

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3718/2017

Prof. Jawaid Mohsin Malik and others

**Versus**

Federation of Pakistan through Secretary M/o Federal Education and  
Professional Training and others

<b>Date of Hearing:</b>	22.03.2018.
<b>Petitioners by:</b>	Mr. G.M. Chaudhary, Advocate
<b>Respondents by:</b>	Mr. Afnan Karim Kundi, Additional-Attorney General, Ch. Kamil Hayat, and Hassan Javed Advocates, Mr. Rehan Seerat, Advocate for respondent No.5.

---

**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide W.P.No.3718/2017, and W.P.No.139/2018, as they entail common questions of law and fact.

2. Through W.P.No.3718/2017, the petitioners, who are educationists by profession, challenge the tender notice/advertisement dated 30.09.2017, published by respondent No.1 (Ministry of Federal Education and Professional Training) inviting applications from publishers for their pre-qualification for development of textbooks. Interested publishers were required to submit their technical proposals by 16.10.2017. The instant writ petition was filed on 30.10.2017 i.e. about two weeks after the last date fixed in the said tender notice for the submission of the technical proposals.

3. The petitioners sought a declaration to the effect that the said advertisement dated 30.09.2017 is in violation of Section 6 of the National Book Foundation Act, 1972 (“the 1972 Act”), and without lawful authority. The petitioners also sought a restraint against respondents No.1 and 2 from *“interfering in legal and constitutional functions and duties of other respective Ministries and Divisions in violation of law”*. The petitioners also sought a

direction to respondent No.1 not to prepare and publish textbooks on the ground that textbooks in accordance with the prescribed curriculum and syllabus, authored by the petitioners, were already being published by respondent No.5 (National Book Foundation) ("N.B.F.").

4. Through W.P.No.139/2018, the petitioner seeks *inter-alia* a declaration to the effect that since the subject of Education is not contained in Federal Legislative List, the Federal Government cannot exercise any legislative or executive authority with respect to the said subject.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-**

5. Learned counsel for the petitioners drew the attention of the Court to Article 142 of the Constitution and submitted that Parliament has the exclusive power to make laws with respect to any matter in the Federal Legislative List; that the Concurrent Legislative List was abolished as a result of the Constitution (Eighteenth Amendment) Act, 2010; and that respondent No.1 did not have the authority to float the impugned tender notice. Learned counsel for the petitioners drew the attention of the Court to entry No.11 titled "*Federal Education and Professional Training Division*" in Schedule-II of the Rules of Business, 1973, and submitted that the N.B.F. does not come under the administrative control of respondent No.1; that as per entry No.3 titled "*Capital Administration and Development Division*" in Schedule-II of the Rules of Business, 1973, neither does the Curriculum Wing of respondent No.1 nor does the N.B.F. come under the administrative control of the Capital Administration and Development Division ("C.A. & D.D."); that Rule 3(3) of the Rules of Business, 1973, provides that the business of government shall be distributed among the Divisions in the manner indicated in Schedule-II thereof; and that since the N.B.F. is mentioned at Serial No.12 of entry No.25 titled "*National History and Literary Heritage Division*", the administrative control over the N.B.F. is with National History and Literary Heritage Division, and

therefore, respondent No.1 had no authority to issue the impugned tender notice for the pre-qualification of publishers for the development of textbooks; that the Rules of Business, 1973, were framed under Article 99(2) of the Constitution, and have the force of law; and that only that business can be allocated through the Rules of Business, 1973, which is set out in the Fourth Schedule to the Constitution.

6. Learned counsel for the petitioners further submitted that for the development of curriculum Textbook Boards had been established in the four Provinces; that since there was no Textbook Board in Islamabad Capital Territory ("I.C.T."), the responsibility for the publication of books was given to N.B.F.; that by virtue of notification dated 10.06.2010, N.B.F. has been declared as the Textbook Board by the Federal Government for the I.C.T.; and that under section 6 (c) and (g) of the 1972 Act, it is N.B.F's function to publish textbooks and make them available to students at moderate prices.

