

(1955) 03 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 84 of 1954

T.K. Gopala Chetty and Another

APPELLANT

Vs

Director of Public Instruction in Mysore and Another

RESPONDENT

Date of Decision : 04-03-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Citation : AIR 1955 Kar 81

Hon'ble Judges : Venkataramaiya, J; Vasudevamurthy, J

Bench : Division Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; A.G. and M.P. Somasekhara Rau, for the Respondent

Judgement

Venkataramaiya, J.—Two notifications dated 20th and 30th March 1954 respectively and a Circular dated 11-5-1954 issued by the Director of Public Instruction in Mysore are attacked in this petition filed under Art. 226 of the Constitution of India as being un warranted and unconstitutional. The notifications prescribed the text books and copy books to be used in all the Primary and Middle Schools of the State during the year 1954-55. Objection is taken to the prescribing not of text books i.e., books to be read and taught but of the Kannada Copy Books described as. "Adarsha Lipi Pusthaka" printed by Maruthi Book Depot, laying special emphasis on the use of these by means of a "N. B." in the notifications and enjoining Educational Officers in the Circular to enforce the same. Of the two persons who have filed the petition, the first is a dealer in Kannada copy books, who of course would be materially affected by his books being excluded from use in schools during the year; the second petitioner is a Christian who complains that the books contain writings on tenets of a particular creed and inculcate sectarian precepts in the minds of the pupils who copy the same. It is alleged by both that the orders are arbitrary and designed to benefit a particular businessman by creating a monopoly of trade in his "favour."

These allegations are denied in the counter-affidavits of the Director. The person

in whose favour the orders were made was not impleaded in the petition. He applied for permission to be added as a party in the proceedings after petitioners-applied for and obtained an order to stay the operation of the orders. Since he is a person interested in the result of the case, his right to participate in the proceedings was not seriously questioned by the other parties and he has been therefore treated as 2nd respondent in the case.

2. The orders have been subjected to severe and searching criticism in the affidavits filed by the petitioners and the arguments advanced by their learned counsel Sri Venkataranga Iyengar, The "learned Advocate-General on behalf of the Director and Mr. Somosekhara Rao on behalf of the 2nd respondent strongly contended that the petition is misconceived and claimed justification for the orders.

3. There is no statute in which the powers of the Director are defined or the exercise of these is regulated and these are to be gathered from notifications, circulars and directions issued from time to time by Government about matters pertaining to Education. The notification relating to Text Books in Secondary Schools was issued in 1941. By this the Secondary Education Board was constituted to select text books with the aid of sub-committees. The procedure to be followed is mentioned at page 53 of the Mysore Education Manuals, Volume VI thus:

"Authors or publishers desiring departmental patronage will submit four copies of each book to the Secretary, Text Book Committee, with an application in the prescribed form

The books received shall be noted in the Text Book Committee Register and a copy of each book will be sent to two members and the Chairman of the Sub-Committee concerned for review

After the review is received the opinion of the Chairman shall be recorded in the review form

The several books recommended by the Chairman of the several Sub-Committees to be prescribed as Text Books should be placed, as a general rule, before the special or ordinary Sub-Committees appointed to recommend text books annually. The text books thus recommended should be placed before the Secondary Education Board for approval and copies of the lists of books prescribed for different grades of schools sent to the Inspecting Officers concerned."

For the Primary Classes

"A" separate Committee has been constituted for consideration and prescription of text books in all languages. The personnel of the Committee will be appointed by the Director of Public Instruction with the Deputy Director for Elementary Education as the Chairman." (Page 2 of Rules relating to text books Sub-Committee).

"The recommendations of this Committee could either be placed before the

Central Board of Education or be disposed of by the Department as may be necessary or expedient." (Page 51, Volume VI of Education Manual).

It will be noticed that in the first instance the text book for primary classes as well as middle school classes must receive consideration of two different Sub-Committees. Reference, to the Secondary Education Board is obligatory for selection of text books in middle schools but, in the case of primary schools, the Department has discretion, to make the selection" after the Deputy Director and his committee have applied their minds to the selection. It is not known whether the books for the primary classes were placed before the committee which had to review the same. The books -- including these or not it is not clear -- were however examined by a Sub-Committee and found by the Chairman and another member not suited to be text books. Thereafter, without seeking the opinion of the Secondary Education Board, the Director made the orders. The questions which arise for examination are (1) whether the Director has the power to determine the text books assuming that these include copy books; (2) whether he can exercise the power, if he has it, without ascertaining the views of the Sub-Committee in the case of books for primary classes and without obtaining the opinion of the Secondary Education Board regarding books for Middle Schools and (3) whether the petitioners can claim relief under Article 226.

