

Naraindas

Vs

The Government of Madhya Pradesh and Others

Civil Misc. Petition No. 6093 of 1973

(CJI A. N. Ray, H. R. Khanna, K. K. Mathew, A. Alagiriswami, P. N. Bhagwati JJ)

18.03.1974

JUDGMENT

BHAGWATI, J.

1. The appellant is a printer and publisher of books in the State of Madhya Pradesh. The books printed and published by the appellant were at all material times very popular in the primary, middle and secondary schools in that State. Sometime in 1968 a Society called the Madhya Pradesh Pathya Pustak Rachna Evam Shaikshinik Anusandhan Nigam was registered under the Madhya Pradesh Societies Act, 1959. The Minister incharge of the portfolio of education was the ex-officio Chairman of this Society while some officers of the Government of Madhya Pradesh connected with the Education Department were ex-officio members along with other non-official members nominated by the Government of Madhya Pradesh. This Society was known by the name of Text Books Corporation. It appears that the Text Books Corporation prepared text books in certain subjects for use in primary and middle schools and it was apprehended that the State Government would prescribe those text books for exclusive use in primary and middle schools throughout the State of Madhya Pradesh. This would naturally hurt the appellant in his business because the text books printed and published by him would be excluded from use and there would be no market for them. The appellant, therefore, filed Civil Suit No. 22A of 1973 in the Court of IVth Civil Judge, Class II, Jabalpur on March 2, 1973 claiming various reliefs against the State of Madhya Pradesh, the Text Books Corporation and the Registrar of Firms and Societies, Madhya Pradesh. An application for interim injunction was also filed by the appellant along with the plaint on the same day and on the application, an ex parte order of interim injunction was issued by the learned Civil Judge against the respondents. The notice of the application for interim injunction was served on the respondents and its hearing was fixed on March 26, 1973. The State of Madhya Pradesh, which is Respondent No. 1, made an application to the learned Civil Judge on March 26, 1973 for vacating the ex parte order of interim injunction and though this application was fixed for hearing on March 28, 1973, it was adjourned to March 31, 1973 at the instance of Respondent No. 1. In the meantime, on March 27, 1973, Respondent No. 1 filed a revision application in the High Court of Madhya Pradesh for revising the ex parte order of interim injunction passed by the learned Civil Judge. The High Court by an order dated March 28, 1973 admitted the revision application and granted ex parte stay of the operation of the ex parte order of interim injunction. The notice of the application for stay was served on the appellant and after hearing the appellant who appeared to show cause, the High Court by an order dated April 2, 1973 confirmed the ex parte order dated March 28, staying the operation of the order of injunction dated March 2, 1973.

2. The appellant thereupon preferred a petition for special leave against the orders of the High Court dated March 28, 1973 and April 2, 1973. The learned Vacation Judge, before whom the special

leave petition came up for hearing during the vacation on May 18, 1973, issued notice to the respondents to show cause why special leave should not be granted and on the application for stay, the learned Vacation Judge made an order granting "interim stay of the operation of the order of the High Court dated March 28, 1973 as confirmed on April 2, 1973" and also stayed further proceedings in the revision application before the High Court pending notice of motion. On June 5, 1973, this interim order dated May 18, 1973 was modified by the learned Vacation Judge after hearing the parties and the relaxation granted was as follows :

The order passed by this Court on May 18, 1973 will not prevent the respondents from doing the work of writing, revising, compiling, editing, designing and printing the books but they will not release the books for distribution before the disposal of this application. Notice made returnable on June 19, 1973. If any member of the Society is not served by June 19, 1973, the matter will be heard ex parte as against him. Contempt matter also to come up for orders on June 19, 1973.

Now the appellant had in the meantime filed Writ Petition No. 1177 of 1973 in this Court challenging the constitutionality of Section 4 of the Madhya Pradesh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pushtakon Sambandhi) Vyavastha Adhiniyam, 1973 (hereinafter referred to as Act 13 of 1973) and the validity of the order dated May 24, 1973 made by the State Government under section 4, sub-section (1) of that act prescribing certain text books in Botany, Zoology, History, Commerce and English printed and published by private parties. This writ petition was admitted and rule nisi was issued by the learned Vacation Judge on June 8, 1973 and on the application for stay made in the writ petition an interim order was made on the same day staying the operation of the order dated May 24, 1973 and restraining the respondents from approving text books on any subject other than those covered by the order dated May 24, 1973 pending disposal of the said application. The petition for special leave along with the application for injunction in that petition as also the stay application in the writ petition thereafter came up for hearing before the learned Vacation Judge on June 19, 1973. The learned Vacation Judge granted special leave to appeal and directed that the appeal be heard along with the writ petition and so far as the applications for interim injunction and stay were concerned, the learned Vacation Judge made a further modification in the interim order dated May 18, 1973 giving liberty to the respondents in the appeal to put into circulation and sale 29 text books which were already in use and also relaxed the interim order dated June 8, 1973 by permitting the respondents in the writ petition "to print the books in regard to the five subjects, namely, Botany, Zoology, History, Commerce and English, but not to publish or distribute them for sale".

