

(1960) 01 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 424 of 1959

Chaitanya Prakash

APPELLANT

Vs

Board of Secondary Education, Rajasthan, Jaipur

RESPONDENT

Date of Decision : 22-01-1960

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 226

Rajasthan Secondary Education Regulation, 1957 — Regulation 16(1), 16(12)

Citation : AIR 1960 Raj 185 : (1960) RLW 209

Hon'ble Judges : J.S. Ranawat, J;D.M. Bhandari, J

Bench : Division Bench

Advocate : Mahendra Singh, for the Appellant; C.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, J.—This is a petition under Articles 226 and 227 of the Constitution of India. The case set out by the petitioner in his petition is that he carried on business in the name of Messrs. Jai Ambey Pustak Bhandar at Jaipur of publishing educational books for schools and colleges in Rajasthan. It is alleged that the petitioner being desirous of submitting the books for courses of study prescribed by the Board of Secondary Education, Rajasthan (hereinafter called "the Board") got himself registered under Regulation 16(1) of the Rajasthan Secondary Education Regulations, 1957, (hereinafter called "the Regulations") framed under the Rajasthan Secondary Education Act, 1957, (hereinafter called "the Act") Under Registration Certificate dated the 14th of October, 1958.

This registration was valid for a period of five years from June, 1958 to June, 1963. On the 30th of July, 1959, the petitioner presented 21 books to the Board for approval for study in various subjects in the Higher Secondary Schools in the year 1963 and the High Schools in the year 1962. According to the petitioner, the books submitted by him should have been made over to the Courses Committee for the respective subjects, but the petitioner received from the Board an intimation by letter dated the 3rd of September, 1957 that the petitioner's

registration with the respondent had been cancelled and the books submitted by the petitioner would not be considered by the Courses Committee for a period of three years.

The petitioner has challenged the cancellation of registration on the ground that it was valid for a period of five years and the Board was not authorized under law to cancel it for any of the reasons mentioned in the said letter. The petitioner further challenges the correctness of the facts mentioned in that letter. The petitioner has urged that under the circumstances the action of the Board in refusing the books of the petitioner, amounted to interference with the petitioner's trade and infringes the petitioner's fundamental right to carry on business guaranteed under Article 19 of the Constitution.

2. The Board contested the writ petition and in the reply filed by it admitted that the petitioner had registered himself with the Board as publishers of educational books for schools and colleges in Rajasthan and asserted that the Board had every right to cancel the registration and that the publisher was not fair in his dealings with the Board and had not carried out the undertakings given by him. Some facts are set out in the reply showing how the petitioner has acted unfairly with the Board in respect of certain matters. Briefly, they disclose that the petitioner over-charged for two books namely, (1) Manav Samaj ke vikas ki roop rekha and (2) Nutan Samanya Vigyan from the purchasers against their prices which had been approved by the Board and complaint to that effect had been received by the Board.

It is further stated that so far as the Manav Samaj ki roop rekha was concerned, the petitioner admitted that a higher price had been charged by mistake. It is also stated that even in spite of the assurance given by the petitioner that he would in future charge the price approved by the Board, he continued to sell the books at higher prices and failed to give any satisfactory explanation. It is also stated that the Board had received a letter dated the 3rd of March, 1959 from the Government of Rajasthan in which the said Government had also complained that the firm was not fair in its dealings in the matter of purchases made by the Government.

It is further stated that of the books submitted by the petitioner on the 30th of July, 1959, the petitioner purported to submit a book "Pratinidhi Yatri ki lekhnise", but in fact it was only the cover which bore that title and inside there was another book and he further gave wrong particulars about the number of pages of that book. The office detected this and the said book was not submitted to the members of the Courses Committee but the petitioner somehow or the other managed to supply the members of the Committee with the copies of the said book. The Secretary of the Board brought this matter to the notice of the said committee in the meetings of the Committee of Courses held on the 20th, 21st and 22nd of November, 1958.

