

(2019) 04 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition (L) No. 1897 Of 2017

Amritpalsingh Khalsa

APPELLANT

Vs

Maharashtra State Bureau Of Textbooks Production And
Curriculum Research Pune And 6 Ors

RESPONDENT

Date of Decision : 18-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 25, 226

Citation : (2019) 04 BOM CK 0079

Hon'ble Judges : S.C. Dharmadhikari, J; Bharati H. Dangre, J

Bench : Division Bench

Advocate : Mathews J. Nedumpara, Rohini M. Amin, V.A. Thorat, Suhasini Mutalik, Jagdish G. Aradwad, Geeta Shastri

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the following two essential reliefs:-

"2. That the chapters/text/word/paragraph/sentence pertaining to Shaheed Saint Jarnailsingh Bhindrawale from the Text books published Maharashtra State Bureau be removed/abolished/deleted/repealed immediately and all the text books must be recalled.

3. That the Maharashtra State Bureau of Textbook Publication and Curriculum Research, Pune be directed to tender unconditional apology to entire Sikh community and all the people for allegedly hurting the religious sentiments."

2. The petitioner claims to be resident of District Thane in the State of Maharashtra and an Indian citizen, interested in ensuring that no textbook prescribed by the Maharashtra State Board and Secondary and Higher Secondary education should contain material derogatory to or defamatory of any religion or

any religious leader that he files this petition. In paras 4 to 9 of this writ petition, the petitioner states as under:-

"4. That petitioner came across a post on Facebook regarding the information published in the Text Book of Maharashtra State Board 9th Standard, History and Political Science subject published by Maharashtra State Bureau of Textbook Publication and Curriculum Research, Pune which contains text which were spreading vicious propaganda against Sikh struggle movement so too calling shaheedSantJarnailSinghjiBhindrawale as terrorist nay all other shaheeds who laid their life in defending Harmandar Sahib (Golden Temple) against Military operation Blue Star.

5. That petitioner though this post to be a joke or mischief by some anti-social elements but petitioner ought necessary to check the authenticity of post by himself therefore petitioner went to book store and bought the copy of History and Civics textbook of 9th standard published by Maharashtra State Bureau of Textbook Publication and Curriculum Research and was literally shocked to see the language and the way in which Sikh struggle movement so too ShaheedSantJarnail Singh Bhindrawale was called as terrorist with other shaheeds.

6. The petitioner is approaching this court to bring certain facts to the notice of this Hon'ble Court wherein it is pertinent to note that the director, authors, publishes, printers, editors, researchers, History Subject Committee of Maharashtra State Bureau of Textbook Publication and Curriculum Research, Pune without doing any research, or reading of books whatsoever chose to publish the alleged defamatory matter hereto annexed and marked as EXHIBIT B the copy of textbook published by Maharashtra state board.

7. This court may be pleased to take on record that ShaheedSantJarnailSinghjiBhindrawale was not named in any FIR ever in his life yet the text book chose to propagate false information by stating that Santji was arrested by Police they failed to also print that Santji was arrested without their name being in any FIR. Hereto is marked and annexed as "EXHIBIT A" a copy of series of communication by one RTI Activist Mr.Navdeep Gupta, the petitioner is thankful to Mr.Navdeep Gupta for taking up he cause in a proper way.

8. The petitioner further begs to state that a State Government and the Central Government had no document proclaiming ShaheedSantJarnailSingh Bhindrawale as terrorist, the same letter are annexed in Exhibit A.

9. The petitioner begs to submit that Only 36 bodies were recovered from Akal Takht after operation Blue Star was over the as stated in the Reply of Government of India, Ministry of Home Affairs even the Central Government chose to respect the ShaheedBhindrawale and others shaheed by, not calling them terrorist the copy of this letter is enclosed in Exhibit A."

3. Then, the petitioner sets out the history of Operation Bluestar in the further

paragraphs. He alleges that the textbook has called the Shaheeds protecting Harmandir Sahib as terrorist. There were only 36 corpses found, but the textbook depicts as if more than thousand so called terrorists were hiding inside the Golden Temple. It is clear, according to the petitioner that such references have been made without understanding the repercussions and consequences of a mass genocide or mass killing of innocent Sikhs. Once there is a history of the attack on Sikh community post assassination of Smt. Indira Gandhi, then, given the apologies tendered by the political leaders of the Sikh community, such references in the textbook will damage the reputation of the Sikh community. It will influence the mind of innocent students or readers of the textbook leading to development of hatred in young impressionable minds. It is in these circumstances that such references or statements in the textbook should be removed as they may adversely impact the students. The petitioner submits that the text published is violative of Articles 21 and 25 of the Constitution of India. A person respected and revered as a Saint is being termed as terrorist. It is in these circumstances that we must grant the reliefs as prayed.