7. Furthermore, it was submitted that under Article 142(b) of the Constitution, the Parliament has the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province; that the I.C.T. is an area in the Federation, which is not included in any Province; that the 1972 Act is a Federal statute and despite the devolution carried out as a result of the Constitution (Eighteenth Amendment) Act, 2010, it operates with respect to the I.C.T, but since the subject of curriculum is not mentioned in the Federal Legislative List, the power to devise curriculum vests in the Provinces, and therefore, with respect to the I.C.T such a power could only be exercised by the Chief Commissioner, I.C.T., under Presidential Order No.18 of 1980. Learned counsel for the petitioners prayed for the writ petitions to be allowed, and for the impugned tender notice/advertisement dated 30.09.2017, to be quashed. In making his submissions, learned counsel for the petitioners placed reliance on the law laid down in the cases of Messrs Mustafa Impex, Karachi and others Vs. The Government of

Pakistan through Secretary, Finance and others (PLD 2016 SC 808), Ahmad Nawaz Shah Vs. Chairman Central Board of Revenue etc (2002 SCMR 560), and Karamat Ali and others Vs. Federation of Pakistan through Secretary, Ministry of Interior etc (PLD 2018 Sindh 08).

**CONTENTIONS OF THE LEARNED ADDITIONAL ATTORNEY GENERAL:-**

8. On the other hand, learned Additional Attorney-General submitted that the petitioners have no *locus standi* to file the writ petitions; that the petitioners could have associated themselves with publishers and submitted their pre-qualification documents in response to the impugned tender notice; that publishers can submit their pre-qualification documents along with a team of authors; that the N.B.F. could have also participated in the competitive process in such a manner and published textbooks, had it been selected as the successful bidder; that after enactment of the Constitution (Eighteenth Amendment) Act, 2010, the 'Ministry of Education' was re-named as the 'Ministry of Federal Education and Professional Training', and the matters relating to the I.C.T. were transferred to C.A.&D.D.; that under section 3(1) of the Federal Supervision of Curricula, Textbooks Maintenance of Standards of Education Act, 1976, ("the 1976 Act"), the Federal Government can appoint one or more competent authorities for carrying out the purposes of the said Act; that under section 3(2)(a) of the 1976 Act, a competent authority can prepare or cause to be prepared schemes of studies, curricula, manuscripts of textbooks and schedules or strategy for their introduction in various classes of an institution in connection with the implementation of the education policy of the Federal Government; that under section 3(2)(b) of the 1976 Act, the competent authority can approve manuscripts of textbooks produced by other agencies before they are prescribed in various classes of an institution; that the 1976 Act is till date good law on the statute book; and that in exercise of powers conferred under section 3(1) of the 1976 Act, the Federal Government appointed

*inter-alia* the National Bureau of Curriculum and Textbooks (Curriculum Wing), Ministry of Education, Government of Pakistan, as the competent authority for carrying out the purposes of the 1976 Act relating to classes I to XII and to all certificates and diplomas not awarded by degree awarding institutions and universities.

9. Learned Additional Attorney-General further submitted that in the 11<sup>th</sup> Inter-Provincial Education Ministers' Conference held on 22.01.2006, the National Textbook and Learning Material Policy was proposed; that as per the said policy, the Textbook Boards were to be transformed into competent facilitating, regulating and monitoring authorities and were to review and help support the process of approval of textbooks for use in schools in their respective areas of jurisdiction; that under the said policy, the Textbook Boards were to seek a "no objection certificate" from the Curriculum Wing of the Federal Ministry of Education being the competent authority to certify that a particular textbook is compatible with the National Curriculum; that in 2006, when a new curriculum came, N.B.F. was employed by the Ministry of Education for the publishing of textbooks; that what the Textbook Boards are doing for the Provinces, the N.B.F. is doing and will do for the I.C.T.; that after the Constitution (Eighteenth Amendment) Act, 2010, the erstwhile Ministry of Education issued notification dated 10.06.2010 in exercise of the powers conferred by section 3(2)(a) of the 1976 Act, providing *inter-alia* that "Textbook Board" means and includes all Provincial Textbook Boards, National Book Foundation, and the Directorate of Curriculum Research and Development, AJK.