The committee thereupon decided that the book may not be considered and left

the matter of the irregularity to be dealt with by the Secretary of the Board. This matter was also considered by the Curriculum Committee under the president ship of Shri G. C. Chatterjee, the Chairman of the Board and that committee requested the chairman to make an inquiry as to how a book which was not amongst the books placed for consideration, was brought into the meeting of the committee and found on the table. Thereupon the Chairman of the respondent Board, appointed a committee on the 12th of April, 1959 consisting of three members to review the registration of the petitioner and the other complaints made against him.

The said committee submitted a report and was of the opinion that the registration of Messrs. Jai Ambey Prakashan Bhandar should be cancelled for three years and no book from this firm should be accepted for consideration of the Board. In the meeting of the Board held on the 29th of July, 1959, it was resolved that the registration of Messrs. Jai Ambey Prakashan Bhandar be cancelled for three years and no book from this firm be accepted for consideration by the Board, and in pursuance of that resolution the registration was cancelled and the petitioner was informed of it. It is urged that the Board was an autonomous institution and this Court should not interfere with its working. A rejoinder was filed by the petitioner in which it was sought to explain the various allegations made by the Board against the petitioner in the reply filed by it. It is not necessary at this stage to give in detail the contentions raised by the petitioner in the rejoinder and the facts alleged by him in it.

3. Shri B. P. Beri on behalf of the petitioner during the course of arguments not only urged that the fundamental right of the petitioner to carry on his business was infringed by the Board, but also tried to reinforce the case of the petitioner by urging that in the matter of cancellation of the registration of the petitioner, the Board was acting as a quasi-judicial body and inasmuch as the Board took the decision of cancellation without reference to the petitioner and without affording an opportunity to explain his position, it violated the principles of natural justice and this Court should set aside the cancellation of registration on this ground.

It was also urged that under the regulations, the registration could be cancelled only for canvassing by the publishing of authors for their books and not for any other ground and as the cancellation of the registration in the case of the petitioner had been done for reasons other than canvassing the Board had contravened the regulations and it should be directed by a writ of mandamus to revoke the cancellation so made. An argument was also urged on the basis of Regulation 23 that the Board could cancel the registration only in case the Committee of Courses had definitely given such a report with respect to the matter in question. It was also urged that the Board had acted mala fide.

4. Sri C. L. Agarwal on behalf of the Board controverted the arguments on grounds which we shall consider in the later part of the judgment.

5. Before we proceed to consider the arguments raised on behalf of the petitioner, it will be useful to refer to the relevant provisions of the Act and the Regulations. The preamble of the Act shows that the Act was enacted with a view to developing the system of Secondary Education in the State of Rajasthan on modern, scientific and progressive lines, and for that purpose, it was thought expedient to provide for the establishment of the Board to reorganise, regulate and supervise such education. u/s 3 of the Act, the State Government was authorized to establish, by a notification in the Official Gazette, a Board of Secondary Education for Rajasthan which was to be a body corporate.

Section 9 of Act gave the powers and functions of the Board which include, the power to prescribe courses of instructions for secondary education in the State for various candidates mentioned in Section 9(1) of the Act. u/s 22, the Board is to appoint several committees, one of which is a Committee of Courses and the other a Curriculum Committee. u/s 36, the Board is given powers to make regulations for the purposes of carrying into effect the provisions of the Act. In accordance with the provisions of the Act, the Board was established and the regulations were framed. Chapter VI of the regulations deals with the committees of courses in various subjects. Regulation 4 under this Chapter runs, as follows:

"Each Committee of Courses shall prepare a syllabus in the subjects with which it is concerned, and, when necessary, recommend suitable text-books and reasonable prices therefor."

Regulation 16 of this Chapter deals with the procedure for submission of books by the publishers or authors of books. The relevant part of this regulation is, as follows:

"The following procedure is laid down for submission of books by the publishers or authors of books for consideration of the Committees of Courses: (1) Publishers or authors intending to submit their books to the Board should first get themselves registered with the Board on filling up an approved application form. This registration shall be valid for five years renewable for a subsequent period of five years on a further application.

(2) Books submitted by publishers or authors not registered with the Board, shall not be considered.