4. The Director as the head of the department has, on account of the increasing activities and institutions for the spread of education, large number of duties to perform. To afford him time and facility for giving attention to matters of importance, a number of officers are appointed and Boards and Committees constituted to attend to work in several spheres. The books to be prescribed are many, relate to various subjects and in different languages. It is certainly difficult if not impossible for the Director to look into all the books received and assess their worth unless he is familiar with the languages and subjects of these. The difficulty is relieved and scrutiny made practicable by a small committee of persons who are conversant with the language and the subject of the books examining them at first, and the books being selected on a consideration of their opinions.

It is not disputed that the opinion of the Committee has to be considered by the Secondary Education Board which is larger than the Committee and composed of persons presumed to be experienced and qualified to judge the quality of the books. According to petitioners the decision as to which book is to be prescribed rests with the Board but according to respondents the Board is only a consultative body like the Text Book Committee, its opinion is only recommendatory, the authority to select and prescribe any book as " a text book is vested in the Director and he is at liberty to select any book irrespective of the views of the Board or the Committees and without consulting them.

The powers of the Director enumerated in Volume VI do not include authority to prescribe text books. But it is argued that the existence of his power is inherent to the office and implied by the position held by him as he has the responsibility for

making timely announcement of books to be used in schools. When a special machinery is created, specific instructions are given to do anything in a particular manner such inference is unsafe as it may lead to uncertainty and speculation about the means and manner of selection. The jurisdiction to make orders which may not strictly fall under any specific provision is conferred in some statutes on the highest court or the highest authority. The Director derives powers from the orders of Government and it is the Government which may, if at all, act in the exercise of inherent powers. The learned Advocate-General has not pointed out any rule or order which empowers the Director to prescribe text books by virtue of the office. The words such as "Recommend" found here and there with reference to the Board and the Committee cannot signify this as the word "prescribe" is also seen in some places. The conclusion to be drawn on reading the provisions in the Manual and Notifications as a whole is that the Director cannot be deemed to be competent, to prescribe the books of his choice suo motu.

5. The next point to be examined is the effect of the omission to place the opinion of the Sub-Committee before the Secondary Education Board. The rules bearing on this are

"All books received on or before 31st March of a year will be reviewed by the members and considered in the respective Sub-Committees. Such books will be placed before the Secondary Education Board at its meeting in November or in May or June of the succeeding calendar year for final approval.

Books prescribed as text books will be notified in the Mysore Gazette in December or June after the meeting of the Secondary Education Board."

In Volume VI of the Education Manual constitution of several Boards of which the Secondary Education Board is one has been mentioned to

"deal with all questions relating to the examinations concerned such as the framing of the rules, syllabuses and courses of study, prescription of the books etc"

Management of S. S. L. C. Middle and Upper Primary Examination is assigned to Secondary Education Board. The Boards, it is stated, meet ordinarily twice a year.

6. It is evident from these that the Board is given a very important position in the scheme for selection of books and the notifications of selection have to be published after the meeting of the Board. The Director as President of the Board may take part in the discussion about the merits and drawbacks in books and may select the members of the Board. The agency for determining the text books is the Board and the determination has to be given effect to by a formal notification. In any event, the consideration of the books by the Board is a pre-requisite for an order prescribing them. Otherwise the rules would become a dead letter and the Board an ornamental body. The learned Advocate General in the course of the argument mentioned that the requirement of reference to the

Board must be treated as satisfied since the Board later on ratified the orders for prescribing the 2nd respondent's book. This is not mentioned in the first affidavit of the Director but is referred to in the affidavit filed as rejoinder to the petitioners' reply. Learned counsel for petitioners contended " that the plea is belated and an afterthought. He cited some cases to show that ratification even if true, cannot be called in aid since the orders are vitiated by lack of jurisdiction. Apart from all this, the plea implies that the prescribing power lies in the Board as otherwise there was no need for the Director to apply for its approval, and such approval cannot be effective as if it was given prior to the orders since the Board was faced with a "fait accompli" and could not form an opinion with an open mind unfettered by the declared commendation of 2nd respondent's books by the Director.