10. Learned Additional Attorney-General further submitted that vide notification dated 31.03.2011, issued by the Cabinet Division, a new Division, namely "Capital Administration and Development Division" was created; that the said Division was to execute, within the jurisdiction of the Federal Capital Area, all such functions handled by the abolished Ministries/Divisions; that the departments/ organizations allocated to the said new Division did

not include N.B.F.; that by virtue of the said notification dated 31.03.2011, the Curriculum Wing in the erstwhile Ministry of Education came under the administrative control of C.A.& D.D.; and that with the approval of the Prime Minister, the Curriculum Wing is now under respondent No.1.

11. Furthermore, learned Additional Attorney-General submitted that on 05.10.2017, a meeting was held with regard to the development of textbooks for I.C.T.; that the said meeting was also attended by the Managing Director of N.B.F.; that in the said meeting, it was decided *inter-alia* to develop textbooks by respondent No.1 through open competition of publishers, and that the N.B.F. could participate in the open bidding and will be given an edge being a government organization; that it was also decided that N.B.F. will continue to print books for class VI to XII for the next academic year, and respondent No.1 will develop textbooks up to 5<sup>th</sup> class for the next academic year by open competition; that there is no provincial law on the subject with respect to which authority could be exercised by the Chief Commissioner, I.C.T., for the development of textbooks. Learned Additional Attorney-General prayed for the writ petitions to be dismissed.

12. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

13. Prior to the enactment of the Constitution (Eighteenth Amendment) Act, 2010, which deleted the Concurrent Legislative List from the Constitution in its entirety, entry No.38 of the Concurrent Legislative List was as follows:

*“38. Curriculum, syllabus, planning, policy, centers of excellence and standards of education.”*

14. It is well settled that the executive authority of the Federation extends to all those matters over which it has the power to legislate. The Parliament has the exclusive power to legislate on matters listed in the Federal Legislative List. Article 142(b) of the Constitution in its un-amended form (i.e. pre-Constitution (Eighteenth Amendment) Act, 2010) provided that the

Parliament and a Provincial Assembly shall have the power to make laws with respect to any matter in the Concurrent Legislative List. Article 143 of the Constitution in its un-amended form provided *inter-alia* that if any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Parliament which the Parliament is competent to enact with respect to any of the matters enumerated in the Concurrent Legislative List, then the Act of Provincial Assembly to the extent of repugnancy, would be void.

15. The National Book Foundation Act, 1972 (“the 1972 Act”) was enacted by Parliament to provide for the establishment of a foundation for making books available at moderate prices, and for matters ancillary thereto. Under section 6 (c) and (g) of the 1972 Act, it is N.B.F’s function *“to undertake writing of books and to encourage writers to produce good books”* and *“to encourage the writers and the book trade in general in the production of books and making them available to the students and the general public at moderate prices”*, respectively. The word “books” has been defined in section 2(a) of the 1972 Act to include textbooks, reference books, books on religion, and other books and reading material for the use by students and the general public. Presently, the administrative control over the N.B.F. lies with the National History and Literary Heritage Division as per entry No.25 in Schedule-II to the Rules of Business, 1973, (as amended up to 20.12.2017).

16. On 29.03.1976, the Federal Supervision of Curricula, Textbooks Maintenance of Standards of Education Act, 1976, (“the 1976 Act”) was enacted. Under section 3(1) the 1976 Act, the Federal Government has the authority to appoint one or more ‘Competent Authorities’ for carrying out the purposes of the said Act. Under section 3(2)(a) of the 1976 Act, a ‘Competent Authority’ was authorized to prepare or cause to be prepared schemes of studies, curricula, manuscripts of textbooks and schedules or strategy for their introduction in various classes of an institution in connection with the implementation of the

education policy of the Federal Government. Under section 3(2) (b) of the 1976 Act, the Competent Authority was authorized to approve manuscripts of textbooks produced by other agencies before they are prescribed in various classes of an institution. It is not disputed that the 1976 Act has till date not been repealed.

