter, an Advocate by name M.Ranka, filed a writ petition in W.P.No.1059 of 1982 on the file of this Court, seeking the

issue of a writ of declaration for declaring Section 4-B of the Tamil Nadu Official Language Act, 1956 and the Notification in G.O.Ms.No.9, Law

Department, dated 18.01.1982 as illegal and unconstitutional. Another writ petition is filed by another Advocate in W.P.No.1148 of 1982, praying

for the issue of a writ of certiorari to quash the Notification in G.O.Ms.9, Law Department, dated 18.01.1982. A member of the Coimbatore Bar

also filed a writ petition in W.P.No.1294 of 1982, seeking a declaration that Section 4-B was unconstitutional. The petitioner who filed

W.P.No.1148 of 1982 also filed another writ petition in W.P.No.4287 of 1984 seeking the issue of writ of mandamus to direct the Union of India

to secure a mandate in exercise of the powers under Article 256 and 257 of the Constitution, requiring all the States including the State of Tamil

Nadu to retain or reintroduce English as the language of the Courts and Tribunals and other authorities subordinate to High Court.

23. All those four writ petitions were actually placed before a Division Bench, which heard the matter at length and reserved orders. However, on

30.03.1984, the Division Bench referred the matter to a Full Bench, on the ground that it involved an important question.

24. Interestingly, a Full Bench was constituted after a period of more than 9+ years, in November 1993. The Full Bench heard all the writ petitions

and dismissed the same by a decision rendered on 21.04.1994.

25. In the said decision, namely, M. Ranka Vs. State of Tamil Nadu, , the Full Bench of this Court traced the history of the legislation in graphic

detail and quoted with the approval of the decision of the Division Bench of Allahabad High Court, wherein it was held that the Courts function

primarily for the benefit of the inhabitants of the locality and that therefore the proceedings must be conducted in a language understood by them.

The Full Bench accepted the stand taken by the State that the Act was passed with the object of benefiting the litigants in Tamil Nadu, most of

whom are peasants, who do not know English. Therefore, the Full Bench rejected the challenge to the provisions of the Act as well as

Notifications issued thereunder.

26. However, it appears that certain representations were received from the Judicial Officers, seeking the permission of the High Court to continue

to write Judgments in English. On the basis of those representations, the Full Court of the High Court appears to have passed a resolution, granting

a general amnesty to all subordinate Judicial Officers. In pursuance of the decision so taken in the Full Court, the Registrar General issued an

official memorandum dated 05.01.1994, granting an option to Judicial officers to right Judgments, Orders, etc. in Tamil or in English. In order to

appreciate the challenge to the said circular issued in pursuance of the resolution of the Full Court, it is necessary to extract the relevant part of the

official memorandum. Hence, it is extracted as follows:

Sub-section(1) of Section 4-B of the Tamil Nadu Official Language Act, shall come into force in respect of Criminal Courts, Civil Courts and the

Tribunals subordinate to High Court with effect from 14.11.1976 and 1.2.1982 respectively. From the said dates, the Presiding Officers of the

Criminal/Civil Courts and the Tribunals were writing Judgments, orders and award in Tamil except, a few Presiding Officers who were writing

Judgments and Orders in English after obtaining the permission of the High Court. Even now, some of the Judicial officers of the Civil and Criminal

Courts and the Tribunals are seeking permission of High Court to write Judgments and Orders in English for the reason that their mother tongue is

not Tamil and the Acts pertaining to their courts are not yet translated in Tamil and supplied to their court. The difficulty experienced by the Judicial

officers was considered by the Full Court of this Honourable High Court and as resolved therein, option is given to the Judicial Officers to write

Judgments, Orders, etc., in Tamil or in English.

27. A careful reading of the circular dated 05.01.1994, whose relevant and operative portions are extracted above, would show that the primary

object of the above circular was to enable a few Presiding Officers, who had expressed difficulties in writing Judgments in Tamil on account of their

mother tongue being different, to write Judgments in English.

