State Of Tamil Nadu & Ors. Etc vs S. K. Krishnamurthi, Etc. Etc on 18 January, 1972

Equivalent citations: 1972 AIR 1126, 1972 SCR (3) 104, AIR 1972 SUPREME COURT 1126, 1974 (1) SCJ 335 1972 3 SCR 104, 1972 3 SCR 104, 1972 3 SCR 104 1974 (1) SCJ 335, 1974 (1) SCJ 335

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, K.S. Hegde, D.G. Palekar

PETITIONER:
STATE OF TAMIL NADU & ORS. ETC.

Vs.

RESPONDENT:
S. K. KRISHNAMURTHI, ETC. ETC.

DATE OF JUDGMENT18/01/1972

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
HEGDE, K.S.
PALEKAR, D.G.

CITATION:
1972 AIR 1126 1972 SCR (3) 104
1972 SCC (1) 492
CITATOR INFO :
RF 1980 SC1285 (48)

ACT:
Madras Educational Rules and Text-Book Committee Rules-Nature of-Rights of Publishers of approved text-books-Government, if estopped from changing text books.

HEADNOTE:
In furtherance of the policy of the appellant-State to nationalise textbooks for schools, directions were issued to District Collectors and Local Board authorities that they should intimate publishers of the text-books which were prescribed for the year 1969-70, that, after the end of the school year they will no longer be prescribed. The

publishers challenged the validity of the directions. Th High Court allowed the petitions on the ground that though the Madras Educational Rules and the Text-Book Committee Rules-under which lists of approved text-books are published in the Gazette-are administrative instructions and are not framed for the benefit of publishers, nonetheless, under those rules, a publisher of text-books could proceed on the basis that he ha,% an assurance that once his books had been selected and prescribed as text-books, they will continue to be prescribed for 3 years.

Allowing the appeal to this Court,

HELD : (1) The Rules are in the nature of Departmental Instructions and do not confer any right on the publishers, nor are they designed to safeguard the interest of publishers. They are conceived in public interest and the Government is at liberty to change the textbooks and delete from and add to the list of approved text-books or even prescribe books which are not in the list. Therefore, the impugned directions have been issued by the Government in exercise of the power,,. reserved to it by the Rules themselves. [108C-E F-G]

(2) There is no warrant for concluding that the Rules held out any kind of representation or assurance to the publishers, or that the Rules envisaged their participation in the scheme and as such the Government was estopped from resiling from the representation that the period of 3 years will not be altered. [107D-F]

The selection of text books by the Text-Book- Committee does not involve any assurance to the publishers that their text-books will be prescribed. The selection only implied that the books have been approved. It any of the schools prescribed any of the approved text-books there is no assurance as to the number of books that may be required. The period during which a text book once prescribed is to continue, is an injunction to the Managers of schools to avoid hardship to failed candidates or to poor students intending to buy second band books. It is not an assurance to the publishers, because, the Managers can change the text-books within the specified period with the approval of the prescribed authority. [108 E-H:109 A-C]

State of Assam v. Ajit Kumar Sharma & Ors., [1965] 1 S.C.R.. 890, followed.

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Union of India v. M/s. Indo-Afghgan Agencies Lid., [1968] 2 S.C.R. 366, Sankaranarayanan, etc. v. State of Kerala, [1971] 2 S.C.R. 361 and M/s. Narinder chand Hemraj & Ors. v. Lt. Governor, Union Territory Himachal Pradesh & Ors., C.A. No. 1313/70 dt. 5-10-71, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : C.A. No. 557 to 575 of 1971. Appeals from the judgment and order dated September 3, 1970 of the Madras High Court in Writ Petitions Nos. 768, 1465 and 1483 of 1970.

S. Govind Swaminadhan, Advocate-General for the State of Tamil Nadu, S. Mohan and A. V. Rangam, for the appellants (in all the appeals).

