
(1983) 08 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No"s. 1239 and 1438 of 1983

J. Mohapatra and Co. and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-08-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 Ori 16 : (1983) 56 CLT 256

Hon'ble Judges : P.K. Mohanty, Acting C.J.;G.B. Patnaik, J

Bench : Division Bench

Advocate : B.B. Mohanty, R. Mohanty, Sanjit Mohanty and S.P. Mishra, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—These two writ petitions have been filed with the prayer that the lists of approved books for the years 1980 1981 and 1982 and the Government decision contained in Annexure-4 regarding purchase of books out of the cyclone and flood relief grant be quashed. The main ground on which this relief has been claimed is an allegation of bias and personal interest against some members of the different Committees set UP by the State Government who were responsible for approving the lists of books inasmuch as these members got their own books included in the approved lists. In other words, the petitioners relied on the "Nemo debet esse iudex in propria sua causa" (no man can be judge in his own cause).

2. Petitioner No. 1 in O. J, C. 1239 of 1983 is a partnership firm which carries on the business of publishing books petitioner No. 2 is also a reputed publisher of books. Petitioner No. 1 in O. J. C. No. 1438 of 1983 is a registered body, an association of publishers, authors and books-sellers. Petitioner No. 2 in the said writ application in his proprietary right carries on the business of publishing books on literature.

3. It has been alleged in both the writ petitions that in the years 1980, 1981 and 1982, the members of different committees who had the onerous duty of selecting books, got their own books as well as the books of their own publishers selected and since there was no time to challenge those decisions, the petitioners could not challenge the same. In the year 1983, the State Government received a huge financial assistance from flood and cyclone relief grant and books worth Rs. 45 lakhs were to be purchased for different institutions in the State. Without adopting the normal process of selection in accordance with the prescribed procedure, the State Government took a decision that the books already selected and approved for the years 1980, 1981 and 1982 together with another 105 books would be the approved lists from out of which books could be purchased from the flood and cyclone relief grant. Since the lists already approved during the years 1980, 1981 and 1982 are bad on account of bias and personal interest of the members of the Committees, the Government decision adopting those lists in Annexure 4 is also bad in law and is liable to be quashed.

4. The stand of the State Government (opposite party No. 1) in the counter affidavit filed in this Court is that the allegation of bias is wholly unjustified. Eminent authors and educationists were in different sub-committees during different years and merely because some of their books were ultimately included in the approved list/lists, it cannot be said that those members were sitting over their own cause since the ultimate selection is that of the State Government. It was also pleaded that some of the ex officio members like the Secretary to Government, Education Department, were required to be in the Committee of necessity and, therefore, to the general rule that an adjudicator who appears to be biased or prejudiced must disqualify himself from participating in a proceeding, the rule of necessity is an exception. The State also further pleaded that these publishers (Petitioners) having submitted their books for approval and even some of their books also having been approved, cannot make an allegation of bias.

5. The other opposite parties also more or less pleaded on the same grounds and gave some dates and particulars which will be discussed later.

6. Before discussing the merits of the rival contentions, it would be appropriate to note the " procedure prescribed for purchase of books.

7. Admittedly there is no statutory rule governing the procedure for selection of books. Administrative instructions from time to time have been issued by the State Government constituting different Committees and indicating the procedure of selection. The main object is to develop the libraries of the educational institutions of the State in purposeful manner and to encourage the students to cultivate the habit of reading standard books and periodicals and also to give a fillip to the literary efforts in the State. Broadly speaking three Committees are constituted, namely, the Assessment Committee, the Distribution Committee and the purchase Committee, apart from the ex-officio members of different Committees like the Secretary to Education Department,

Director of Public Instruction (Higher Education), Director of Public Instruction (Schools), Vice-president. Board of Secondary Education, non-official members well connected with literary activities are also taken in the different committees. The State Government provides a specific sum for purchase of books for libraries and for prize purposes for the educational institutions in the State. The Member-Secretary of Committee calls upon the publishers and authors to submit books for consideration. No book of the author is submitted twice. The assessment sub-committee considering the textual quality, quality of printing general get-up of the book, quality of binding, reasonability of price quantity of books available in ready stock with the concerned publisher and on a finding that the book does not contain materials which may develop casteism or communal feeling, recommends a list of books suitable both for schools and colleges. The Purchase Committee considers the recommendation of the assessment subcommittee and draws up a list out of those recommended books. The job of the distribution committee is to work out the details regarding purchase of books taking into consideration the funds available for the purpose. The State Government takes a final decision regarding assessment, selection, purchase and distribution of books and it is open for the State Government to reject any book even though recommended by the assessment sub-committee and approved by the purchase committee without assigning any reasons. Thus, it is the decision of the State Government which makes a list of approved books final out of which different institutions purchase books depending upon the funds available and the purpose for which books are going to be purchased. It is to be noted that though every year. Government issues separate administrative instructions in supersession of the earlier one, more or less this pattern has been accepted and only some non-official members in the different Committees are changed. It is pertinent to note that in the context of selection, the role of an individual member of any of the subcommittees is insignificant. To a query from the court as to the number of authors whose books have been selected in 1980, 1981 and 1982. Mr. Ranjit Mohanty, counsel for opposite party-interveners in O. J. C. 1239 of 1983 gave in a tabular form that about 700 authors are involved whose books have been in the approved lists of those years. If the contention of Mr. B. B. Mohanty. learned counsel appearing for the petitioners is accented, then it will be necessary to find out enrrnent literary persons other than those 700 authors to be included in different sub-committees. which job is undoubtedly a difficult one, nay reaching a stage of impossibility. Besides, so far as the official members are concerned, their presence in different committees is a question of necessity.

