

(1958) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 161 of 1958

Kashi Prasad Sinha

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-07-1958

Acts Referred:

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

Madhya Pradesh Secondary Education Act, 1951 — Section 18

Citation : AIR 1959 MP 183 : (1958) ILR (MP) 619 : (1959) JLJ 498 : (1959) 4 MPLJ 525

Hon'ble Judges : V.R. Sen, J; T.P. Naik, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; M. Adhikari, General (for No. 1), S.B. Sen, Additional Government Advocate (for No. 2) and K.B. Sinha, (for No. 3), for the Respondent

Final Decision : Allowed

Judgement

T.P. Naik, J.

This is a petition under Article 226 of the Constitution of India. The petitioner is the proprietor of the "Bhartiya Bhandar" whose Hindi publication "Naya Sahitya Sourabha", parts 1 to 4, had been sanctioned and prescribed as one of the text books in "Hindi" for the middle school classes in Mahakoshal in the syllabus of studies for classes V to VIII of the middle school for the academic year 1958-59 by the Board of Secondary Education, Madhya Pradesh (hereinafter called the Board).

His main complaint is that the State of Madhya Pradesh (respondent No. 1) and the Director of Public Instruction (respondent No. 2) have -- vide notification, dated 1-6-1958, (Annexure E) -- changed the said syllabus of the course of studies for the year 1958-59 and onwards for the middle school classes and substituted a new syllabus in contravention of the Madhya Pradesh Secondary Education Act, 1951 (hereinafter called the Act) and the Regulations made

thereunder (hereinafter called the Regulations).

It is further complained that they have for that syllabus, without any authority of law, prescribed text books printed and published by the State Government called "Nationalized Test Books" in place of the text books printed and published by the petitioner, which had already been prescribed by the Board in accordance with the syllabus for 1958-59 published in 1956. It is contended that the Director of Public Instruction had no authority to change the syllabus or to prescribe the text books, which function could be performed by the Board only after following the procedure laid down in the Regulations.

This required the initiation of the proceedings for revision of the syllabus by the Board of Studies for the respective subjects, constituted under Chapter XIV of the Regulations, in its annual general meeting and forwarding it to the Board through the Academic Council (vide Clause 11 of Chapter XIV of the Regulations). It is also contended that prescribing of text books printed and published by the State Government infringed the fundamental right of the petitioner under Article 19(1)(f) and (g) of the Constitution. He, therefore, prayed for the following reliefs:

"(i) A writ of certiorari quashing the notification of the Director of Public Instruction contained in Annexure E may kindly be issued.

(ii) A writ of prohibition restraining the respondents; from publishing, printing and selling the books and continuing the courses as per the above notifications contained in Annexure E may kindly be issued.

(iii) A writ of mandamus ordering the respondents to continue the books and studies in accordance with the syllabus printed in 1956 (Annexure A) may kindly be issued.

(iv) Any other order or orders, direction or directions or writ or writs thought expedient, just and appropriate in the circumstances of the case may kindly be issued.

(v) Costs of these proceedings be awarded."

The respondents in their return averred that the change in the syllabus and the prescribing of the text books had been done by the Board and not by the Director of Public Instruction as contended by the petitioner. They also averred that the action of the Board was in conformity with the Act and the Regulations, and that on a proper construction of the Act and the Regulations the syllabus for the middle school classes did not require to be initiated by the Board of Studies and that the provisions of Clause 11 of Chapter XIV of the Regulations did not apply to the syllabus of the middle school classes. They also denied that there was any infringement of the fundamental right of the petitioner under Article 19(1)(f) and (g) of the Constitution. They, therefore, prayed that the petition be dismissed with costs.

After the arguments had proceeded for sometime, which, to a certain extent, clarified the respective contentions of the parties, the petitioner prayed for leave to amend the petition. We considered it advisable to adjourn the case for a few days for the purpose, and we have now before us an application for amendment filed by the petitioner as well as its reply by the respondents.

The amendment raises no new points, except such as were being canvassed before us when we adjourned the case, and as there is no serious opposition to the amendment being allowed we consider it advisable to allow it in the interest of justice as it only clarifies certain issues which arose for determination in the original petition.

The petitioner has no doubt in the application for amendment made certain additional averments supported by additional documentary evidence to show that the Director of Public Instruction has been acting as if he had all the powers of the Board. On that basis it is contended that the stand taken by the respondents that the changes had been effected by the Board and not by the Director of Public Instruction was not correct.

We are, however, not concerned with the irregularities committed by the Director of Public Instruction, if any, as the only question to be decided in this petition is whether the stand taken by the respondents that the change has been effected by the Board in accordance with the provisions of the Act and the Regulations is correct or not.