* * * * * (6) No book shall be sent by the publishers or authors direct to the members of a Committee of Courses.

* * * * * (12) Canvassing by the publishers or authors for their books will render them liable to be removed from register."

6. Having set out the relevant provisions of the Act and the Regulations, we proceed to take notice of the arguments urged on behalf of the petitioner. The first contention urged on behalf of the petitioner is that the cancellation of the registration of the petitioner by the Board infringed his right to carry on his trade

guaranteed under Article 19(1)(g) of the Constitution. We fail to see any merit in this argument. The petitioner's right to carry on his trade or business in the matter of publication of books cannot be said to be infringed by any action of the Board. They could continue to print and publish any publication they liked. They could sell it to any customer.

The Board was rather its customer or was a body whose recommendation counted in bringing a host of customers to the petitioner, but there is no right in the petitioner that he must have particular customers or that the Board should adopt a course which may eventually create a field for the sale of the books of the petitioner and thus make his trade lucrative. Article 19 guarantees the freedom of trade or business but it does not guarantee that conditions must be created by the State or any statutory subordinate body to make the trade lucrative or to bring customers to the trader or business-man. If any authority for this proposition is needed, we may refer to the decision of their Lordships in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, wherein under similar circumstances, it was observed, as follows:

"So the utmost that could be said is that there was merely a chance or prospect of any or some of their books being approved as text books by the Government. Such chances are incidental to all trades and businesses and there is no fundamental right guaranteeing them. A trader might be lucky in securing a particular market for his goods but if he loses that field because the particular customers for some reason or other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers for ever."

We reject this contention of the petitioner. The second argument urged on behalf of the petitioner is that the Board must be taken to be acting in quasi-judicial capacity in cancelling the registration of the petitioner and as it had violated the principles of natural justice in not affording any opportunity to the petitioner to place his case before the Board, the decision of the Board should be quashed by a writ of certiorari. The question that arises for consideration is whether the Board was an executive body and was acting in that capacity or was it a quasi-judicial body passing a judicial or quasi-judicial order.

There are a series of decisions of their Lordships of the Supreme Court which bear out the distinction between an executive or administrative order and a judicial or quasi-judicial order. The first of such decisions is *Province of Bombay Vs. Kusaldas S. Advani and Others*, The next case is *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, The third case is *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and the latest case is *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, In the last case, K. Subba Rao J. observed, as follows:

"The criteria to ascertain whether a particular act is a judicial act or an

administrative one have been laid down with clarity by Lord Justice Atkin in *Rex v. Electricity Commissioner; Ex parte London Electricity Joint Committee Co., (1920) Ltd.* 1924 1 K.B. 171 They laid down the following conditions -- (a) the body of persons must have legal authority; (b) the authority should be given to determine questions affecting the rights of subjects and (c) they should have a duty to act judicially."

If we examine the position of the Board in the light of the aforesaid observations, it cannot be said that so far as the petitioner is concerned, the Board had any legal authority over him. There is nothing in the Act or the Regulations which conferred on the Board any authority over the petitioner. The petitioner had full freedom to get himself registered or not with the Board. The Board could not exercise any authority to compel the petitioner to register himself with it and/or sell his books to the customers whom the Board recommended at particular prices. In fact, the Board was, as pointed out, in search of dealers who could place before the Board good books which could be prescribed for courses of study in various subjects and who could be recommended by the Board to the candidates for purchasing the said books.

Again, the Board was in so acting not deciding any dispute between two contesting parties. Lastly, it cannot be said that either in the matter of registration or in the matter of cancellation, the Board was to act judicially. It had of course to act judiciously. Nor do we find from the provisions of the Act or the Regulations that the Board was "called upon" to decide respective rights of contesting parties and in so doing a duty was cast upon it to act judicially. The learned counsel for the petitioner has not been able to refer to any single provision in the Act or the Regulations which may imply that the Board was to act in a judicial manner. As a matter of fact, the Board is charged with the duty of placing the secondary education on sound footing and was only performing its administrative functions in the selection of books through the Committee of Courses and in recommending to the candidates who were to appear in the various examinations of the Board such books as commended themselves to the Board and such publishers whom it considered fit to have dealings with its candidates.