7. Urgency of the situation and necessity for timely intimation to teachers and pupils of the books to be used are urged as circumstances which compelled the Director to make the orders. The learned Advocate-General represented that the consideration of the books was shelved or put off in a meeting of the Board, that the schools had to commence working before the Board could meet again and therefore the 2nd respondent's books which were the only books received were prescribed by the Director in exercise of his discretion. It is contended that the act is administrative not liable to be questioned under Article 226 and that the petitioners having failed to apply for selection of their books are not entitled to impugn the orders. The explanations cannot be easily accepted as there was nothing like an emergency except that occasioned by the Director in not calling for one or more meetings earlier, no special power is conferred on the Director to act on behalf of the Board or for its being dispensed with and no reason whatever is advanced for adopting an unusual course.

The notification inviting authors and publishers to send books intended to be considered is dated 19-4-52 and during the interval of more than two years between that date and the dates of the orders now in question it cannot have been difficult for the Director as President of the Board or the Secretary to have the matter disposed of at any of the meetings of the Board, if they were seriously mindful of it. Dilatoriness or delay on the part of the Board, in dealing with the question of selection cannot be assumed when there is uncertainty about the meeting at which the opinion was sought and no allegation that either the President or Secretary pressed for it. Moreover the Director, at the time of the order was not under necessity of providing some book for use as the Government publications were available and he had only to be satisfied that the copy books of the 2nd respondent were really superior to those in spite of the condemnation by the Chairman and a member of the Sub-Committee. There is a rule that

"when there is a departmental text book on any subject for any class, no non-departmental book will ordinarily be considered to replace it."

Petitioners' counsel represented that Government publications were cheaper and

better in quality than 2nd respondent's books and that the writings in the latter were faulty so as to be ill-suited for copying. Strictly the books of 2nd respondent were not entitled to consideration as these were not sent before 31-3-53 as required in the notification. The 2nd respondent stated in his affidavit that he submitted the books on 10-9-1953 which is nearly five and a half months later and that the Secretary intimated to "him by communication dated 15-12-1953 and another of the following day that some publications were prescribed for primary classes and some others for middle school classes. The meeting of the Board had to be held under the rules in November, May or June and the books are to be placed for - consideration in any of the meetings which means that if it is not possible in . November, then in May and failing that in June. What happened in November is not known and the notifications were issued in March.

8. Sri Venkataranga Iyengar has commented upon the orders as "mala fide" on the ground that these are passed contrary to practice, rules and principles governing selection of text books. Petitioners in one of the affidavits state that 2nd respondent has been "patronised to reap huge profits." Some books published by the 1st petitioner, are produced to show that in respect of quality they are as good as 2nd respondent's books, if not better, but appreciably cheaper. The difference in price is not disputed and is striking if sales in gross are taken into account. Accrual of substantial gain from the orders to the 2nd respondent is obvious as the total number of books required is said to be about five lakhs, the use of his books is made compulsory and price of each book is fixed at three annas with a margin of profit. It is also mentioned that as a result of the orders more than a lakh of copy books printed by Government for use in previous years will remain unsold and that the insistence on the use of only 2nd respondent's books savours of the needless preference shown to these.

The last criticism is based on the fact that in a former notification for English handwriting about 14 publications were specified with a "N. B. Teachers should advise students to select particular style of copy books suited to their individual style of writing." Similar choice is provided for in the case of Hindi writing. The ideas underlying this apparently is that writing of each has to be improved according to his own peculiarity and not by enforcing imitation of a pattern. What is desired in the Manual is not that the writing should be of a uniform type but that "pupils should practise writing running Hand throughout school course."

Another point raised against the orders is that when no one submitted any books for consideration within the date fixed, the books received months after were held to be unsuited to be text books, the Director should have at least called for books from publishers inside or outside the Mysore State before making the selection. If this course was adopted, the order may have implied that the 2nd respondent's books stood the test of comparison with books of others. The absence of applications for selection by others is said to be due to the impression that copy books are different from text books, that the notification called for only

text books without indicating the discontinuance of Government publications from use. The explanation has some force as not even one amongst the several publishers of copy books sent any book by the appointed date and the 2nd respondent too does not state why he did not offer his books in due time and why he applied for the selection after long delay when his books were not entitled to consideration.