Stated shortly, the questions that arise for consideration are:

- (1) Whether the Board has, in fact, approved the revised syllabus for the year 1958-59, for the middle school classes of the Mahakoshal region of Madhya Pradesh?
- (2) Whether it has also, in fact, approved the "Nationalized text books" for introduction in the middle school classes of the Mahakoshal region as required by the Act?
- (3) Whether the Board had power to approve the syllabus and the books without consulting the Board of Studies?
- (4) Whether the State Government, in prescribing the "Nationalized text books" infringed the fundamental right of the petitioner under Article 19(1)(g) of the Constitution?

On the first two questions, the first relevant resolution of the Board, relied on by the respondents, which envisaged the revision of syllabus is the one passed on 28-6-1957, The said resolution is contained in the extract of the minutes of the meeting of that date. As these minutes help us in understanding the problems involved, we have quoted them in full:

"9-B. "Maintenance of uniformity in the Middle School Syllabus in the whole of Madhya Pradesh".

At this stage the members were apprized of the position of the Middle School Syllabus as it exists in the other parts of Madhya Pradesh, viz., Bhopal, Vindhya Pradesh and Madhya Bharat. In these States, control of the Middle School education rests with the Education Department and Syllabus and Text Books are ipso facto prescribed by the Director of Public Instruction. The trend of discussion that followed was that as the first step towards integration it was necessary to maintain a uniformity of syllabus, prospectus and Text Books in the whole State of Madhya Pradesh so far as Middle Schools are concerned; and that in order to maintain such uniformity it was necessary to obtain the help and advice of the Director of Public Instruction in regard to the syllabus and books that he prescribes for other areas of Madhya Pradesh.

It was finally resolved that the Director of Public Instruction may be requested to recommend to the Board the syllabus and books that are prescribed for other areas in Madhya Pradesh to enable the Board to prescribe, after the expiry of the period for which the Board has already prescribed syllabus, the same books and the courses for Mahakoshal also with a view to maintain uniformity."

It would be apparent from this resolution that the recommendation had been requested from the Director of Public Instruction with a view to its adoption if approved, after the expiry of the period for which the Board had already prescribed syllabus.

The Director of Public Instruction sent his recommendation by his memorandum No. Pry/U/323/1958-3, dated Bhopal, the 9th January, 1958, which reads :

"To The Secretary, Mahakoshal Board of Secondary Education, Jabalpur, Madhya Pradesh. Subject -- Approval of the enforcement of the Unified Syllabus.

Your attention is invited to the resolution referred to. The Government have decided that the enforcement of the Unified syllabus should commence with effect from the academic session 1958-59 in all the Primary and Pre-Secondary schools of the State. A copy of the said syllabus are approved by the Government is being sent to you in order that after placing the same before the next meeting of the Mahakoshal Board of Secondary Education and obtaining its concurrence with regard to its implementation you may inform this office so that the decision of the Government may be acted upon.

(2) Unified syllabus is not a new syllabus. After making the minimum possible changes in the approved subjects under the syllabi which were in use in the different regions of the State they have been compiled in the Unified syllabus. It is evident that the implementation of this syllabus with effect from the next session will cause no special difficulty to the teachers and the pupils.

(3) It is decided to introduce this syllabus in all the other regions of the State and in classes V, VI and VII of Mahakoshal with effect from the coming session. Teaching in subjects. Mother-tongue (Hindi, Marathi, Urdu, Sindhi), Hindi, Sanskrit, Pharsi, Arithmetic, General Science, Social Studies and Physical

Educations will be imparted in accordance with the Unified syllabus from this academic session and teaching in other alternative subjects, e.g., Home Science, Drawing, Music, Craft, in accordance with the Unified Syllabus, will be imparted from the academic session 1959-60.

(4) Also kindly secure the concurrence of the Mahakoshal Board of Secondary Education in respect of the above-mentioned implementation of the Unified syllabus.

(5) The question of nationalized text books connected with the implementation of the Unified syllabus is also important. In this connection, after examining the nationalised text books prevalent in various regions of the State, the Government have decided that nationalised text books in Hindi and Marathi languages and nationalised arithmetic books in Hindi and Marathi will be introduced in all the Primary classes of the State with effect from the coming session. In the same manner nationalised text books in Hindi and General Science will be introduced in class V of the Primary Education standard and classes VI, VII and VIII of the Pre-Secondary standard with effect from the coming session and the use of the other text books in these subjects will be discontinued.

(6) With regard to text-books in other subjects, it has been decided, detailed specifications should be prepared based on the Unified syllabus and text books be invited from the publishers accordingly, and the best selected books from amongst them should be introduced. Your co-operation for implementing the said decision of the Government is requested. Kindly inform the publishers of your region about the said decision."

"Enclo--

Copy of the resolution Sd/- Dharampal Varsh of the Mahakoshal Board sent for Director of Secondary Education, Public Instruction, Madhya Pradesh. Copies of the Parts I and II of the Unified syllabus."