4. There is an affidavit which has been filed in reply to this petition by the Maharashtra State Bureau of Textbooks (respondent no.1). All allegations have been denied and it is stated that the textbook is printed and published after meticulous planning and preparation. There are eight language subject committees and eight non-language committees working in the Bureau, which are entrusted with responsibility of preparing manuscripts of all the textbooks based upon the syllabus approved by the State Government.

5. In the affidavit in reply, in paragraphs 7 to 12, the deponent states as under:-

"7. I say and submit that before any textbook is printed and published, there is meticulous planning and preparation for the textbooks. I say that there are eight language subject committees and eight non-language committees working in the Bureau who are entrusted with the responsibilities of preparing manuscripts of all the textbooks based upon the syllabus approved by the State Government. I say that the expert members are drawn from different levels of education, that is primary, secondary, college, university and the literary world. The teacher educators and educationists are also included as members on the subject committees. I say that the academic officer of the Bureau works as a member secretary of each of these committees.

8. I say and submit that the syllabi and curricula is prepared by the MSCERT (Maharashtra State Council of Educational Research and Training, which is recently named as Academic Authority for Maharashtra) along with the members of the Bureau. I say and submit that this syllabi and curricula prepared by the MSCERT and the Bureau is then sent for necessary sanction to the Education Department of the State of Maharashtra. I say that after obtaining the sanction, then the Bureau undertakes the work of preparation of the textbooks.

9. I say and submit that within the Bureau, there are different committees for

different subjects. I say that the members of the History subject committee, the members of the History and Civic study group, the names of the Authors, etc. are printed in the book. I say and submit that there is an elaborate procedure before the preparation of any text book. The copy of the page of the history text book showing the names of the members of the different committees is Ann 'A'.

Procedure at the time of preparing a textbook:

10. I say and submit that there is a committee for the History subject consisting of members who are renowned in the fields of education and the history subject. I say that the curricula which is sanctioned by the Education Department of the State of Maharashtra is then sent to this subject committee who prepares a table-wise sheet of the contents of the chapters, etc. I say and submit that this committee then holds deliberations and contemplates as to who would be a writer for the particular subject, in the present case the history subject, and then names an expert and passes a resolution naming the expert in the history subject to be a Writer for the history textbook. I say that Dr.Ganesh Raut M.A. PhD, who is the Head of the history department in H. V. Desai College, Pune was named as a writer for this history subject. I say and submit that the resolution to appoint Dr.Ganesh Raut as the writer for the history subject was then sent to me as a Director and I have given the approval for the same. The names of the History Subject Committee along with their qualifications is annexed hereto and marked as Ann. 'B' hereto.

11. I say and submit that Dr.Ganesh Raut has prepared a draft for the history subject and then submitted the draft to the Bureau. I say and submit that, after the draft was submitted by Dr.Ganesh Raut, it was put up before a separate History and Civics study group consisting of 30 renowned people knowing the history subject. The names and qualifications of this study groups are annexed hereto and marked as Ann. 'C'.

12. I say and submit that this study group then held a collective reading of each and every sentence, remark, word, coma etc. of the draft and then put up their own suggestions and remarks on the said draft. I say that, as per the procedure, the said draft, as approved, corrected and modified by the history and civics study group was placed again before the main committee for the history subject who read the entire text again and prepared the text as per the suggestions and modifications suggested by the history and civics study group. I say and submit that the said approved text was then sent for scrutiny to Dr.Bushan Phadtare Quality Reviewer M.A.PhD, Head of Department of History of the Bharatiya Jain Sanghatana, Wagholi, Pune and to Dr.Shrikanth Paranjape Quality Reviewer and Civics Committee Chairman M.A.PhD, Ex-head of the Defence Studies in the Savitribai Phule Pune University. I say and submit that, after scrutiny, the reviewed text with remarks and suggestions were again placed before the history subject committee who then made the necessary corrections and sent the said text for printing."

