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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 13 OF 2003

1. Rashtrabhasha Mahasangh, Mumbai)
A society duly registered under the Society)
Registration Act, having the office at Vithal)
Sadan, 2nd Floor, Vithalbhai Patel Road,)
Mumbai 400 004.)
2. Mumbai Rashtriya Rashtrabhasha Prachar)
Sabha, a Society duly registered under the)
Society Registration Act, established in)
the year 1935, having its Office at 2nd)
Floor, Vithal Sadan, Congress House,)
Vithalbhai Patel Road, Mumbai 400 004.)
3. Deokinandan Ramlal Dhanuka, President)
Rashtrabhasha Mahasangh Mumbai,)
Indian Inhabitant of Mumbai, residing at)
Flat No. 703, Meenaxi Tower,)
Gokuldharm, Goregaon (East),)
Mumbai 400 063.)
4. Nandkishore Thakoreprasad Nautiyal)
Vice-President of Petitioner)
No.1, Editor 'Nutan Savera', Indian)
Inhabitant of Mumbai, Residing at 102,)
Silverreen, Second Hansa Baug Lane,)
Santacruz (W), Mumbai 400 054.)
5. Dr. Sushila T. Gupta, Honorary Secretary)
of Petitioner NO.1, Indian Inhabitant of)
Mumbai, having her address at Vithal)
Sadan, 2nd Floor, Vithalbhai Patel Road,)
Mumbai 400 004.)

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| 6. | Ramnarayan Ghanshyamdas Saraf |) | |
| | Indian Inhabitant of Mumbai, |) | |
| | residing at Saraf Apartment, Rani Sati |) | |
| | Marg, Malad (East), Mumbai 400 097. |) | |
| 7. | Ashok Kantilal Joshi, Honorary Secretary |) | |
| | of Petitioner No.2, residing at 4 th Floor, |) | |
| | Flat No. 41, 270 A-1 Apartment Walkeshwar |) | |
| | Road, Bombay – 6. |) | ..Petitioners |

Versus

Union of India	)	
Department of Official Languages,	)	
Ministry of Home Affairs,	)	
Aaykar Bhavan, Mumbai 400 020.	)	..Respondent

Mr. V. V. Khemka for Petitioners.

Mr. D. A. Dube a/w Mr. N. R. Prajapati for Respondent.

CORAM: B. P. DHARMADHIKARI, ACTING CJ. &
N. R. BORKAR, J.

MARCH 12, 2020.

ORAL JUDGMENT [Per B. P. Dharmadhikari, ACJ] :

1. Petitioner Nos.1 and 2 are Societies, while other petitioners are office bearers of those Societies. Petitioner Nos.4, 6 and 7 have expired during pendency of the matter. Petitioners state that they are

registered under Society Registration Act, 1860 and also are Public Trust as per Bombay Public Trust Act, 1950 with object of promoting the cause of Hindi language.

2. The prayer before this Court is to declare the Official Language Act, 1963 unconstitutional or in the alternate to quash and set aside its Section 3(5) as unconstitutional.

3. Learned Advocate appearing for the Petitioners states that the subject of official language is deliberately not included in Seventh Schedule and, therefore, does not form part of scheme commencing from Article 246 onwards upto Article 254 of the Constitution of India. The object is to establish Hindi language in Devnagari script as official language within 15 years and, therefore, a breathing time has been permitted in Sub-Article (2) of Article 343. Continuation of the Official Languages Act, 1963 for last 57 years is, therefore, contrary to Article 343. Our attention is drawn to the fact that in Part XVII of Constitution, dealing with official language, there are separate chapters

dealing with language of Union, Regional languages and language of Supreme Court, High Courts etc. Regional language, therefore, is outside the purview of Chapter-I in Part XVII. It is submitted that Section 3(5) which, in effect, continued use of English language for the purposes of Chapter-I gives primacy to legislatures of all States and this treatment or primacy is unconstitutional. Contention is in affairs of Union, State or its legislatures must have no role. It is contended that requirement of a resolution of legislatures of all States to discontinue English is, therefore, against spirit of Chapter-I of Part XVII.

4. Learned Advocate appearing for respondent – Union of India submits that separate treatment given to official language in Part XVII itself militates with the arguments advanced by the Petitioners. The recourse to analogy of Article 245 onwards in Part XI of Constitution of India is, therefore, wholly misconceived. Support is also taken from the judgment delivered by Allahabad High Court in Writ Petition No. 8249 of 1988 on 7th May, 1991 to urge that identical challenge has been turned down there and Uttar Pradesh Hindi Sahitya Sammelan was the Petitioner in that matter.

5. With the assistance of respective Advocates we have perused papers. We have also considered the judgment delivered by Allahabad High Court mentioned supra.

6. The express language in Article 343 (3) permits Parliament to bring a law to permit use of English beyond period of fifteen years. Thus, when said period of fifteen years was about to expire, Parliament thought it fit to bring into force the Official Languages Act, 1963 and Section 3 of said Act points out the circumstances in which user of English can be discontinued. Therefore, Official Languages Act 1963 is well within competence of Parliament. A law made by Parliament can be challenged on limited grounds and none of such grounds are being pressed into service. We find that such grounds are not really available in present matter.

7. As far as Section 3(5) is concerned, it requires resolutions for discontinuance of use of English language passed by legislatures of all States which have not adopted Hindi as their official language.

After such resolutions are passed by all such States, the Parliament has to consider such resolutions and itself resolve for discontinuance of English. This mechanism is contained in a law validly made by competent legislature. Only exception taken to this arrangement is requirement of the resolution of discontinuance of use of English by State legislatures. It is to be noted that Article 343 deals with official language of the Union and therein vide Sub Article (3) arrangement for enacting above mentioned Act has been made. Wisdom behind such arrangement cannot be gone into by this court.

8. Chapter-II in Part XVII begins with Article 345 and it is on regional languages. Article 345 itself begins with words “Subject to the provisions of articles 346 and 347” and empowers legislature of a State to adopt any one or more of the languages in use in that State or Hindi as the language for official purposes. It is, therefore, obvious that in so far as affairs of States are concerned, the States have been given supremacy to decide upon language to be used by them. Article 343 does not in any way interfere with that supremacy.

9. However, the Union cannot exist without States and States have to, therefore, form important part of consideration when language of Union is to be looked into. Keeping this factor in mind, Parliament has in Section 3(5) envisaged resolutions of discontinuance of use of English language.

10. We, therefore, do not find anything unconstitutional even in Section 3(5) of the Official Languages Act, 1963.

11. The Division Bench of Allahabad High Court has already considered the facets having bearing on this controversy in its judgment mentioned supra. We find no reason to take a different view in the matter.

12. We, therefore, find no case made out. The Writ Petition is, therefore, dismissed. Rule is discharged. No costs.