17. In exercise of the powers conferred under section 3(1) of the 1976 Act, the Federal Government (i.e. the erstwhile Ministry of Education), vide notification dated 04.12.1976 appointed *inter-alia* the National Bureau of Curriculum and Textbooks (Curriculum Wing), Ministry of Education, Government of Pakistan, as the 'Competent Authority' for the purposes of the 1976 Act relating to classes I to XII and to all certificates and diplomas not awarded by degree awarding institutions and universities. The Curriculum Wing was subsequently renamed as the National Curriculum Wing (Curriculum Development and Textbook Production Wing).

18. In the post Eighteenth Amendment scenario, with the deletion/omission of the Concurrent Legislative List, Parliament does not have the power to legislate on the matters listed in the erstwhile entry No.38 of the Concurrent Legislative List, except as regards legislation for the areas which are not included in any Province. I.C.T. is amongst the areas in the Federation but not included in any Province. In this regard, Article 142(d) of the Constitution, as it stands now, reads as follows:-

*“(d) Majlis-e-Shura (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province”*

19. I have gone through every entry made in the Federal Legislative List, but was not able to find any entry dealing with curriculum or curriculum development. Entry No.12: *“standards institutions for higher education and research, scientific and technical institutions”* in Part-II of the Federal Legislative List in the Constitution, cannot be read as giving the power to the Parliament to legislate on curriculum or curriculum development. However, since by virtue of Article 142(d) of the Constitution, as it now stands, Parliament has the exclusive power to make laws



with respect to *“all matters”* pertaining to areas in the Federation as are not included in any Province; and since the I.C.T. is one such area, the 1972 Act as well as the 1976 Act, both being Federal statutes, will operate as laws with respect to the I.C.T. Therefore, to the extent of the I.C.T., the Federal Government will have the power to exercise its executive authority on all matters.

20. The Constitution (Eighteenth Amendment) Act, 2010, was enacted on 19.04.2010. On 10.06.2010, the erstwhile Ministry of Education (Curriculum Wing) issued notification (S.R.O.615(I)/2010), dated 10.06.2010, in exercise of the powers conferred by section 3(2)(a) of the 1976 Act, providing *inter-alia* that *“textbook board”* means and includes all provincial textbook boards, N.B.F., etc. Therefore, insofar as the I.C.T. is concerned, the N.B.F. operates as *“the textbook board”*.

21. Vide notification dated 31.03.2011, issued by the Cabinet Division, a new Division, namely “Capital Administration and Development Division” was created. The said Division was to execute, within the jurisdiction of the Federal Capital area, all such functions handled by the abolished Ministries/Divisions. The departments/ organizations allocated to the said new Division did not include N.B.F. It is the contention of the learned Additional Attorney-General that by virtue of the said notification dated 31.03.2011, the Curriculum Wing in the erstwhile Ministry of Education came under the administrative control of C.A. & D.D.

22. Vide notification dated 29.07.2011, issued by the Cabinet Secretariat, the Ministry of Professional and Technical Training (later re-named as “Ministry of Federal Education and Professional Training”) was created. Since the Curriculum Wing was not a part of the said Ministry/respondent No.1, on 18.06.2014, a summary was submitted by respondent No.1 to the Prime Minister of Pakistan highlighting the importance and the urgent need to constitute a National Curriculum Council, which could evolve a coordination mechanism for curriculum development amongst the Provinces. The National Curriculum Wing which previously functioned under the erstwhile Ministry of