6. Thereafter, it is stated that once the draft of the textbook of History subject has been scrutinised, verified by a number of experts in the subject and the book is not prepared hurriedly or in a haphazard manner, then, this court should not interfere in writ jurisdiction with a decision of this nature. In paras 14 and 15, it is stated that the head of the History Department, H. V. College, Pune, who was named as a writer, has referred to enormous source of material on History. He has detailed the references and carefully perused and analysed them. It is thereafter that the book was printed, published and distributed. In para 15, it is stated that the Bureau has its offices at nine places all over the Maharashtra, 22,45,000 copies of the History and Political Science textbook have been printed and distributed. Now, belatedly such a petition is filed. Further, the textbook has been printed in different languages and it has been distributed to all the aided and un-aided schools, including Zilla Parishad schools all over Maharashtra and to nearly 19,44,124 students. The text was published on 28th April, 2017. Thus, there is a gross delay in filing the petition. In para 17, for the purpose of satisfying the judicial conscience of this court, it is stated that extensive material, which includes publications in the newspapers at the relevant time and post assassination of the Late Prime Minister Smt. Indira Gandhi, was referred at the time of preparation of the script of the textbook. The opinions of eminent writers and thinkers, as emerged in their writings were considered and also inclusive of a book titled as "Operation Bluestar: The True Story" scripted by Lt. General K. S. Brar and another books by eminent authors. Then, it is incorrect to say that the book is published without doing any research or reading any contemporary works. Further, the context and backdrop in which the textbook included this Chapter or reference is totally lost to the petitioner. The contents are of a History textbook for Standard IX students. It informs them as to why the operation was carried out and in what circumstances. Therefore, nothing much can be made of such a publication and it is unlikely to influence anybody's mind, much less generate hatred and prejudice. For all these reasons, the writ petition be dismissed.

7. On such a petition, we have heard Mr.Nedumpara appearing for the petitioner and he says that we must also refer to the rejoinder affidavit which highlights as to how Sikhs are revered and respected all over the world for their calvary and valor. They are known as warriors and their sacrifice and services to the nation have been recognised and respected. It is in these circumstances that the petitioner has moved this petition and in complete good faith. The petition is not filed to gain publicity or to foment or stir up a controversy on religious issues. Mr.Nedumpara submits that Mr.Jarnailsingh Bhindranwale was considered as a saint by the Sikh community. The Government should consider the deletion of the offending portion as the feelings of the Sikh community are hurt. Their pain and anguish must be understood for a person respected by them is defamed in this manner. He is a religious leader and his description as a terrorist is likely to create an adverse impact. It may divide and create a rift between the Sikhs and others. It is submitted that no sense of alienation should be felt by the Sikhs and

the community has always respected other communities. The petitioner is a law abiding public spirited individual. For all these reasons, Mr.Nedumpara would submit that the writ petition be allowed.

8. Mr.Nedumpara has handed over written materials and also the alleged offending portion of the subject textbook. He would submit that there is contra material which would indicate that Mr.Bhindranwale was respected as a religious leader. Hence, the writ petition be entertained and allowed.

9. On the other hand, Mr.Thorat learned senior counsel appearing for the respondents would submit that the writ petition has no merit and must be dismissed. It is urged that this writ petition filed by an individual cannot be considered to be espousing the cause of entire Sikh community. The petitioner cannot claim to represent the whole community. He has no locus to speak authoritatively on the feelings of the Sikh community just because he is one of them. The community is not before this court in a representative capacity. Apart from that, the affidavit in reply elaborates the process of scrutiny and verification carried out by the experts before the material is sent for printing and the textbook is distributed. Once the allegations in the petition are but a opinion of the petitioner, then, all the more this writ petition should not be entertained. Further, this is the second year of the publication and the textbook has already reached the teachers, students and the managements of educational institutions all over Maharashtra. Nobody has complained about the contents nor anybody is offended. For these reasons, he would submit that the petition be dismissed.

10. Before we consider the rival contentions, we must impress upon all concerned that in matters of this nature and where the power is conferred on a statutory authority to prescribe books and make a syllabus, then, there is a certain latitude flexibility and discretion conceded to them. The exercise of discretion in such cases cannot be a subject matter of judicial review on all occasions, save and except when there are clear situations of abuse of such discretionary power. Unless the discretionary power is abused to such an extent as is demonstrative of arbitrariness and malafides, the court cannot interfere. In De Smith, Woolf and Jowell: Judicial Review of Administrative Action published by Sweet and Maxwell, on this aspect, the learned authors have to say as under:-

"Limitation inherent in the courts' institutional capacity 1-030 In respect of the institutional capacity of the courts, there are some decisions which they are ill-equipped to review-those which are not ideally justiciable or, in other words, "not amenable to the judicial process", or indeed those which are better able to be determined by other bodies, including Parliament.