28. But the above official memorandum, has omitted to take note of two important aspects. The first is that under Section 4-B of the Tamil Nadu

Official Language Act, 1956, Tamil has been declared to be the language of all Civil and Criminal Courts subordinate to High Court,

notwithstanding anything contained in the Code of Criminal or Civil Procedure"". Section 4-B(1) contains a non-obstante clause. Sub-section(2)of

Section 4-B states that the provisions of Sub-section(1) will come into force on such date as the State Government may by notification appoint.

The State Government by notification has actually appointed the dates 14.11.1976 and 01.02.1982 as respective dates. The validity of Section 4-

B has been upheld by a Full Bench of this Court and the issue has attained finality.

29. The only area where some leverage is granted to the High Court, is under the second proviso to Section 4-B(1). A careful look at the second

proviso to Section 4-B(1) would show that the High Court is invested with the power to permit any class of Presiding Officers or any Presiding

Officer of any Court, by general or special order, to write Judgments, Decrees or Orders in English. The power conferred by the second proviso is

circumscribed by various conditions. First of all, the power conferred by the second proviso to permit officers to write Judgments in English, can

be exercised either in respect of any class of Presiding officers or in favour of any particular Presiding Officer. Such permission can be granted only

in specific circumstances and for specified periods of time, as may be indicated in the order.

30. Keeping in mind the scope of the power conferred by the second proviso to Section 4-B(1), if we have look at the impugned circular dated

05.01.1994, it will be clear that the same does not specify any of the parameters of the second proviso. By the impugned circular, all officers

throughout the State have been granted a general permission. This permission is not for any particular period of time.

31. In other words, the impugned circular is violative of the second proviso to Section 4-B(1), for the following reasons:

(i) While the second proviso to Section 4-B(1) empowers the High Court to grant permission either to a class of presiding Officers or to a particular Presiding officer, the impugned circular grants permission to all Judicial Officers throughout the State. This is the first violation.

(ii) The second illegality about the impugned circular is that the power under the second proviso can be exercised by the High Court, only in specified circumstances and for specified periods of time. But the impugned circular, does not even put a restriction with regard to time. The only circumstance which has necessitated the issue of the circular is that a few officers have, as their mother tongue, a language other than Tamil and that some of the enactments are not yet translated into Tamil and supplied to their Courts. But these are not real circumstances, for granting a general amnesty for all times to come. Therefore the impugned circular, is issued far in excess of the power conferred by the second proviso to Section 4-B(1).

32. We may also take note of two more important things. The General Rules for Tamil Nadu State and Subordinate Services apply to the Judicial

Officers appointed to the Tamil Nadu State Judicial Service also. These rules take care of the contingencies where a person whose mother tongue

is other than Tamil is appointed to a State or subordinate service or even a ministerial service. Rule 12-A(a) of Part II of the General Rules for

Tamil Nadu State and Subordinate Services, stipulates that no person shall be eligible for appointment to any service by direct recruitment unless

he has adequate knowledge of the official language of the State namely, Tamil. The proviso to the said rule enables even a person who does not

possess an adequate knowledge of Tamil, to apply for any post. But after such appointment, he is required to pass a second class test in Tamil

conducted by the Tamil Nadu Public Service Commission. This is what is prescribed by Sub-rule(b) of Rule 12-A. The rule in entirety can be

extracted as follows:

12-A.Linguistic qualification-(a)No person shall be eligible for appointment to any service by direct recruitment unless he has an adequate

knowledge of the official language of the State, namely, Tamil:

Provided that a person, being otherwise qualified for appointment to the post to which recruitment is to be made, may apply for recruitment to the

post, despite the fact that, at the time of such application, he does not possess an adequate knowledge of Tamil.

Explanation For the purpose of this rule, a person shall be deemed

to have an adequate knowledge of Tamil, if-

[(i)In the case of a post for which the educational qualification prescribed is the minimum general educational qualification and above, he has passed

the S.S.L.C. Public Examination or its equivalent examination with Tamil as one of the languages; or studied the High School Course in Tamil

Medium and passed the S.S.L.C. Public Examination or its equivalent Examination in Tamil Medium; or passed the Second Class Language Test

in Tamil Conducted by the Tamil Nadu Public Service Commission.]