It will be observed that the recommendation consisted of three parts : (1) that relating to the revised unified syllabus, (2) that relating to its implementation from the academic year 1958-59, and (3) that relating to the introduction of the "Nationalized Text Books". In order to enable the Board to approve the syllabus, a copy of the syllabus was enclosed, but copies of the "Nationalized Text Books" were not enclosed for reasons best known to the Director of Public Instruction. The endorsement "Enclo" in the said memorandum shows only that "copies of the parts I and II of the Unified syllabus" were sent. No copies of the text books were submitted and the fact is now admitted that the "Nationalized text books" were not submitted to the Board for its approval.

The resolution of the Board passed after considering the aforesaid Unified syllabus is contained in the following minutes of the meetings held on 12th, 13th and 14th January, 1958 :

"XIII -- Introduction of Unified syllabus at the Middle School Stages.

The Director of Public Instruction's memo No. Pry/U/323/1958/3, dated the 9th January, 1958, together with its enclosures containing the Syllabus as approved by the Government for Primary and Middle School classes was read out to the Board. The Chairman explained the implications of the salient points of the Director of Public Instruction's memo, and the syllabus to the Board. The Chairman also drew attention of the Board to its previous resolution No. 9 of the emergent meeting held on the 28th of June, 1957, in which the Board had decided to consider the recommendations of the Director of Public Instruction in regard to the Middle School syllabus with a view to maintain uniformity of syllabus throughout the State of Madhya Pradesh.

Shri Bangaram pointed out that the Board had already agreed to the principle of having a uniform syllabus in the Middle School Classes in the whole of the Madhya Pradesh as referred to by the Chairman and proposed that the recommendations of the Director of Public Instruction contained in the memo cited above and the syllabus approved by the Government so far as it relates to Middle school classes be accepted and adopted in their entirety.

Shri P.C. Sethi seconded the resolution. The resolution was adopted unanimously."

This resolution referred to the syllabus and its introduction in the academic year 1958-59 in terms, and its approval must clearly be strictly confined to those topics only. There is no reference in it to the "Nationalized text books" and the contention is that the approval of the recommendation in its entirety implied the approval of the "Nationalized text books" also. We do not agree.

There is no affidavit on behalf of the Mahakoshal Board of Secondary Education (respondent No. 3) that the members were in fact intimately acquainted with the text books, "Hindi Prabodh" series which were in vogue in the Vindhya Pradesh region. In the absence of such an affidavit we think it would be hazardous to presume their knowledge of the contents and nature of these books.

The learned Advocate-General, however, claims that the Board was aware of the nature of the books, when it adopted the recommendation of the Director of Public Instruction dated 9th January, 1958. He suggested that the books that were prescribed for the middle school classes were the same which were in vogue in the Vindhya Pradesh region for those classes, and consequently the members of the Board must have been aware of their nature and contents.

In our opinion, there is no warrant for such a presumption. It would be a mockery of the Act and the Regulations enacted for the approval of text books by the Board if we were to act on such a presumption. On behalf of the respondents, a copy of rules was placed before us prescribing the procedure for submission of books by publishers for consideration by the Board. All that would have been unnecessary if the knowledge obtained by the members individually from outside sources was all that was required.

In approving the text books it is of prime importance that the members go through those books themselves for ascertaining their suitability for prescribing them as text books according to the syllabus in force. For this purpose the text books to be approved must be physically before the members at the meeting so that their merits and demerits could be ascertained and assessed by mutual consultation and discussion.

In addition to what we have said above, we find that there is internal evidence also of the fact that the Board could not be taken to have approved the text books in the form in which they have been later on printed and published. The learned Advocate-General placed before us for our perusal copies of "Hindi Prabodh" series which have been now printed as "Bal Bharaty" series and prescribed for the middle school classes. A bare comparison of the books of the two series would show that the two series are not identical in contents.

In fact, the Secretary to Government, Education Department, Madhya Pradesh, in his preface ^{^fuosnu*} clearly admits that the books have been to some extent revised. He has even apologised that as time was short for the beginning of the academic year 1958-59, little revision of the books could be done. He states that from the next session endeavour was being made to give still more revised and enlarged editions of these text books. This clearly showed that these revisions did not and could not have the sanction of the Board.

It is then submitted by the learned Advocate-General that the "Nationalized test books" had been approved by the Text Book Committee. These Text Book Committees were appointed by the State Government and had no relation with the Act. We do not see how the approval of the books by the Text Book Committee could absolve the Board from approving the books itself. We may further remark that no material has been placed before us to show that the deliberations or recommendations of the Text Book Committee were placed before the Board so that it could have any adequate material for its decision. Also we cannot lose sight of the fact that there is much justification in the criticism of the learned counsel for the petitioner that the Board had acted so hastily that it had hardly any time to deliberate and decide all the problems arising in the revision of the syllabus and the text books.