Matters in relation to which the court lacks expertise 1-032 A second institutional limitation of the courts is lack of relative expertise. Particularly as the review of fact, or the merits of a decision is not routinely permitted in judicial review, there are some matters which are best resolved by those with specialist knowledge (such as decisions about the ranking of university departments.) Connected with

the issue of expertise is that of risk-assessment. National security is often said to be an area in which the courts should not readily intervene, not merely because the executive possess prime constitutional responsibility in this area, but because they may be best placed to assess, through their network of informers, the risk of the dangers involved.

However, here too the court will no longer unquestioningly accept the say-so of the executive or other experts, and will properly intervene if the decision is based on a material mistake of fact, or is otherwise illegal or irrational."

11. After perusing the writ petition, its annexures, the affidavit in reply and rejoinder together with their exhibits, we agree with Mr.Thorat. We feel that the writ petition should be dismissed.

12. In the case of Basavaiah (Dr.) vs. Dr.H.L.Ramesh and Ors. (2010) 8 SCC 372, a decision heavily relied upon by Mr.Thorat, the Hon'ble Supreme Court has held that the courts have to show deference and consideration to the decisions of the expert committees consisting of distinguished persons in the field. Once the matter is of research, study and an academic exercise based thereon being carried out, then, the writ court should not interfere. The judgment of experts and academicians cannot be substituted by our opinions and judgments. As far as such bodies are concerned, in academic matters, at least their views and opinions deserve due respect and regard. Of-course, there are exceptions to this general rule, but the exceptional circumstances have to be established and proved by cogent and reliable material.

13. In the instant case, without reading the Chapter as a whole and by referring and relying on a part thereof, the allegations are made. In the textbook prescribed for Standard IXth by the Bureau on the subject of "History and Political Science", there are several Chapters. Under the broad heading "India after Independence", there are Chapters, namely, "Sources of History", "India: Events after 1960", "India's Internal Challenges", "Economic Development" and "Education". Therefore, Chapters 1 to 10 include a Chapter each on "Empowerment of Women and other Weaker Sections", "Science and Technology", "Industry and Trade" etc. In such a comprehensive study material, there is one Chapter which discusses India's internal challenges. The Chapter intends to inform the students that the country is facing enormous internal challenges like separatist movements, issues of north-east India, naxalism, communalism and regionalism. While referring to the unrest in Punjab, the demand for Independent State/Khalistan, all the events are set out. The name of Saint Jarnailsingh Bhindranwale is mentioned with reference to his support for the Khalistan movement. Thereafter, the arrest of Bhindranwale is referred after there was a violent incident in 1981 in the State of Punjab. The worsened situation and its details are given. It is in that context, the Operation Blue Star is referred to and it is termed as a military expedition taken up with a particular objective. That is how it is described as an operation. The Operation Blue Star was undertaken to evict the terrorists hiding in the Golden Temple. It is in this

context that we must read the alleged offending sentences and we do not see any insulting or irreverential reference therein to anybody much less Shri.Bhindranwale. The contents of the Chapter do not term him as a terrorist. If the Chapter is read as a whole and harmoniously, the alleged offending portion is perused in its entirety, then, we do not find anything therein which would hurt the religious sentiments of the Sikh community.

14. We agree with respondent no. 1 that the Chapter contains reference to several events posing challenges to India's internal security. It is in these circumstances and while informing the students about several movements, including naxalist, the attempt is to identify internal challenges. Thus, a broad picture is painted before the reader and he/she is not likely to be influenced eitherway. It is not a one-sided version. It gives a balanced picture. It is a study material and prescribed for a student of IXth Standard who will taking the examinations. We do not think that in such a material we should read something more and particularly as suggested by Mr.Nedumpara.

15. None of the grounds in the writ petition, therefore, impress us. We are not in agreement with Mr.Nedumpara that a Saint is projected as a terrorist. It is merely a reference to the operation carried out in the Golden Temple. The source material procured from within India and abroad has been carefully studied and analysed and based on that, the contents are prepared. If viewed broadly and particularly in the backdrop of the duty and function of a Bureau preparing the prescribed textbooks for school going students, all the more we do not think that this is a fit case for interference in writ jurisdiction. We do not find any merit in the writ petition and it is dismissed. There would be no order as to costs.