Substituted in G.O.Ms.No.538, P&AR (Per.S) dt.28-9-89,

w.e.f.15.11.88.

ff{(ii)in the case of a post for which the educational qualification prescribed is VIII Standard and above but below S.S.L.C. he has studied in Tamil

Medium in those standards or passed the Language Test in Tamil referred to in rule 12-B(i); and

(iii)in the case of a post for which the educational qualification prescribed is below VIII standard, he has studied in Tamil Medium in those

standards or passed the oral test in Tamil referred to in rule 12-(B)(ii).} ff Substituted in G.O.Ms.No.445, P&AR(Per.P) dt.4-5-84.

(b) Every such candidate as is referred to in the proviso to sub-rule (a), shall, if selected and appointed on or after 9th February, 1996, pass the

Second Class Language Test in Tamil conducted by the Tamil Nadu Public

Service Commission, or pass the language Test in Tamil referred to in rule 12- B(i) conducted by the appointing authority or pass the oral 12-B(ii)

conducted by the appointing authority, as the case may be within a period of two years from the date of his appointment. If he fails to pass the said

Language Test within the said period of two years, he shall be discharged from service".

33. Therefore, the first circumstance which led to the resolution of the Full Court, leading to the issue of the impugned circular, is not in existence

any more. While the impugned circular was issued in 1994, Sub-rule(b) of Rule 12-A, was inserted on 09.02.1996. Hence, the first circumstance

which purportedly necessitated the Full Court resolution leading to the issue of the impugned circular, is not now available.

34. The second reason, reflected in the impugned order is that the Courts are not supplied with copies of enactments translated into Tamil. This

circumstance also does not exist any more. There is an official journal printed and published by the High Court itself, under the title

"Hindi in Tamil". The said journal translates all important Judgments of the High Court itself into Tamil. Almost all enactments have been translated

into Tamil by now and the copies are available. Therefore, the second stand enacted in the impugned circular also does not exist any more.

35. In *Prabhandhak Samiti and Another Vs. Zila Vidyalaya Nirikshak, Allahabad and Others*, a question arose before a Division Bench of the

Allahabad High Court, as to whether a writ petition drafted in Hindi Devanagari script can be maintained and adjudicated upon. In view of the

notification issued by the Governor of Uttar Pradesh under Article 348(2) of the Constitution, the Division Bench of the Allahabad High Court held

that the petition could be entertained.

36. Similarly, a question arose before the Division Bench of the Rajasthan High Court in *Narendra Kumar Vs. Rajasthan High Court and Others*,

as to whether all proceedings in the Court should only be written in Hindi Devanagari script in view of Section 47 of the Rajasthan High Court

Ordinance, 1949. The Division Bench concluded that the use of Hindi as optional in Judgments and Decrees and Orders in addition to English

cannot be said to in contravention of any provision of the Constitution, rather it is in accordance with the Official Languages Act.

37. Therefore, it is clear (i) that the two circumstances on the basis of which the Full Court passed a resolution leading to the issue of the impugned

circular are no more in existence and (ii) that the circular exempting all Judicial Officers for all times to come, is far in excess of the power

conferred upon the High Court under the second proviso to Section 4-B(1) of the Act. The only power conferred upon the High Court by the

second proviso to Section 4-B(1), is to grant exemption in individual cases and not to dilute the very provisions in total and in entirety.

38. In such circumstances, the impugned office memorandum issued by the Registry cannot be sustained. Hence, the writ petition is allowed and

impugned office memorandum is set aside. No costs.

39. Before parting, we cannot resist our temptation to record one ground reality. Today, there is a general decline, in the communication skills.

While the electronic communication techniques have improved the speed, they have also led to grammar and syntax becoming casualties. The legal

fraternity and judicial officers are no exception to this general decline. Therefore, some lovers of Tamil actually argue that it is better to allow an

alien language than one's own mother tongue to suffer. This highlights the importance of improving the linguistic skills of Judicial Officers both in

Tamil as well as in English since officers who have a long run, may have to acquire proficiency in both. Hence, it is necessary to impart special

training periodically for the officers in linguistic skills, as otherwise, the litigants may not be able to decipher what is actually sought to be

communicated to them, in the form of Judgments and Orders.