8. In the context of the procedure prescribed for selection referred to above, we will examine the correctness of the contention of the petitioners counsel that the approved lists of the years 1980, 1981 and 1982 are bad as some of the members of different committees are authors of certain books which have found place in the final approved lists of the state Government. In support of his contention, Mr. Mohanty, learned counsel for the petitioners, placed reliance on the well-known decision of the Supreme Court in A.K. Kraipak and Others Vs.

Union of India (UOI) and Others, . Mr. Mohanty's emphasis is on the ground that even though the final selection lies with the Government yet the very presence of some of the members in different committees vitiates the entire selection as soon as the books of those members were considered for selection. We are not in a position to accept the submission in its broad term. The Supreme Court in Kraipak's case (supra) relying on its earlier decision in the case of Suresh Koshy George Vs. University of Kerala and Others, , observed at p. 157):--

".....What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

The attack to the selection of books made in this case on the ground of bias is obviously on the footing that the principles of natural justice have been violated. Where, it is alleged that the adjudicator has made himself a partisan, or is to be suspected of partisanship, by reasons of his words or deeds or his association with a party who is instituting or defending the proceedings before him, the courts will not hold him to be disqualified unless the circumstances point to a real likelihood or reasonable suspicion of bias. While discussing the question of interest and bias and violation of principles of natural justice in the matters of administrative policy and routine administrative acts and decisions, it has been observed in De Smith's Judicial Review of Administrative Action, 4th edition, at page 253 :--

"Public administration cannot be carried on in a spirit of judicial detachment. In some situations it will be perfectly proper for a public body to make a particular decision for its own pecuniary advantage as distinct from the pecuniary advantage of individual members or officers. And a decision as to the mode of discharging a public duty will not necessarily be vitiated by the personal interest of a member in the method adopted "

The presence of the official members in different committees under the procedure for selection prescribed by the Government is fully covered by the aforesaid weighty observations. The Secretary of the Education Department is discharging his public duty of being present in the Committee for selection of books for different educational institutions in the State and in the process if some of his books are selected, we cannot hold that selection to be bad on the ground of bias.

9. Application of the rules against interest and bias must be tempered with realism. Purchases have already been made during the year 1980 from out of the books selected for 1980. Similarly purchases have already been made from out of the books approved for 1981 and 1982 during the said years. It would be a

futile exercise of power at this stage to sit upon the legality of those lists at this stage. We are alive to the contention of Mr. Mohanty that those lists have also been the basis for purchases to be made out of the cyclone and flood relief grant to be made in 1983 which we will examine at a later stage. Therefore, if a petitioner approached the Court to quash a selection of books made in the year 1980 or 1981 after the books during that year have already been purchased from out of that list, the court will not certainly exercise its jurisdiction. It may not be out of place to mention one fact that to our query Mr. R. Mohanty, learned counsel appearing for the inter-vener-opposite parties in O.J.C. No. 123 of 1983 stated that the total number of books approved by the State Government during the years 1980, 1981 and 1982 is 1252 out of which the members against whom allegations of bias have been made in the writ petitions had 39 books in all.

10. The contention of the petitioners in this regard can be considered from another angle. There is no doubt that a party otherwise entitled to impugn the decision for breach of the rule of violation of principles of natural justice may forfeit his right to do so by his own conduct in approbating the proceedings, and in such circumstances disentitlement to relief does not appear to be wholly dependent on the discretionary nature of the remedy sought. A party may waive his objections to adjudication by persons subject to disqualification. Objection is generally deemed to have been waived if the party or his legal representative knew of the disqualification and acquiesced in the proceedings by failing to take objection in the earliest practicable opportunity. In the present case, petitioner No. 1 O. J. C. no. 1239 of 1983 submitted 24 books for consideration in the year 1981-82 out of which one was selected. In 1982-83, he submitted 29 books out of which six books were selected (vide para 3 of the State's counter affidavit). So far as O. J. C. No. 1438 of 1983 is concerned petitioner No. 2 submitted eleven books in 1980-81 and also eleven books in 1982-83. Therefore, for these years petitioners having submitted their books for selection and having either partially successful in getting some of their books selected or having failed in getting the books selected, cannot impugn the selection on the ground of bias.