We may at this stage refer to the case of *R. v. Metropolitan Police Commissioner; ex parte Parker* 1953 1 WLR 1150. In that case, Mr. Parker, who was a cabman was granted a cab-driver's licence in 1951 by the Commissioner of Police, for the Metropolis. It was subsequently brought to the Commissioner's attention that the applicant was alleged by the Police to have allowed his cab to be used by prostitutes. The Commissioner, therefore, decided to revoke the applicant's licence under paragraph 60 of the London Cab Order, 1934. The applicant moved for an order of certiorari to quash the order made by the Commissioner revoking his licence, on the ground that he was not given an opportunity to call a witness who he claimed would have been able to give evidence to rebut the police allegations that he was allowing prostitutes to use his taxi-cab and that the

Commissioner was not exercising his functions judicially and there was a denial of natural justice. It was held in that case that the Commissioner in passing the order for the revocation of the licence did not pass any order which a judicial tribunal or a quasi-judicial tribunal is bound to pass.

"It was simply a decision of the Commissioner that by reason of facts coming to his knowledge, he was satisfied that the licensee was not a fit person, to hold the licence, and that is all. Therefore, it does not seem to me that there was any order."

7. We fail to see that the Board was acting, as a quasi-judicial body in cancelling the registration of the petitioner. Neither was the Board bound to act in that capacity under the provisions of the Act. or the Regulations. For these reasons, we reject, this contention of the petitioner and refuse to issue any writ of certiorari to quash the order of the Board.

8. Next it is urged that the Board could cancel the registration only under Regulation 16(12) of Chapter VI for canvassing by the publishers or authors for their books and for no other reason. In this connection, it was urged that this was the only provision under Chapter VI of the Regulations authorising the removal of the names of the publishers or authors from the register and there was no other provision, and therefore cancellation of registration could only be done if the conditions under Regulation 16(12) of Chapter VI were satisfied. We have given our earnest consideration to this matter. Registration was nothing but a permission granted by the Board to the person whose name has been, registered to submit his books before the Board and such permission can in its very nature of things be withdrawn any time. In this connection, we may again refer to the case of 1953 1 W.L.R. 1150 wherein the observations of Lord Goddard were as follows:

"The present position with regard to the revocation of a licence is to be found in paragraph 30 of the London Cab Order, 1934, and the regulations issued under the order that I have just cited clearly show that a licence may be revoked or suspended. Indeed, leaving out of account such very exceptional things as irrevocable licences granted under seal and possibly licences coupled with an interest, the very fact that a licence is granted to a person would seem to imply that the person granting the licence can also revoke it. The licence is nothing but a permission, and if one gives a man permission to do something it is natural that the person who gives the permission will be able to withdraw the permission. As a rule where a licence is granted, the licensor does not have to state why he withdraws his permission."

9. In the instant case also, the position is much the same. The purpose of registration was nothing but to grant a permission to the petitioner to submit his books and the Board could withdraw that permission at any time. Learned counsel for the petitioner laid much emphasis on the presence of Regulation 16(12) and tried to argue that in view of this provision there could be

cancellation only if the conditions of it were satisfied and the Board had no authority to cancel the registration for another reason. We are not persuaded to accept this contention. This would unnecessarily curtail the power of the Board in a matter which depends entirely on its discretion. We do not find any reason for doing so. The petitioner had no more rights than that of a trader to display his goods before his customers at the premises of the customers with his permission.

The trader is bound to quit when the customers withdraw such permission for good reasons or bad. We are not prepared to accept the interpretation that the provision relating to canvassing would curtail the rights of the Board for cancelling the registration for any other reason. On a careful consideration we are of opinion that that provision was inserted *ex abundanti cautela* only to warn the publishers and authors for canvassing. Learned counsel for the petitioner tried to strengthen his argument by invoking the assistance of the maxim *expressio unius est exclusio alterius* but we feel that we would not be justified in acting on that maxim in the present case. The regulations are inaptly drafted and are not comprehensive.

