
(1965) 03 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 171 of 1965

Vasudev Bhupal

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 25-03-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226

Citation : AIR 1966 Kar 92 : (1965) ILR (Kar) 840 : (1965) 1 MysLJ 780

Hon'ble Judges : K.S. Hegde, J;C. Honniah, J

Bench : Division Bench

Judgement

Hegde, J.

(1) In this Writ Petition under Article 226 of the Constitution the petitioner prays for a Writ of Mandamus or any other direction as the case may be, requiring the respondents and in particular, the second respondent as the Chairman of the Text Book Committee to review the books of the petitioner and place them for consideration of the Text Book Committee for being prescribed as text books for the concerned classes. The other reliefs prayed for in the petition really do not arise for consideration.

(2) The petitioner claims to be the author of several books suitable for being prescribed as text books for several standards of Primary and High Schools, recognised by the Director of Public Instruction in Mysore, Bangalore. He states that several of his books had been prescribed as text books for school classes during the past ten years. On 5-11-1964 he submitted some books to the Chairman of the Text Book Committee for being considered by the Committee. According to him, he submitted those books before 5-30 P.M. on the date. But according to the second respondent (Director of Public Instruction), those books were produced before him after 5-30 P.M. Under instructions from the Government, the petitioner's books have been rejected on the sole ground that they were produced after 5-30 P.M. on 5th November 1964. The question for consideration is, whether the rejection in question can be challenged before a

court of law; further, whether the petitioner has made out a case for the Writ of mandamus prayed for by him.

(3) The Government has framed certain rule relating to the constitution and functions of Text Book Committees and prescription of Text Books for Primary, Basic and Secondary Schools in the Mysore State. A copy of those rules is produced into Court and marked as Annexure A in this case. The rules framed by the Government do not show that source of power on the basis of which those rules were framed. We were not told that those rules were framed pursuant to any power given to the State Government under any statute enacted by the State legislature or by the Central legislature. Obviously those rules were framed in exercise of the executive power of the State available to it under Article 162 of the Constitution. Under those rules, a Text Book Committee is constituted for the purpose of examining the suitability of text-books produced before it and selecting the best available books for Primary, Basic and Secondary Schools. One of the duties of the Secretary of the Committee is to receive the applications together with copies of the books produced before him by the authors and the registered publishers. Rule 32 provides that all books to be prescribed as text-books in Primary (including Basic) and Secondary Schools for the following year shall be submitted ordinarily on or before 1st September of year in response to the Notification from the Chairman of the Text Book Committee concerned to be published in the Mysore Gazette before 15th April of every year, and books received thereafter shall not be considered for sanction as text-books for the following year.

(4) Admittedly, the petitioner did not produce the text-books in question within the date prescribed by this rule. But the date for production of the books has been extended several times. By a notification dated 7th April 1964 the time for production of the books was extended till 4-30 P.M. on 25th August 1964. That Notification gives a warning that books received after the date will not be accepted and under no circumstances will that date be postponed. The time for production of books was further extended till 5-30 P.M. on 5th November 1964 by means of the Notification dated 31st October 1964. That Notification reads:

"In partial modification of this office Notifications referred to above the Text-Book Publishers and authors are hereby informed that the last date for receipt of Text books called for in this office Notification Nos. TBC 36/63-64 and TBC 37/63-64 is extended upto and inclusive of 5th November, 1964(Thursday) 5-30 P.M."

(5) It appears that several authors and publishers produced their books within that time. But some, including the petitioner, according to the second respondent, did not produce the books within the time prescribed. The second respondent's case is that petitioner produced some books before him after the prescribed time. He provisionally received the same. We were also informed that some authors and publishers produced the books on 6th November 1964 and some had produced late in the night on the 5th before the Minister for Education. It became difficult for the Chairman to decide whether he could accept the books

produced after the prescribed time. Therefore, he wrote to the Secretary to the Government of Mysore, Education Department, 30th November 1964, the following letter:

"No. TBC (P.S.)-5/64-65.

Office of the Director of Public

Instruction (Text Book Committee)

No.14, Kumara Park West Extn.

Bangalore, dated 30-11-1964.

To,

The Secretary to Government of Mysore

Education Department, Vidhana Soudha,

Bangalore-1.

Sir,

Sub: Discrepancies in books received for prescription during 1965-66.

I write to state that on a scrutiny of some of the packets of books received in connection with the prescription of text Books for 1965-66, the following discrepancies have been noticed:

The discrepancies are of two types--

(1) The first discrepancy is in submitting the books on 5th November 1964 after 5-30 P.M. or on 6th November 1964 during office hours. Some books have been received by post on 6th November 1964 having been posted on 2nd or 4th November 1964.

Annexure I: Shows details of Books submitted to the Director of Public Instruction on 5-11-64 after 5-30 P.M.

Annexure II: Shows details of Books submitted to the Honourable Minister for Education after office hours as endorsed by his Personal Assistant.