9. It has been held in several cases that statutory provisions which permit exercise of power in an arbitrary manner or the possibility of it are invalid. In -- Anumathi Sadhukhan Vs. A.K. Chatterjee, , Bose J. observed

"It is clear law that an arbitrary or capricious , exercise of the power is no exercise at all. If no reasons are assigned it is not possible to know or judge whether the order is a valid, mala fide or arbitrary order",

while dealing with a case under West Bengal Rice Mills Control Order. At p. 574 in -- R. Balakrishnan Vs. State of Madras, Venkatarama Iyer J. expressed

"if there are no rules for guiding and controlling the exercise of discretion by the person or body of persons then the power must be held to be arbitrary and unreasonable",

with reference to a clause in Textile Control Order by which absolute power was given to an officer in certain matters. The application of these principles cannot be avoided only because of the absence of a statute governing the acts of the Director.

It is not disputed that administrative orders may be challenged if these involve infringement of I constitutional rights or disregard of rules. In -- The State of Bombay Vs. Bombay Education Society and Others, an order of the Bombay Government about admission of pupils in schools teaching English was held to be unconstitutional. The cases in -- Ram Charan Lal Vs. The State of Uttar Pradesh, and -- Buddhu Vs. Municipal Board and Others, are other instances of relief being granted under Article 226 with respect to orders not strictly judicial. Ordinarily the court will not allow parties to invoke the aid of this Article when they have other means of obtaining redress and their rights or interests are not substantially affected by "the acts or orders of the authorities. In this case it is alleged that a request was made to the Director by the Association of Publishers for the withdrawal of the orders but in vain. The question whether petitioners could or should have approached Government for cancellation of the orders does not arise since the stand taken is that those are final and the power of the Director to make them is absolute. The contentions raised cannot be treated as academic when the orders, if given effect to, will benefit- one individual to the exclusion of others at the cost of the students, Persons who make a living by sale of books or to whom it "is a calling and those who have to provide the books necessary" for education of pupils who depend on them are entitled to expect and demand the observance of rules and adherence to methods settled by practice so that there is no room for doubt -- fancied or real -- about play of

personal predilections in the choice of books. Whatever may be the considerations for the use of other books being made compulsory, the insistence on the use of particular copy books is a novel and striking feature of the notification. Under Art. 19(1)(g) of the Constitution the citizens have the right to carry on any occupation, trade or business, subject to such restrictions as the State may impose in the interests of the public and such qualifications as are necessary for carrying on any occupation, trade or business.

10. In -- Rashid Ahmed Vs. The Municipal Board, Kairana, , a Municipal bye-law which provided for the grant of a monopoly to a contractor in wholesale transactions at a place fixed as market was held to be void by the Supreme Court on the ground of being repugnant to the Article. There is no express prohibition of the sales of books by petitioners and other publishers in the orders but it is implied and almost "Certain as copy books are likely to be purchased, only by pupils for necessary use. The prohibition indirectly resulting from grant of monopoly in a trade was disapproved by the Supreme Court in -- Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, . From the observations in -- "Commonwealth of Australia v. Bank of New South Wales" 1950 AC 235 at p. 311 (H)

"Their Lordships do not intend to lay it down that in no circumstances could the exclusion of competition so as to create monopoly either in a State or Commonwealth Agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time and" circumstances"

quoted in -- Saghir Ahmad Vs. The State of U.P. and Others, , a doubt may arise whether monopoly is altogether forbidden. Assuming it is permissible, there should be something more than a bare order unsupported by reasons to justify it. For, as remarked in the Madras case already referred to "If the yardstick is only the personal Opinion of the officer concerned it is plainly a case of naked arbitrary power." The orders in this case are found to be without or in excess of jurisdiction and not in conformity with practice. Restrictions" are placed on the use of books published by the 1st petitioner and several others by granting, monopoly of supply to the 2nd respondent. The burden of paying more for the 2nd respondent's books than for books of others is imposed on the pupils. Orders suffer from the infirmity of the absence of reasons for all this. The petitioners are therefore justified in challenging them. In this view it is unnecessary to discuss whether the compulsory use of the books amounts to imparting, religious instruction in Government schools and affects freedom of conscience, in violation of the Constitutional provisions. The powers of this Court under Article 228 are wide and not limited to cases for safeguarding fundamental rights as implied from the words "for any other purpose". (See -- ";. D. Karkare v. T. L. Shevde" AIR 1952 Nag 330 (J); -- "Sampu Gowda v. State of Mysore" AIR 1953 Mys. 156 (FB) (K)). The notifications and the circular so far as the copy books of 2nd respondent are concerned are quashed. Respondents will pay the petitioners' costs of this proceeding. Advocate's fee Rs. 100/-.