K. K. Venugopal and K. R. Nambiar, for the respondents (in (C.A.S No. 557 to 559 and 561 to 575 of 1971).

The Judgment of the Court was delivered by P. Jaganmohan Reddy, J. 22 Writ Petitions were filed in the High Court of Madras by publishers of text-books for Government Schools, Distt. Board and Municipal Council Schools challenging the directions of the Deputy Secretary to Government Education Department, contained in his D.O. letter No. 454582/ E5/69, Education, dated 12th August 1969, addressed to District Collectors and Local Board authorities that they should intimate to the publishers of the books which are prescribed for the year 1969-70 that after the end of the School year they will no longer be prescribed. A Division Bench of the High Court allowed the Writ Petitions. From this decision, 19 appeals are before us by certificate. It appears that the Government of Tamil Nadu in furtherance of its policy to nationalise text-books for schools, was intending to publish them through the Tamil Nadu Text Books Corporation pursuant to which it had issued the impugned D.O. letter. The writ petitions which are the subject matter of these appeals raise similar grounds and we will adopt the averments in writ Petition No. 768/ 70 as being typical of the other Writ Petitions. which course was also adopted by the High Court.

The respondent in that appeal, alleged that the impugned D.O. letter giving the aforesaid directions is illegal and void as being contrary to the Madras Educational Rules and the Text-Book Committee Rules made by the Governor of Tamil Nadu in pursuance of the powers vasted under Article 162 of the Constitution and affected respondent's fundamental rights under Article 19 (I) (g) of the Constitution inasmuch as his business of publishing TextBooks has been seriously jeopardised and has practically been brought to a stand- stilt; that it is not open to the Government of Tamil Nadu to act contrary to the general rules made under Article 162 of the Constitution-, that the policy of nationalisation of the

-L864SupCI/72 text-books is itself illegal and void; that the principles of natural justice have been violated in that under the rules once textbooks have been approved and selected for the schools and have been prescribed, they remained current for three years, as such to cancel this continuance for the remaining period without notice and without hearing would result in heavy financial loss; and that as under Article 19(6) of the Constitution the trade carried out by the private citizens can be restricted only in pursuance of a law which enables the State to have a monopoly of that trade, it will not be open to the State to set up a Text Books Society to have a monopoly over the text-books trade without the authority of law and an executive order purporting to do this would be violative of Article 19 (1) (f) & (g) of the Constitution. It was further averred that even if it is assumed that Article 19(6) does not apply to their case, their fundamental rights cannot be restricted only for the purpose of enabling a State, or the Corporation owned or controlled by the State to carry on the

particular trade to the exclusion of private citizens. The- High Court disposed of the Writ Petitions merely on the ground that even though the Madras Education Rules like the Text Book Committee rules have been issued in exercise of the administrative powers vested in the Government, the inhibition against change of selected text-books within a period of three years is not for the purposes of safeguarding the interest of the publishers but is conceived in public interest, namely, that the institution concerned should not be at liberty to change the books every year which may involve hardships to the students. Nonetheless it was of the view that a publisher of text- books could proceed on the basis that he has some sort of assurance that once his books have been selected and prescribed as text-books, those books will remain to be so prescribed for three years, on which expectation he may, from a business point of view, have the requisite number of text-books printed in advance or stock the same. It further observed that the publisher can well say unless the rules are changed, by no administrative instructions, the three years' period can be curtailed to his prejudice. On this assumption it held that "if a representation is made to some one of a particular state of affairs to continue over a time and he acts on it and as a result, does something which has cost him time and money the representator or the person who induced the belief and expectation will not be at liberty to go back upon his representation or holding out of expectation and withdraw his stand to, the prejudice of the one who has acted upon it". The petitioner was, therefore. entitled to invoke this principle in his favour in the instant case. The contention urged on behalf of the State of Tamil Nadu that the rules being merely in the nature of administrative instructions, do not have the force of law and cannot be enforced in courts was negatived on two grounds, firstly, that even as an administrative instruction, if it has the force of representation which a publisher may well rely on and commit himself to a certain position, it is not open to the authority to resile from it to his prejudice and secondly, that the rules referred to are obviously traceable to the executive power of the Government under Article 162 of the Constitution and provide for the procedure for registration of publishers, submission of books by them for approval and their selection, which books if approved and selected, are to be valid for a certain duration. For these reasons the High Court observed that "even as an administrative instruction when it is codified in that form, it is bound to be followed", and therefore, the executive cannot say that because they have the administrative power they are entitled to use and invoke such administrative power and act for the purpose of its adoption in individual cases contrary to the generality and tenor of the rules.