It is significant that the question was not on the agenda of the Board for the 12th of January, and was introduced in the items of agenda under the head "any other business" for the Board meeting of the 13th for the first time.

We are, therefore, of opinion that the Board did in fact approve the revised syllabus for the year 1958-59 for the middle school classes of the Mahakoshal region of Madhya Pradesh, but that it did not approve the text books "Bal Bharaty" series alleged to be prescribed for introduction in the middle school classes of the said region.

The third question poses a more fundamental objection to the approval of the revised syllabus by the Board. It is not disputed that the Board and not the

Director of Public Instruction is the authority for revising the syllabus and prescribing the text books for the Mahakoshal region of the State of Madhya Pradesh.

This is because of the Madhya Pradesh Secondary Education Act, 1951 (No. XII of 1951), Section 8 of which provides that the Board of Secondary Education constituted u/s 4 thereof shall have the power to prescribe courses of instruction for recognised institutions in such branches of secondary education as it may think fit. Section 17 of the Act provides that the Board shall appoint a body called the Board of Studies. The functions of this body are detailed in Chapter XIV of the Regulations made under the Act. Section 18 of the Act then says :

"Exercise of powers delegated by the Board to Committee, etc. -- All matters relating to the exercise by the Board of powers conferred upon it by this Act which have, by regulation, been delegated by the Board to any body appointed u/s 17 shall stand referred to that body, and the Board before exercising any such powers shall receive and consider the report of the body with respect to the matter in question."

Under Clause 14 of the Regulations, a Board of Studies was appointed for one of the prescribed subjects, e.g., "Hindi", and under Clause 7 of the said Chapter : "It shall be the duty of the Board of Studies to make recommendations regarding -- (i) syllabuses for subjects of instructions with which it is concerned; and (ii) prescribing suitable text-books in conformity with the syllabus.

This being the position, the Board before exercising the powers under the Act was under a statutory obligation created by Section 18 of the Act to receive and consider the report of the Board of Studies for "Hindi" in regard to the revision of the " syllabus and the text books.

The learned Advocate-General contends that the provisions of Chapter XIV of the Regulations have no application to the middle school classes, and consequently there was no Board of Studies for Hindi" so far as these classes are concerned whose report on these questions the Board was under any statutory obligation to receive and consider before coming to its own decision on the point.

The learned Advocate-General wants to derive support for this argument from the provisions of Clause II of Chapter XIV of the Regulations. In our opinion, there is no warrant to limit the powers of the Board of Studies in this way. The provisions of the Regulation regarding the Boards of Studies are framed in a wide and general language which admit of no such limitation as is now sought to be placed upon them.

Because, even accepting that the provisions of Clause 11 of Chapter XIV refer to the syllabus of the Secondary School Certificate Examination, there is no justification for limiting the other clauses to that examination alone. There is also the fact that a contingency such as we have here has never arisen before and the petitioner asserts that the Board of Studies had always initiated the revision

of the syllabus and the text books.

Even the respondents concede that the Board of Studies had always been consulted in the past, though as a matter of convenience. But, be that as it may, we find no justification for limiting the provisions regarding the Board of Studies to the syllabi and text books of the higher secondary school classes, e.g., classes after the VIII standard to the Secondary School Certificate Examination.

It is not denied that the report of the Board of Studies was neither received nor considered, and consequently we hold that the mandatory provisions of Section 18 of the Act were not fully complied with. The contention that there was substantial compliance with the provisions of the Act and the Regulations is not acceptable, for the simple reason that the receipt of the report from the Board of Studies and its consideration by the Board, was a condition precedent to the exercise of their powers. We are, therefore, of opinion that the Board acted ultra vires in revising the syllabus in question.

The last contention that the State Government in printing and publishing the text books infringes the fundamental right of the petitioner under Article 19(1)(f) and (g) of the Constitution has no merit. The State Government in itself printing and publishing certain text books does not impinge any legal right of the petitioner. His property in his books is still there. If, because the Board chooses not to prescribe his books as the text books for the middle school classes, his books do not get a ready market for sale, he can make no grievance of it on the score of infringement of his fundamental right under Article 19(1)(f) and (g) of the Constitution.

We, therefore, direct:

(1) The notification of the Director of Public Instruction, dated 1st June, 1958 (Annexure E) in so far as it relates to the syllabus and text books for the middle school classes of the Mahakoshal region in Madhya Pradesh is hereby quashed.

(2) The respondents are directed not to enforce the revised syllabus and the "Nationalized text books" in the middle school classes of the Mahakoshal region of Madhya Pradesh, unless and until the same are revised as required by the Act and the Regulations.

The petition is allowed with costs. Counsel's fee Rs. 100/-.