There is no provision in the Act or regulations limiting the right of cancellation of registration. Regulation 16(12) is rather a provision in the nature of a warning to the publishers and authors than a comprehensive treatment of the subject of cancellation of registration. The power to cancel registration is to be gathered from Regulation 16(12) and Regulation 16(12) cannot be taken to exclude the power of the Board to cancel registration under other circumstances. In this connection, we may refer to the following passage from *Statutes and Statutory Construction* by J. G. Sutherland Third (1943) Edition, Vol. 2, Pages 418 to 421:

"The maxim ... requires great caution in its application, and in all cases is applicable only under certain conditions." As a tool of statutory interpretation the maxim is important only in so far as it is a syllogistic restatement that the courts will first look strictly to the literal language of the statute to determine legislative intent. And so, where the meaning of the statute is plainly expressed in its language, and if it does not involve an absurdity, contradiction, injustice, invade public policy, or if the statute is penal in nature or in derogation of the common law, a literal interpretation will prevail. Conversely, where an expanded interpretation will accomplish beneficial results, serve the purpose for which the statute was enacted, is a necessary incidental to a power or right, or is the established custom, usage or practice, the maxim will be refuted, and an expanded meaning given."

In this connection, we may also quote the observations of Farwell LJ. in *Lowe v. Dorling and Son* 1906 2 KB 772 at p. 785:

"The generality of the maxim *Expressum facit cessare taciturnum*" which was relied on, renders caution necessary in its application. It is not enough that the express and the tacit are merely incongruous; it must be clear that they cannot reasonably be intended to co-exist. In *Colquhoun v. Brooks* (1887) 19 QBD 400

at p. 406, Wills J. says: "I may observe that the method of construction summarised in the maxim "Expressio unius exclusio alterius" is one that certainly requires to be watched. The failure to make the "expressio" complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind." Lopes LJ. in the Court of Appeal, *Colquhoun v. Brooks*; ((1888) 21 Q.B.D. 52) says: "The maxim "Expressio unius exclusio alterius" has been pressed upon us. I agree, with what is said in the Court below by Wills J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusion is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.

10. We are definitely of opinion that the general powers of the Board to cancel registration are not in any way affected by the existence of Regulation 16(12) in Chapter VI. That power exists and is the outcome of the very power of registration. There is no obligation cast on the Board to keep the petitioner on the register for a period of five years as contended by him and in the absence of such duty or obligation on the part of the Board, he is not entitled to the grant of a writ of mandamus directing the Board to set aside the cancellation of registration. In this view of the matter, we do not think that the petitioner is entitled to any writ or direction in the nature of the writ of mandamus.

11. Lastly, it has been urged that the Board had been acting mala fide in cancelling the registration. On the material on the record, we are not satisfied that the Board had been acting mala fide. The chairman of the Board had constituted a committee to go into the matter and no charge had been made that the members of the committee were in any way prejudiced against the petitioner. The report of the committee was considered by the Board and a resolution was passed cancelling the registration for three years. Learned counsel for the petitioner has laid a great emphasis on the fact that such an order by the Board would operate in a manner prejudicial to the development of the higher secondary education in the State inasmuch as good books by certain publishers shall be thrown out of field of choice of the Courses Committee at the whim of the Board but this pre-supposes that the Board will act capriciously and we do not expect that the Board will fail to discharge its responsibilities in a fitting manner. Even if it were so, the aggrieved party may appeal to the State to invoke its supervisory powers conferred under Chapter VII of the Act.

12. Learned counsel argued on the basis of Section 23 that it was only the Committee of Courses which could only cancel the registration and the Board could not cancel the registration as this power must be deemed to have been delegated to the Committee of Courses by the Board. This argument has got no force because under" Regulation 16(12) of Chapter VI, it is the Board which is to register the publishers and for that reason, the right of cancellation also vests in

the Board. This power cannot be said to have been delegated to the Committee of Courses.

13. As a result of the aforesaid discussion, we find that there is no force in the writ petition and it is dismissed with costs.