Education was said to have the institutional capacity to serve as the secretariat of the National Curriculum Council. In the said summary, it was proposed that the National Curriculum Wing (functioning under the C.A.&D.D.) may be placed under the administrative control of respondent No.1. After the Ministry of Law, Justice and Human Rights endorsed the said summary, the Prime Minister, on 17.11.2014 approved the proposal of placing the Curriculum Wing under the administrative control of respondent No.1. Memorandum dated 25.11.2014, issued by the Cabinet Division provides that the Prime Minister had approved the transfer of the National Curriculum Wing from C.A.&D.D. to respondent No.1. Vide notification dated 05.12.2014, issued by respondent No.1, the Curriculum Wing was attached with respondent No.1 with immediate effect. Vide notification dated 27.03.2015, issued by C.A.& D.D., the Curriculum Wing was transferred from C.A.&D.D. to respondent No.1.

23. The Prime Minister is said to have made the said decision in exercise of his powers conferred under Rule 3(3) of the Rules of Business, 1973. Although Rule 3(2) of the Rules of Business, 1973, empowers the Prime Minister to constitute a new Ministry consisting of one or more Divisions, Rule 3(3) thereof provides that the business of government shall be distributed among the Divisions in the manner indicated in Schedule-II. It is an admitted position that the Rules of Business, 1973, have till date, not been amended, so as to give effect to the Prime Minister's decision dated 17.11.2014, by placing the Curriculum Wing (Curriculum Development and Textbook Production Wing) under the administrative control of respondent No.1. Be that as it may, the effect of respondent No.1's notification dated 05.12.2014, and C.A.&D.D.'s notification dated 27.03.2015 is that the Curriculum Wing stands transferred from the control of C.A.& D.D. to respondent No.1.

24. The vital question that needs to be answered is whether the Curriculum Wing (which is under the administrative control of respondent No.1) in exercise of the powers conferred under the

provisions of the 1976 Act, OR the N.B.F. (which is under the administrative control of the National History and Literary Heritage Division) in exercise of the powers conferred under the provisions of the 1972 Act, had the power to publish the impugned tender notice dated 30.09.2017 inviting applications for the pre-qualification of publishers for the development of textbooks based on an approved curricula. The said tender notice clearly mentions that *“copies of the approved curriculum 2017 (Pre-I-V)”* could be obtained from the National Curriculum Council Secretariat. This shows that the curriculum has already been approved. All that remained to be done is for the textbooks to be developed on the basis of the already approved curriculum. The said tender notice was designed to invite applications from *“publishers”*. Separate proposals could be submitted for each subject, and for different classes. The applicants/publishers were also required to submit along with their proposals the detailed *curriculum vitae* of the potential authors to be engaged by such applicants/publishers. The textbooks to be developed by the selected publishers were to be procured by the Federal Directorate of Education and be implemented in educational institutions in the I.C.T.

25. The powers of the Curriculum Wing are circumscribed by Section 3(2) of the 1976 Act. These powers are as follows:-

- a) *Prepare or cause to be prepared schemes of studies, curricula, manuscripts of textbooks and schedules or strategy for their introduction in various classes of an institution in connection with the implementation of the education policy of the Federal Government.*
- b) *Approve manuscripts of textbooks produced by other agencies before they are prescribed in various classes of an institution; and*
- c) *Direct any person or agency in writing to delete, amend or withdraw any portion, or the whole, of the curriculum, textbook or reference material prescribed for any class of an institution within a period specified in such directive.”*

26. The role of the Curriculum Wing/‘Competent Authority’ is *inter-alia* to prepare or cause to be prepared *“schemes of studies, curricula, manuscripts of textbooks”* etc. It also has the power to *“approve manuscripts of textbooks produced by other agencies”*. It is my view that these powers cannot be effectively exercised if

the power for “*development of textbooks*” is not exercised by the Curriculum Wing. In determining whether any applicant/bidder is prequalified or not, the Curriculum Wing will have to determine whether the manuscripts of the textbooks submitted by the bidders along with their proposals are in conformity with the curriculum approved by the Curriculum Wing. The Curriculum Wing cannot be considered as having no concern with the development of textbooks in accordance with the manuscripts of textbooks approved by the Curriculum Wing in accordance with section 3(2)(b) of the 1976 Act.