Annexure III: Shows details of books submitted to the Director of Public Instruction on 6-11-64.

Annexure IV: Shows details of books received under post on 6-11-64.

The Books in question have been provisionally accepted. The last date prescribed for receipt of books being 5-11-64(5-30 P.M.) this late acceptance of books will not be in order unless ratified by Government.

(2) The second discrepancy is in the payment of scrutiny fee into the Treasury late. Some packets of books delivered on 6th November 1964 contain challans

which bear the date 6-11-64. In one particular case, the packet was delivered on 6-11-64 without the required Challan or Bank Draft covering the scrutiny fee and the scrutiny fee in respect of that packet is subsequently remitted to the Treasury on 9-11-64 and the Challan thereof is produced to the office for acceptance. Annexure V shows details of such cases.

In view of the provisional acceptance of the books of the above category, the time for accepting the books may kindly be deemed to have been extended till 9-11-1964 to avoid possible legal complications in future.

Yours faithfully,

(SD)

For Director of Public Instruction".

(6) The Government after considering the matter directed the Chairman of the Text Book Committee that all books received after due date and time should be rejected. Accordingly, the books produced by the petitioner as well as by others, who are stated to have produced after the due date and time were rejected. Aggrieved by that decision, the petitioner has come up to this court seeking a direction to the second respondent to place his books before the Text Book Committee. The question is, whether he is entitled to that relief.

(7) Before issuing a Writ of Mandamus or a direction in the nature of mandamus, this court must be satisfied that the petitioner has a legal right to get his books examined by the Text Book Committee and the Text Book Committee has a legal duty to do so. This takes us to the nature of the rules framed by the Government. As mentioned earlier, those rules were not framed in pursuance of any power given under any statute. Therefore they cannot be called statutory rules. Quite clearly, those rules were framed in exercise of the executive power of the State. Article 162 of the Constitution states that :

"Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:"

In other words, the ambit of the executive power of the State is co-extensive with the legislative power of the Legislature to make laws. Education is one of the subjects included in the State list. Therefore, it is not denied that the Legislature has power to make laws as regards the selection of Text-Books for Primary and Secondary Schools. In the absence of any legislation, as in the case here, the executive must be held to have the power to regulate those matters by issuing executive orders.

(8) It was contended by Sri S.K. Venkataranga Iyengar, the learned counsel for the petitioner that when the executive issues any rule or orders in pursuance of the power conferred on it under Article 162 of the Constitution, that rule or order assumes the character of a constitutional provision. The order in question was

issued because of the power conferred on the executive by the Constitution. There can be hardly any dispute on that question. But the real issue arising for decision is as to whether those rules, merely because they were issued in exercise of a power conferred by provision in the constitution by themselves became constitutional provisions. Every administrative order issued by the State is issued pursuant to the power conferred on it under Article 162 of the Constitution. If Sri Iyengar's contention is correct, then every contravention of an administrative direction amounts to a contravention of the Constitution, a proposition which in our opinion, does not deserve serious consideration. The rules that are before us are essentially administrative rules that framed for the guidance of the officers of the Education Department. Their contravention is not justiciable. In other words, the steps taken on the basis of the orders issued in pursuance of those rules are not open to judicial review. By this we do not mean to say that if any action taken on the basis of administrative rules or orders infringes any of the Fundamental Rights, the remedy under Article 226 suit not available.

(9) It is not the case of the petitioner, nor could it be his case, that he has a fundamental right to have his books prescribed as text books. His fundamental rights to publish books and sell them have not been interfered at all. What he claims is that his books should be considered for being prescribed as text books, so that, if one or more of them are prescribed as text books, he will have a good chance of selling those books. He is merely aspiring to get some preference. Hence there is no question of protection of any of his fundamental rights. In fact when this very question came up for consideration on an earlier occasion in W.P. No.98 of 65, Sri Venkataranga Iyengar himself appearing for the petitioner therein stated that the rules in question are administrative rules, but appears to have changed his mind. He thinks that in the earlier case he was hasty in submitting that the rules in question are administrative rules. After due consideration, we are inclined to think that his first impression was the right one.

(10) Our conclusion that the rules in question are administrative rules necessarily precludes us from subjecting to judicial review orders made on the basis of those rules.

(11) For argument's sake, let us assume that the rules in question have a constitutional vitality (validity?) as asserted by Sri S.K. Venkataranga Iyengar. In that event, the petitioner not having submitted his books on or before 1st September 1964, he is out of court. He cannot claim to be an aggrieved party. Therefore, he has no locus standi to seek any relief at the hands of this court. To avoid this inevitable conclusion Sri S.K. Venkataranga Iyengar contended that rule 32 of the rules is merely directory and not mandatory, a contention which is not taken in the affidavit filed in support of the petition. That apart, it is for the authority which has fixed the time for the doing of an act to extend the time if it so chooses. That authority is regulating its own affairs. No one can dictate to it to arrange its affairs in a manner different from that prescribed by it. If the

applicants had been permitted to choose their own time then there would have been chaos.