Vasudevamurthy, J.

11. By two notifications dated 20-3-1954 and 30-3-1954 published in the Mysore Gazette on 15-4-1954 the Director of "Public Instruction in Mysore, respondent 1 herein, prescribed for use in the Middle and Primary Classes certain copy books named "Adarsha Lipi Pusthaka" published by the supplemental respondent 2 the proprietor of the Maruthi Book Depot in Bangalore City. By those notifications he directed that they were to be used in the Primary and Middle Schools of the State during the year 1954-55. In those notifications he made a further express direction that these copy books alone as printed and published by the Maruthi Book Depot should be used in all schools whether wholly or partly maintained out of the State funds. He also issued a Departmental Circular dated 11-5-1954 in which he stated that the Kannada copy books published by the Maruthi Book Depot have an appeal to religion and culture as they "contained sayings of "Ramakrishna, Basaveswara, Epics etc.," and that orders had therefore been passed that those copy books "alone" should be used in the schools and he directed that the Inspecting Officers should issue strict instructions to Heads of Institutions under their control to insist upon boys and girls "not to use any other than the prescribed copy books, referred to above. These words are underlined (here in " ") in the original circular.

12. The 1st petitioner is a Hindu and claims to be the printer and publisher of copy books in Kanarese for the last 30 years as an item of his family trade. He has also a son studying in an aided Middle School and a daughter studying in the Government Girl School, Chickpet. The 2nd petitioner is a Christian, a graduate of the Mysore University, who claims to be taking an intelligent interest in the public affairs of the State. The petitioners have filed this application under Article 226 of the Constitution of India for a declaration that the notifications and the circular order referred to above are void and inoperative as infringing Articles 14, 19 and 28 of the Constitution and for the issue of a suitable writ for withdrawing or cancelling those notifications and circular.

13. I have had the benefit of reading the judgment of my learned brother Venkata Ramaiya J. and I am in full agreement with his findings and decision. As the matter is of some importance I would like to supplement his judgment by a few words of my own.

14. After the petition was filed on 25-6-1954 this Court issued an ad interim stay order against the operation of those notifications and circular. The Maruthi Book Depot later on applied to be impleaded and this was done. The parties have filed detailed affidavits and counter affidavits and elaborate arguments have been advanced before us by Mr. S.K. Venkataranga Iyengar, learned Counsel for the petitioners and the learned Advocate-General and Mr. Sornasekhara Rau who appear for respondent 1 and the supplemental respondent 2 respectively.

15. The prescribing of text books and other books, like several other matters involving questions of policy and patronage, have in Mysore been from a very

long time entrusted by a far seeing Government of the day to various committees, and we have the Mysore Educational Manuals and Departmental Orders and Circulars which have been printed from time to time for the information and guidance of the officers of the department. So far back as in 1921 the Government have prescribed the Curricula of Studies for Middle Schools. It has been provided in the Mysore Educational Manuals, Volume III at page 117 in regard to writing that pupils should practise writing running hand throughout the school course; and each pupil should show 50 copies per year and each exercise should be carefully corrected by the teacher. The Text-Book Committee was constituted in May 1892, to help Government in the selection and preparation of text-books for all Lower Secondary and Primary Schools with eight Sub-Committees.