3. On June 27, 1973 an English Daily newspaper, called Hitwad, published a Press Note issued by the State Government which was to the following effect :

The Primary, Middle and Higher Secondary Schools in the State are scheduled to open after the summer vacation on July 2, 1973. Advance arrangements had been made for preparation printing and publication of text-books through the Text Books Corporation so that they are freely available by that date.

The State Government was served with a stay order of March 2, 1973 by the Civil Judge, Class II, Jabalpur. Even though this order was vacated by the High Court on March 28, 1973, the Supreme

Court on May 18, 1973 reimposed the earlier restrictions. It is only on June 5, that the Supreme Court allowed the State Government and the Text Books Corporation to go ahead with the printing of the text books. On June 19, the Supreme Court has further allowed the publication and distribution of 28 text books for classes I to VIII. In relation to seven text books the earlier stay regarding publication and distribution still continues. This matter will come up before the Court again on July 16.

In the case of classes IX to XI the Supreme Court has also stayed the order of the state Government prescribing books in Botany, Zoology, Commerce, History and English. The Supreme Court has also prohibited the prescription of books of any other subjects. This will affect subjects like Sanskrit and History, etc.

Regarding seven text books, viz. Science for Classes III and IV, English and Sanskrit for Class VI and Supplementary Readers in Hindi for Classes VI, VII and VIII, the position is that the State Government had indicated on September 21, 1973 and that text books in these subjects prepared by the Text Books Corporation would be taught from the academic session 1973-74 and that those would be the only books used for these subjects from that session onwards. It is likely that as a result of this order books published by private parties will no longer be available in the coming session. Moreover, the State Government have formally prescribed the books prepared by the Text Books Corporation under the powers vested in them under section 4(1) of the M. P. Prathmik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhiniyam, 1973. Consequently the use of any other text book in the schools save those prescribed by the State Government is prohibited. Unless the matter is fully placed before the Supreme Court and its final decision obtained, the position about the exact books to be used by students and teachers in schools is not clear.

Considering these facts and the difficulty that the students and parents may face without text books, the State Government have decided that the schools should open on Monday the 16th instead of July 2nd. The State Government will also try to ensure that the consequential loss in teaching days will be kept to the minimum during the academic session.

This Press Note was preceded by the report of a statement alleged to have been made by one Arjun Singh, Minister for Education at a Press Conference, namely :

Mr. Singh said the postponement of the reopening date of the schools by a fortnight, would enable the Government to take necessary steps for the preparation, printing and publication of the text books and their timely distribution to the students.

The appellant, taking the view that some of the statements contained in the Press Note constituted contempt of court, filed a Miscellaneous Petition in this Court for taking proceedings against Arjun Singh for contempt of court. This petition for contempt was also directed against one Y. N. Chaturvedi, Director, Text Books Corporation. On this petition for contempt, notice was ordered to be issued and it was made returnable on July 16, 1973.

4. The application for interim injunction in the appeal and the petition for contempt then came up for hearing before this Court on July 16, 1973 when this Court made the following order :

The parties agree that the High Court will dispose of the revision petition within a period of 30 days from today. In view of the agreement, it is hoped that the High

Court will dispose of the revision petition in terms of the agreement. It will be open to the High Court to consider and modify the interlocutory orders passed by this Court on the stay petitions if moved by any of the parties. The status quo to continue until such orders are modified by High Court. The contempt application is adjourned until the High Court disposes of the revision petition.

Pursuant to this order, the High Court took up the Revision Application for hearing and by an order dated August 6, 1973 allowed the Revision Application and set aside the ex parte order of interim injunction granted by the learned Civil Judge on March 2, 1973.

5. The position which, therefore, now obtains is that the Revision application in which the ex parte interim order was made on March 28, 1973 and confirmed on April 2, 1973 has been disposed of and the ex parte order of interim injunction dated March 2, 1973 has been vacated. The ex parte order of interim stay made on March 28, 1973 and confirmed on April 2, 1973 has come to an end with the disposal of the Revision Application. The appeal directed against the ex parte order of interim stay made on March 28, 1973 and confirmed on April 2, 1973 has therefore become academic. It does not survive and must accordingly be dismissed with no order as to costs.