(12) There is controversy between the parties whether the books in question have been produced within the prescribed time or not. According to Sri S.K. Venkataranga Iyengar, his client had produced those books within the prescribed time. This assertion the petitioner did not make in the main affidavit filed by him in support of the petition. That was made for the first time in the reply affidavit. On the other hand, the Director of Public Instruction has sworn to the fact that the books in question were produced after the prescribed time. His words are entitled to weight. That apart, that statement of his is supported by satisfactory circumstantial evidence, such as the letter written by him to the Government on 30th November 1964 wherein he requested the Government extend the date prescribed till 9th November 1964. In fact, the Director of Public Instruction was of the opinion that even those books which had been produced after the prescribed date and time, if the same had been produced before 9th November 1964, should be placed before the Text Book Committee. In these circumstances, if it is a question of preferring as between the assertion of the petitioner and the version of the second respondent, we have no doubt in our mind that we would prefer to rely on the words of the second respondent.

(13) It was next urged on behalf of the petitioner that the text books in question were not rejected by the Text Book Committee or its Chairman, but were rejected in obedience to the directions given by the Government and hence the order of rejection is an invalid order. It was said the order in question fell within the rule laid down by the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . In Gordhandas" case, the question that came up to consideration before the Supreme Court was whether the Commissioner of Police who had a statutory duty to consider an application for license acted validly in refusing to grant the license prayed in pursuance of an order given by the Government. It was a clear case of abdication of a statutory power. Hence the Supreme Court came to the conclusion that the order impugned was bad in law. That is not the position here. As held earlier, the rules in question are administrative directions issued by the Government. Those directions can be altered, varied or abrogated at any time by the Government. Therefore, the Government had full competence to give such directions as it pleased. That apart, the direction given by the Government is fully authorised by Rule 48 of the rules referred to earlier. That rule reads:

"If any question arises as to the interpretation of these rules, the question shall be referred to the Government and the decision of the Government on such question shall be final."

(14) In the instant case, the Director was doubtful whether the books received by him as well as by the Minister for Education after the prescribed date and time are required to be placed before the Text Book Committee for its consideration. In other words he was doubtful as to the true effect of the rules bearing on the

subject. That is why he referred the question to the Government. His own suggestion for the solution of the difficulty was to extend the time till 9th November 1964. But the Government evidently after interpreting the relevant rules came to the conclusion that all books received after the prescribed time should be rejected.

(15) The next contention urged was that the second respondent by rejecting the text books produced by the petitioner at the instance of the Government contravened Article 14 of the Constitution. Dealing with this aspect, this is what is stated in the affidavit filed by the petitioner.

"The equality of treatment granted under the Constitution of India has been denied to me. Whereas all the other books which have been kept for consideration for being prescribed, have been received by the Assistant Secretary who is not even the authorised person to receive, I have come in for hostile discrimination by the wrongful rejection as aforesaid."

(16) It is not the case of the petitioner that any book received after the prescribed date and time has been placed before the Text Book committee for its consideration. Therefore, it cannot be said that there was any inequality of treatment. What was said at the time of the hearing was that the Assistant Secretary who had no authority to receive the books, has received several of the books produced. Even though those books had been placed before the Committee, the books received by the Chairman had not been placed before the Committee. This contention really misses the essential point. The petitioner's books have been ejected not on the ground that they were not received by the Secretary but by the Chairman, but on the ground that they were produced late. As mentioned earlier it is not his case that any books received after the prescribed time have been taken into consideration. We see nothing illegal intervened he receipt of the books either by the Assistant Secretary or by the Chairman. As seen from the counter--affidavit of the Chairman Sri Ramachandra Rao, who was the Secretary then was on leave; one Sri Hiremath was officiating as Secretary; Sir Hiremath had directed his Assistant Secretary Sri S. Rangaiah to sit at a place and receive the books. The Assistant Secretary merely did the physical act of receiving the books. He received it on behalf of the Secretary. There is nothing illegal in that. For our present purpose, the question as to who received the books is not relevant; the time of the receipt of the books is the relevant factor. We fail to see any substance in the contention that there was any violation of Art. 14 of the Constitution.

(17) Lastly, Sri S.K. Venkataranga Iyengar contended that by the rules in question the Government has given to its officers very wide powers of discretion and therefore, those rules are violative of Art. 14 of the Constitution. No such contention was taken in the pleadings. Hence we decline to go into it.

(18) We do not think that the decision in Jagdish Prasad Saxena v. State of M.P. AIR 1961 SC 1070 and that in Glass Chatons Importers and Users' Association

Vs. Union of India (UOI), relied on by Sri S.K. Venkataranga Iyengar, at the time of the arguments, do in the least bear on the points under consideration.

(19) In the result, this petition fails and the same is dismissed. The petitioner to pay the costs of respondents. (One set). Advocates fee Rs. 100.

(20) Petition dismissed.