In 1925, the Government laid down rules regarding the constitution and functions of the Text-Book Committee and permitted the formation of 13 Sub-Committees under it. With the constitution of the Secondary Education Board in 1941, the Text-Book Committee was abolished and its "various Sub-Committees were ordered to work under the Secondary Education Board. In 1945, a separate Committee " was formed with the permission of Government to consider all technical matters relating to Primary School text-books and syllabus. The Director of Public Instruction was the President of the Secondary Education Board and the Deputy Director of Public Instruction was the Chairman of the Primary School Text-Book Committee. The functions of the sub-committees were also laid down, and it was to consider such books as may be referred to it by the Secretary, Text-Book Committee under the orders of the Director of Public Instruction and to advise the latter as to their suitability as text-books for the several classes and as library books. To advise the Education Department as to the steps to be taken for the preparation and publication of Departmental text-books when necessary, The Government also appointed a Secretary to the Text-Book Committee whose business was to implement the rules and to carry on correspondence and to act as a liaison between the various text-book committees and the Director and the Deputy Director.

16. It appears that so far back as in April 1947 the Government had printed a large number of Kannada copy books with the assistance, it is argued, of some experts. These books were initially priced at Re. 0-1-6. Later the price was raised to Re. 0-2-6 probably in view of the general rise in the cost of materials, though one would think that there was not much justification for doing so as the books were long ago printed and they were running slowly. It does not appear as though those books were ever condemned" or their use superseded except through the notifications and circular now Impugned and it was represented to us --and it is not seriously denied-- that more than a lakh of such copy books of the value of about Rs. 10,000/- or a little over are lying in the go-downs of the Government Central Book Depot in Bangalore. This circumstance has been strongly relied on by the petitioners in the course of their attack on the present notifications and circular.

17. Mr. Venkataranga" Iyengar, learned Counsel for the petitioners, has urged that copy books are not text-books and he has referred to certain dictionary meanings of the word "text-book". I think the word "text-book" would involve either some original matter contributed and published by the author or it may even include an intelligent selection of the work of another author or authors for use in schools -- say like the Palgrave's Treasuries of Songs and Lyrics. It may also include some books which have been copyrighted and if the scheme of the book or books involves a graduated or considered study or training the particular subject like say books of drawing, it might be said to be text-book. I do not think that a copy book could be strictly a text-book in that sense. As contemplated in the circular of 1921, the teachers were concerned in seeing that the boys wrote a number of copy books and improved their handwriting. The proper kind of paper, say not too thin or too smooth and suitably ruled, with any suitable headings and maxims which were not likely to be offensive and may preferably be of some use for developing the character of the boy might be insisted. As pointed out by my learned brother I do not think it is either feasible or within anybody's view that every boy and girl should write absolutely similar hand without reference to the innate characteristic of his or her handwriting and capacity for development.

18. It has been urged by Mr. Somasekhara Rau in this connection that if these copy books are not text-books, then they would not fall within the ambit of any rules or regulations at all and that the Director was absolutely at liberty to prescribe what he liked and in whatever terms he wanted in the matter of copy books. That argument no doubt appears plausible; but I think there is really nothing in it. The Director has prescribed these copy books as text-books and his whole case has been that they are text-books. Even otherwise it would be in the nature of a tall order if the prescribing of such books involving important issues were left to the unfettered discretion of the Director while even the selection of cheaper books which are called text-books would have to pass through the various Text-Books Committees. Mr. Venkataranga Iyengar has urged that the publishers were not being asked to send selection of those copy books and it is rather a significant circumstance in this case that suddenly respondent 2 alone has offered the impugned copy-books. He has also urged that these copy books were placed before the concerned sub-committee and the Chairman declared against the use of these books and notwithstanding that the Director, without placing it before either the Primary Education Board or the Secondary Education Board or the Text-Book Committee prescribed these text-books.

19. For the Director the learned Advocate-General took a rather extreme stand. He argued that the Director was the Head of the Department and that he was fully at liberty to choose whatever books he liked with a view to see that the schools were supplied with proper text-books, that the functions of these various sub-committees are merely advisory and that though he had not placed the matter before the sub-committee he got the selection ratified later and such a course was not merely permissible but became necessary in the circumstances of this case as the Text-Book Committee could not meet in time. I think such a

representation is not entitled to any consideration. Formal rules have been framed by the Government containing elaborate checks and counter checks and I do not think it can be claimed that the Director can ignore them and that he is responsible to nobody. After the Constitution at "least, as pointed out by my learned brother such naked, arbitrary and unfettered or unregulated exercise of power even by the Executive is not allowable and especially if, as in this case, it is shown that it offends any of the articles of the Constitution or is "ultra vires" of the rules framed by Government or can be reasonably assumed to be either "mala fide", or at least not "bona-fide", as, contended by Mr. Venkataranga Iyengar, I think this Court must issue a writ at least to avoid such improper exercise of official power.

