

(1998) 03 AHC CK 0118
In the Allahabad High Court
Case No : C.M.W.P. No. 4172 of 1998

Prakashan Bhawan and others

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 15(2), 7(1), 9(1)

Citation : AIR 1998 All 222 : (1998) 2 AWC 1142 : (1998) 3 UPLBEC 2317

Hon'ble Judges : G.P. Mathur, J;D.K. Seth, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The petitioners seek to challenge the Government Order dated 14.1.1998 (Annexure-1 to the writ petition) sent to the Director of Education and Chairman of the Board of High School and Intermediate Education. U. P. Allahabad (hereinafter referred to as the Board).

2. Sri Dinesh Dwivedi has submitted that by the impugned order the course of studies prescribed in the High School classes have been completely changed, which power could only be exercised by the Board u/s 7 (1) of the U. P. High School and Intermediate Education Act. 1921, (hereinafter referred to as the Act) or by making regulations u/s 15 (2) (d) thereof and, therefore, the same is illegal. We are unable to accept the submission made. A perusal of the impugned order would show that the Principal Secretary of U. P. Government has written a letter on 14.1.1998 to the Chairman of the Board, which office is ex officio held by Director of Education, intimating him that in accordance with National Education Policy, a decision has been taken to simplify the High School Examination by reducing the number of papers and by introducing six subjects uniformly. Towards the end of the letter, a request is made that necessary proposal for making amendment in the rules and regulations be forwarded to the Government within fifteen days. The last part of the letter makes it clear that the

Government has not changed or altered the course of instructions but has asked the Board to suggest the amendment which will have to be incorporated. Section 9 (1) of the Act reads as follows :

9. (1) The State Government shall have the right to address the Board with reference to any of the works conducted or done by the Board and to communicate to the Board its views on any matter with which the Board is concerned."

In our opinion, the letter sent by the Government to the Board was in exercise of the powers conferred by Section 9 (1) of the Act and the same was perfectly within its authority.

3. We are also of the view that the present writ petition is premature. As mentioned above, the Government has merely asked the Board to send proposal for making appropriate amendment in the rules and regulations so that the course of studies for High School classes in the State of U. P. may be brought in line with National Education Policy. The amendments in the rules and regulations have not yet been made and the course of studies has not been changed so far. Till that is done, the petitioners can have no cause of action to file the writ petition.

4. We are further of the opinion that the petitioners, who are publishers of books, have no locus standi to file the present writ petition. A publisher of textbook cannot challenge a decision of the Board to change the course of study. Sri Dwivedi has on the strength of the decision rendered in *Naraindas Indurkhyia Vs. The State of Madhya Pradesh and Others*, , urged that the writ petition at the instance of a publisher of books is maintainable. We do not find that it has been held as a proposition of law in the aforesaid case that a writ petition challenging the decision of the Board to prescribe a course of study would be maintainable at the instance of a publisher. On the other hand, the following observation in para 11 of the report goes contrary to the stand of the petitioners :

"No publisher has any right to insist that any of his books shall be accepted as text-books by the State Government. He has merely a chance or prospect of any or some of his books being approved as text books by the State Government. "Such chances are" to use the words of Mukherjee. C. J.. In *Rai Sahib Ram Jawaya's* case, "incidental to all trade and business" and there can be no infringement of any right if by an action of the State Government such chances are taken away."

5. No other point was urged.

6. The writ petition is dismissed summarily.

D.K. Seth, J.

7.--While respectfully agreeing with the judgment delivered by my learned Brother. I would like to support the decision yet on another ground.

8. The letter dated 14th January, 1998 (Annexure-1) is a part of the process undertaken by the State Government u/s 9 (1), of the Act through delegated legislative power for subordinate legislation. It is in the form of proposal for amendment in the rules and regulations which may ultimately result in a legislation or it may not at all be amended. If amended, then the amendment would be in the exercise of legislative powers, a plenary jurisdiction conferred on the authority by virtue of Section 9 (1). There cannot be any embargo on the plenary jurisdiction. If the legislation comes into being, then it might be challenged on account of its alleged unconstitutionally or incompetence, illegality or otherwise. There cannot be any restraint on the plenary jurisdiction conferred by law on any authority. Something which is yet to come into being cannot be challenged on any anticipated hypothetical ground on apprehension.