6. The petition for contempt is directed against two contemnors, Arjun Singh and Y. N. Chaturvedi. The charge against Arjun Singh is that he made several statements in the Press Note issued by the State Government which had the effect of interfering with the due course of the appeal and the writ petition by creating prejudice against the appellant. The appellant relied on four statements contained in the Press Note which according to him were calculated to cause prejudice to him in regard to the appeal and the writ petition. We have carefully gone through these four statements but we fail to see how they can at all be regarded as prejudicing in any manner whatsoever fair trial and hearing of the appeal and the writ petition. The State Government by the Press Note announced the postponement of the reopening of the schools in Madhya Pradesh from July 2, 1973 and made certain statements in the Press Note explaining why it had become necessary to make such postponement. It may be that some of the statements made in the Press Note were not correct - for example, the statement that the State Government has formally prescribed the books prepared by the Text Books Corporation in exercise of the powers vested in it under Section 4(1) of Act 13 of 1973 was incorrect, because barring the order dated May 24, 1973 which prescribed certain text books printed and published by private publishers, there was no other order made by the State Government prescribing text books under Section 4(1) of Act 13 of 1973. But mere making of incorrect statements in justification of a decision to postpone the reopening of the schools could not possibly have any prejudicial effect on the due course of justice so far as the appeal and the writ petition were concerned. It is quite possible that some of the statements made in the Press Note, if incorrect, might prejudicially affect the business of the appellant by bringing down sales of the text books printed and published by him, but that is very much different from saying that he would be prejudiced in the appeal or the writ petition. What we have to consider for the purpose of determining whether any of these statements constitutes contempt of court is whether these statements interfere or have a tendency to interfere with the due course of the appeal or the writ petition by creating prejudice against the appellant which would affect the fair hearing and disposal of the appeal or the writ petition. The effect, we are afraid, the statements in the Press Note complained of by the appellant do not have. It is not possible to hold that any of these statements constitutes contempt of court.

7. The charge of contempt against Y. N. Chaturvedi is also equally unsustainable. The complaint against Y. N. Chaturvedi was that on June 19, 1973, when the applications for interim injunction

and stay were heard by the learned Vacation Judge, he had got wrong statement made by the advocate General of Madhya Pradesh, who appeared for the respondents, namely, that all the 29 text books prepared by the Text Books Corporation were printed and ready for sale and it was on account of this statement that the learned Vacation Judge had modified the interim order dated May 18, 1973 by permitting the respondents to put in circulation and sale those 29 text books, but as appearing from the statement of Arjun Singh reported in Hitwad, this statement was incorrect because not only were those 29 text books not ready on June 19, 1973 but they were not ready even on July 2, 1973 and the reopening of the schools had to be postponed by a fortnight to enable the Government to take necessary steps for the preparation, printing and publication of these 29 text books and their timely distribution to the students. The statement got made through the learned Advocate General by Y. N. Chaturvedi was thus a deliberately wrong statement calculated to obtain a relaxation of the interim order dated May 18, 1973 in favour of the respondents and making of such a deliberately misleading statement constituted contempt of court. Now there can be no doubt that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceeding and thus amount to contempt of court. But here we cannot say that it is established satisfactorily by the appellant that any deliberately wrong or misleading statement was made or got made by Y. N. Chaturvedi with a view to obtaining a relaxation of the interim order dated May 18, 1973. Y. N. Chaturvedi has clearly stated in Paragraph 12 of his affidavit dated July 10, 1973 which has been referred to and relied upon in the affidavit filed by him in reply to the petition for contempt, that :

The Advocate-General also submitted that 29 books had been in circulation for several years. It was also said that the respondents be permitted to get the books printed in seven subjects mentioned in the order dated May 24, 1973. It is correct that the statement was made on behalf of the respondents that these 29 books were ready with them. The appellant's counsel on the instructions of the appellant may have made a statement that books were not ready but that statement was not correct.

The Advocate-General had pointed out in the Court that the Society had got the books prepared and given to printers for printing and then delivery in the month of June. He also said that full arrangements had been made to make available books to students when schools opened in July and also submitted that Society could not go back as the printing under terms of agreement executed with the printers even if it wished to do so.

It has also been said by Y. N. Chaturvedi in the affidavit filed by him in reply to the petition for contempt that all arrangements had been made by the Text Books Corporation to have 29 text books ready for circulation when the schools reopened on July 2, 1973 and the reopening of the schools was not postponed because 29 text books were not ready for sale. This clearly shows that no reliance can be placed on the report of Hitwad as to the statement alleged to have been made by Arjun Singh and Y. N. Chaturvedi cannot be condemned on the basis of such report. In fact Arjun Singh himself has categorically asserted in the affidavit filed by him in reply to the petition for contempt that it was not correct to say that the reopening of the schools was postponed because 29 text books were not ready. There is, therefore, no substance in the charge of contempt against Y. N. Chaturvedi and that charge must fail.

8. We, therefore, dismiss both the appeal and the petition for contempt of court with no order as to costs.

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