Before us it is submitted on behalf of the State of Tamil Nadu by the learned Advocate General that the High Court adopted two contradictory positions in that while holding that the rules approving the text-books and prescribing them for schools though administrative in character are not for the benefit of the publisher nonetheless a representation is said to have been made to then that once they are prescribed they will not be changed for three years. There is in our view no warrant for concluding that the Madras Education Rules and the Text Book Committee Rules hold out any representation or even an assurance to the publishers that the books once prescribed will not be changed nor as contended by the respondent's advocate is there any justification for the assumption that these rules envisage the participation of the Publishers in the scheme and as such the Government will be estopped from resiling from the representation that the period will not be altered. The Madras Education Rules though called rules are administrative instructions for the guidance of the Department. Rule 58 which deals with the text-books, states that a consolidated list of text-books authorised by the Government to be used under the several subjects is published

annually in the Fort St. George Gazette; that Managers of schools are, at liberty to select from the latest list such books as they may deem most suitable provided that the text-books so selected shall not be changed within three years of their introduction in any of the schools except with the previous approval of the District Education Officer in the case of boys' schools and the Inspectress in the case of girls' schools. It further states that no books (other than books for religious instruction) not authorised by the Government shall be used in any recognised school. The Government, however, reserve to itself the right to forbid or to prescribe the use of any book or books in the recognised schools. The rules relating to Madras text-books Committee which were issued on November 26, 1965, set out the objects of the Committee, its constitution, the general grounds on 1 08 which the books may be described as unsuitable, expression, printing and get-up, registration of publishers, rules relating to recognised schools, fees for scrutiny of books submitted for approval of the text-book committee, etc. In Rule 2", it is provided that any book approved for use in recognised schools as text-book shall retain its approval for five years and in Rule 30 it is provided that 11 text-books used in recognised schools shall be selected only from the approved list of text-books issued during the year excepting books published by or on behalf of the Government. It is also provided in Rule 32 that under the powers delegated to him by the Government, the Director retains on behalf of the Government the right to prescribe text-books in a particular subject for use in recognised schools, even though such books have not been approved by the text-book committee. A perusal of these rules show that they are in the nature of Departmental instructions and do not confer any right on the publishers. Nor are they, as held by the High Court, designed to safeguard the interests of the publishers but are conceived in public interest. The Government is at liberty to change those text-books or to delete from or add to the list or even prescribe books which are not in the list. When once it is accepted that those instructions do not confer any right on nor create an interest in the publishers but are conceived in the public interest and the Government has full liberty in the matter of approval as well as the power of control over the kind of books that should be prescribed in the ,schools, the publishers cannot say that once they are prescribed they cannot be changed within the period for which they are stated to be current. The period during which a Text-book once prescribed is to continue is more an injunction to the Managers of the schools than an assurance to the publishers that they will not be changed because that power, even if it is conferred by administrative rules made under Article 162, which in our view they are not, empower the managers subject to the approval of the authority concerned to change them within the period specified therein or the Government to forbid or prescribe the use of any book or books in the recognised schools. The impugned letter in this case can, therefore, be said to have been issued by the Government in exercise of the power reserved to it under those very rules. Even dehors these provisions the instructions do not extend to the publishers any kind of representation or assurance. The selection of any text-books by the Committee does not confer any rights on the publishers that their text-books will be prescribed. All that the selection implies is that the books have been approved as fit and of the standard which can be prescribed for respective classes in the schools by their managers. There is no undertaking that they will be prescribed. If any of the schools prescribe the books in the approved list for their classes there is no assurance or a holding out by them that a particular number of books will be required. If the books that are printed are, not sold the risk is that of the publishers. Nor can the schools which have prescribed the book hold the publishers responsible if they cannot at any time supply sufficient number of books to cope with the needs of the school. All that the instructions that a book prescribed should not be changed for three years

imply, as the High Court rightly recognised, is to avoid any hardship to the students. Students may fail and have to repeat the course the next year, or those who are promoted may not afford new books but might go in for second hand books used in the previous years. These are some of the hardships that may be sought to be avoided by requiring the books prescribed to be current for three school years.