So far as 1980-81 is concerned, petitioner No. 1 in O. J. C. 1239 of 1983 did not submit any books pursuant to the advertisement issued by the Government and petitioner No. 2 in the said O. J. C. did not submit any books pursuant to the advertisement issued for the year 1980-81, 1981-82 and 1982-83. Similarly, petitioner No. 1 in O. J. C. No. 1438 of 1983 did not submit any books for any of the years. In that view of the matter, they cannot be deemed to be "person aggrieved" to impugn any selection made. Consequently, the petitioners contention fails on this score also. We would profitably quote a passage from the book *Judicial Review* by De Smith at pages 262-263 while dealing with the question "the real likelihood of bias or reasonable suspicion of bias" :--

"A "real likelihood" of bias means at least a substantial possibility of bias. The Court it has been said will judge of the matter "as a reasonable man would judge of any matter in the conduct of his own business." The test of real likelihood of

bias which has been applied in a number of leading case, in magisterial and liquor licensing law is based on the reasonable apprehensions of a reasonable men fully apprised of the facts. It is no doubt desirable that all judges. like Caesar's wife, should be above suspicion; but it would be hopeless for the courts to insist that only people who cannot be suspected of improper motives" were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people."

11. The next submission of Mr. B. B. Mohanty, learned counsel for the petitioners is that Annexure 4. the decision of the Government is bad on account of arbitrariness inasmuch as instead of following the normal process of selection in accordance with the prescribed procedure, the Government took an arbitrary decision in approving the earlier lists in addition to some other text books. In support of this submission, the learned counsel for the petitioners relied upon the decision of the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and the decision of the Supreme Court in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, . According to Mr. Mohanty, any governmental action which fails to satisfy the test of reasonableness and public interest, it would be liable to be struck down as invalid. The learned counsel drew our attention to the observations of Bhagwati, J. in Kesturi Lal's case (supra) at page 2000 to the following effect:--

"But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging it? validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest....."

From the materials available on record, particularly the counter affidavit filed on behalf of the State, we find that on account of unprecedented flood and cyclone in August-September, 1982. large number of schools and colleges were washed away. These schools and colleges had no books in their libraries for the education of the students. The State Government received time-bound grants from the Central Government for this purpose and the sums allotted in this regard were to be utilised within a specified period. In this background it was not feasible or possible on the part of the State Government to make a fresh selection for purchase of books by going through the process of selection by different

committees after making fresh advertisement and observing other formalities. In this context, we cannot hold that the Government decision adopting the approved lists for the years 1980. 1981 and 1982 to be arbitrary or not in the public interest. It is the exigencies of the situation that have prompted the State Government to take an immediate decision.

Besides the procedure prescribed for selection of books is not statutory and is purely an executive direction. It is open for the State Government to change one executive instruction by another. The Impugned decision of the State Government to purchase books out of the grant for flood and cyclone relief from out of approved lists of books for the years 1980. 1981 and 1983 is also the executive decision in supersession of the earlier one that was prevailing in the field. The said decision is a bona fide one and has been made in the larger interests of the students and the educational institutions of the State. We, therefore, reject the submission of the petitioners that the decision is an arbitrary one.

12. Mr. Mohanty for the petitioners further submitted that the Government decision contained in Annexure-4 was vitiated as one of the suppliers was present in the said meeting. This contention is to be rejected as Annexure 4 is not the Government decision approving the books to be purchased out of the cyclone and flood relief grant A3 has been rightly submitted by the State in its counter affidavit, the decision of the Government in this regard is a government letter dated 5-4-1983 which has been annexed as Annexure-B to the State's counter affidavit in O. J. C. No. 1438 of 1983. This Government decision contained in Annexure-B was being implemented in the meeting dated 13-4-1983 the resolution of which has been annexed as Annexure-4. In the matter of implementation of the earlier Government decision, the presence of the publishers and book-sellers' association" who offered their services to carry out the Government decision does not vitiate the Government decision dated 5-4-1983 and. therefore, the contention of the petitioners is wholly unfounded.

13. In the result all the contentions raised on behalf of the petitioners fail and the writ petitions are accordingly dismissed but in the circumstance there would be no order as to costs. The interim orders passed in the writ applications are hereby vacated

P.K. Mohanty, Ag. C.J.

14. I agree.