20. The number of copy books required for the use of the school is very large and is said to be in the region of five lakhs. The difference in price between the Government copy book and the impugned copy book which is priced at 0-3-0 each is 0-0-8. The cost of the copy book printed and published by the 1st Petitioner is 0-2-6 and the petitioners have sworn that their price per gross is as low as 7-8-0. There is no doubt therefore that there is room for enormous profit in the marketing of those copy books and that such copy books can be produced at very low cost. Indeed those copy books are merely the ordinary kind of exercise books cut into half with printed headlines. The number of pages is only 24 per book while the ordinary note-book would have as many as 32 or 40 pages and the cost thereof would be in the region of 11/2 annas or two annas, These books are to be used universally by the rich and the poor alike and one can imagine the unnecessary drain. The State is pledged to impart free and compulsory Primary and Secondary Education in the State and one of the directive principles of the Constitution as laid down in Article 45 is also to the same effect, viz., that the -State shall endeavour to provide for free and compulsory education for all children until they complete the age of 14 years.

As argued by Mr. Venkata Rauga Iyengar it, would involve unnecessary and tremendous hardship if the parents are to be compelled to buy these particular books at this exorbitant cost when there is no doubt that it could have been easily avoided by either inviting competition in this matter or by publishing such books through the State agency.

21. Mr. Venkataranga Iyengar has argued that the Secretary, Text-Book Committee, has his own duties to perform under the rules & that apparently he has been ignored in this whole matter. There appears to be considerable force in this argument.

The Secretary, Text-Book Committee" is a responsible officer who is expected to arrange meetings of the Text-Book Committees well in time and I think it is no answer to say that he or the Director was not able to arrange such meetings for Securing their recommendations in time before prescribing the books. The scheme of such selection suggests that more than a year is available for holding such meetings and consultations before the books are prescribed and there can

be no excuse for not obtaining the necessary permission of the concerned committees.

22. Mr. Venkataranga Iyengar has argued that the notifications and circular created a monopoly in Marathi Book Depot and that other publishers like his own client and others are discriminated against and excluded unfairly from the field and that this is opposed to Article 14 of the Constitution, and in my opinion he has a just grievance. He has also urged that they amount to an unauthorised infringement of his right to carry on his trade or business as printer and publisher of such copy books and text-books. Under Article 226 this Court has ample powers to issue to any person in authority including any Government a direction for enforcement of any of the rights conferred by Part III and for any other purpose. Interference by the Court will be warranted by the law when even an executive authority is not exercising its powers "bona fide" for the purpose contemplated by the law or influenced by extraneous and irrelevant considerations and where in justice has resulted -- See *The Constitution of India by V. V. Chitaley 1954 Edn., Vol. 2, pp. 1799-1800.*

23. It has been urged for the petitioners that the sudden and secret way in which Respondent 2's books were tendered to the Department, the way in which they have been accepted against recommendation of the Sub-Committee, the enormous margin of profit which has been made available to Respondent 2 and the very emphatic way in which these copy books alone are sought to be forced on the students, all point only to the want of "bona fides" if not "mala fides. The dividing line between a highly arbitrary action of an officer which may be interpreted as bona fide" or considered as within the limit of "bona fides" and such action which may be interpreted as "mala fide is exceedingly thin and I think it is therefore necessary that rules and regulations in the matter of distribution of such large scale patronage are strictly observed by the officers concerned if they wish to avoid any challenge of their actions. - As pointed out by the Supreme Court in -- *K.N. Guruswamy Vs. The State of Mysore and Others*, , in such matters

"deeper considerations are also at stake, namely the elimination of favouritism and nepotism and corruption and to permit what has occurred in this case would leave the door wide open to the very evils which the Legislature (here the Rules) in its wisdom has endeavoured to avoid. All that is part and policy of the Legislature. None of it can be ignored."

Their Lordships were no doubt speaking on that occasion about an Act of Legislature and the rules framed under it but for the purposes of this case those high and pregnant observations are equally apposite.

24. Petition allowed.