27. Indeed, the functions of the N.B.F. include the function to encourage writers and the book trade in general and the production of books and making them available to students and the general public at moderate prices. The N.B.F. can also undertake the writing of books, including textbooks. But such functions would not *ipso facto* take away from the Curriculum Wing the power to approve the manuscripts of textbooks, or to develop textbooks or to ensure that the textbooks are produced in accordance with the approved curricula. The cumulative reading of the 1976 Act and Section 6 of the 1972 Act shows that the responsibility for the preparation of the curricula and manuscripts of textbooks is with the Curriculum Wing, which is under the administrative control of respondent No.1 and does not have a legal personality of its own.

28. The publication of the tender notice dated 30.09.2017 appears to be with N.B.F.’s consent. I say this because the Managing Director of N.B.F. attended the meeting dated 05.10.2017 on the development of textbooks for the I.C.T. This meeting was chaired by the Minister for Federal Education and Professional Training and attended by *inter-alia* the Director General (Federal Directorate of Education). One of the subjects under discussion in this meeting was “*adoption of textbooks by C.A.&D.D.*” which were to be developed on curriculum of 2017. It is an admitted position that the curriculum had been revised in 2017 for Grade Pre-I to V, and the same has been notified for the

educational institutions in the I.C.T. The new textbooks are to be developed on the new curriculum. The minutes of this meeting reveal that all who participated in this meeting were aware that the said tender notice had been published so as to develop textbooks in accordance with the revised curriculum of 2017. In the said meeting, the Managing Director of N.B.F. stated that the *“development of textbooks is a complicated area for them in view of the time constraint as only five months are left for the development of textbooks”*. The decisions taken in the said meeting include the following decisions:-

*“iii. Textbooks developed by M/o FE&PT through open competition of publishers, will be procured by FDE for distribution to schools at ICT.*

*vi. NBF may also participate in the open bidding and will be given an edge being Govt. organization.”*

*vii. The National Book Foundation will continue to print books for class VI to XII for the next academic year and Ministry of FE&PT will develop textbooks up to 5<sup>th</sup> class for the next academic year by open competition.*

*viii. In case the selection of publishers for development of new textbooks for pre-I to V class is not finalized by 30<sup>th</sup> November, 2017, Ministry will inform NBF to print old books for the said classes for the next academic year.”*

(Emphasis added)

29. There was nothing preventing the N.B.F. from participating in the competitive process in response to the said tender notice. It ought to be borne in mind that N.B.F is not the petitioner before this Court. Admittedly, the petitioners are affiliated with N.B.F. and have authored textbooks as per the old curriculum. Since neither the N.B.F. nor the petitioners participated in the competitive process in response to the tender notice dated 30.09.2017, therefore it is my view that the petitioners do not have the *locus standi* to challenge the same.

30. As regards the contention of the learned counsel for the petitioners that only the Chief Commissioner, I.C.T. could have issued the impugned tender notice, suffice it to say that the provisions of Presidential Order No.18 of 1980 read with the notification dated 31.12.1980 as amended by notification dated 07.05.1990, the Chief Commissioner, I.C.T. has with respect to the

I.C.T. the powers and duties conferred on the Provincial Government under any law for the time being in force in I.C.T. Since neither the 1972 Act nor the 1976 Act are Provincial statutes, to the extent of their applicability to I.C.T., therefore, I am of the view that the power to issue the impugned tender notice did not vest in the Chief Commissioner, I.C.T.

31. Since the Curriculum Wing is competent to prepare or cause to be prepared curricula and manuscripts of textbooks under Section 3(2)(a) of the 1976 Act, I do not find any invalidity in the exercise of power by respondent No.1 to issue/publish the impugned tender notice. Consequently, the writ petitions are dismissed.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2018.**

**(JUDGE)**

*Qamar Khan\**

**APPROVED FOR REPORTING**