It is true that a representation can be made- to a person either directly or indirectly if it was intended to be made to him when it is brought to his notice. But that is not the case here as it was in the Union of India & Ors v. M/s. Indo-Afghan Agencies Ltd.(1), where under a scheme to increase exports of woollen textiles, as an incentive it was provided that an exporter will be granted certificates to import raw materials of a total amount equal to 100% of the f.o.b. value of his exports. The scheme was under the Imports (Control) Order 1955 made pursuant to section 3 of the Imports and Exports (Control) Act 1947. Clause 10 of the scheme provided that the Textile Commissioner could rant an import certificate for a lesser amount if he is satisfied, after holding an enquiry, that the declared value of the goods exported is hi-her than the real value of the goods. The Textile Commissioner collected evidence ex-parte and acting upon the report of a Committee appointed by him, passed orders reducing the import entitlement,-, of the respondents without informing them or giving them an opportunity to explain the materials on the basis of which the said action was taken. This Court held that it could not be assumed merely because the policy Is general in terms and deals with the grant of licences for import of goods and related matters, that it is statutory in character. But even it is only executive or administrative in character, courts have power in appropriate cases to compel performance of the obligations imposed by the scheme upon the Departmental authorities. On the terms of the scheme and the facts of the case, the action of the Textile Commissioner in reducing the "import entitlement" was considered to be bad and struck down. This case was later considered and explained in Sankaranarayanan, etc. etc. v. The State of Kerala (2), and in 'an unreported decision in M/s.

(1) [1968] 2 S.C.R. 366. (2) [1971] 2 S.C.R. 361.

Narinderchand Hemraj and Ors. V. Lt. Governor, Union Territory, Himachal Pradesh & Ors.(1), to both of which one of us (Hegde, J.) was a party. In the former case it was pointed out that "there is no question of any representation having been made by the Government which was acted upon to their detriment by the appellants". In the later case one of us, Hegde J, pointed out that in the Indo-Afghan Agencies' case "This Court did not hold that the Government was not competent to change the scheme. If the scheme had statutory force, it bound the Government as much as it bound the exporters. In that event the% Court was competent to compel the Government to act according to the scheme. If on the other hand the scheme contained merely administrative instructions then the Government having made the representation referred to earlier, on the basis of which the exporters had exported certain goods, the Government was estopped from going back on the representation made by it". The case which is more analogous to the one before us is The State of Assam and Another v. Ajit Kumar Sharma and Others(2) where a Constitution Bench of this Court which considered the claim of the teacher of a private College affiliated to the Gauhati University in Assam which received grants-in-aid from the State on certain conditions set out in the form of Rules held that the was not entitled to maintain a Writ Petition under Article 226 of the Constitution. In

that case Rule 7 of the Rules provided that if a teacher stood for elections to the Legislature, he should be on compulsory leave without pay from the date of the filing of his nomination till the end of the next academic session or till the termination of the term of office to which he may be elected as the case may be. The respondent who had recourse to this Rule had after obtaining permission, stood as a candidate for Parliament and was defeated. Thereafter, he rejoined his post but was informed that he has been granted compulsory leave without pay till the end of the academic session. It was against this direction that he filed a Writ Petition challenging the rules as being without legal, force and not binding on the Governing Body or the respondent, which contention was negatived on the ground that the rules were merely administrative instructions not having the force of the law as statutory rules and govern matters between private colleges and the Government. In any view of the matter, the claim of the respondents that there was any representation made to them or intended to be made is not justified. In this view, the appeals are allowed but as some of the contentions raised in the petitions have not been considered by the High Court, the matter is remanded to it for disposal according to law. There will be no order as to costs.

V.P.S. Appeals allowed.

(1) C.A. 1313/70 decided on 5-10-71.

(2) [1965] 1 S.C.R. 890.