

(1997) 08 AHC CK 0108

Allahabad High Court

Case No: C.M.W.P. No. 20221 of 1997

Arun Pathak

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 26, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Course Books Act, 1978 - Section 3, 3(2), 5, 6, 7
- Uttar Pradesh State Universities Act, 1973 - Section 2

Citation: (1997) AWC 511 Supp

Hon'ble Judges: O.P. Garg, J; M. Katju, J

Bench: Division Bench

Advocate: Umesh Narain Sharma and Suneet Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

O.P. Garg, J.

Sri Arun Pathak, resident of 11, Tripolia, Allahabad, claiming himself to be pro bono publico has brought this public interest litigation by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, with the prayer that the orders dated 1.5.1997 and 8.5.1997, contained in Annexures-4 and 5 to the writ petition, relating to the price list of the text books issued by the State Government and the order dated 11.12.1996, insofar as it relates to the printing and publication of text books on water mark papers, be quashed and a direction in the nature of mandamus be issued to restrain the Respondents from seizing and destroying the residue stock of text books and from interfering in the sale of text books available with the book sellers, whose number runs in thousands all over Uttar Pradesh.

2. Advertance to certain facts, which are necessary, is like this; an appeal in the name of Education Secretary, Government of Uttar Pradesh was published in various newspapers addressed to Printers, Publishers and Dealers of course books

mentioning therein that the State Government is firmly committed to make available nationalised quality books to the students of Basic and Intermediate Schools/Colleges on reasonable and fair price and all the attempts to play with the future career of the students or to compromise with the excellence in the educational field shall not be tolerated and curbed with firm hand. The printers, publishers and dealers were advised to make over all their stocks of fake course books to the various paper mills for turning them into pulp or to burn/destroy them within a period of ten days of the appeal, failing which, the State Government would be compelled to search and seize the stocks and to destroy the same besides prosecuting the persons who have indulged in illegal activity of flooding the market with unauthorised and sub-standard course books. This appeal naturally created a flutter and furore amongst the persons dealing with the printing, publishing and marketing of the course books. The price of the nationalised course books have been determined/enhanced by the State Government by order dated 1.5.1997, Annexure-4 and dated 8.5.1997, Annexure-5. These orders pertain to 85 course books of classes I to VIII and 42 course books of classes IX to XII.

3. The grievance of the Petitioner is that the conduct of the State Government is wholly arbitrary and mala fide as the direction to destroy the residue stock of books worth of Rs. 100 crores will adversely affect such book sellers throughout the State, out of whom, 80 per cent are situated in rural areas and that the enhancement of price of the text books by 25% to 100% from the new session commencing from July, 1997 will adversely affect about 6 crores school going children in Uttar Pradesh. It is also alleged that the raids are being organised at the premises of various book sellers throughout the State in an illegal manner and the authorities have started destroying the seized books. According to the Petitioner, the State Government has not taken any action against the unauthorised publishers and printers who are guilty of printing and publishing the inferior quality of books. The Petitioner also appears to be aggrieved from the direction issued by the Government that the books shall be printed on the specified quality of paper having water mark as the papers on concessional rate is not available to the printers and publishers.

4. The Respondents have resisted and refuted the various allegations made and the grounds of challenge incorporated in the writ petition. In substance, the defence of the Respondents is that the intent and purpose of the various orders of the State Government is to provide quality books to the students at a comparative cheaper rates and to prevent publication, circulation and sale of duplicate unauthorised and non-durable fake books, which have a number of printing mistakes.

5. Counter and rejoinder-affidavits have been exchanged. Sri Sunit Kumar, learned Counsel for the Petitioner as well as Sri Yatindra Singh, learned Additional Advocate General on behalf of the State Government have been heard at a considerable length. Since the learned Counsel for the parties have canvassed on merits of the case, with their consent, we proceed to finally dispose of this writ petition at the

admission stage.

6. To begin with, it may be observed that prescription of syllabus, curriculum, course and text books is the most neglected area in the field of education though it is quite significant to ensure uniformity of standards and excellence in instruction. Realising this shortcoming in the field of education and to curb the malpractices which were being adopted by the printers, publishers and dealers of the course books, the U.P. State Legislature brought on statute book the U.P. Course Books Act, 1978 (U.P. Act No. 7 of 1979) (hereinafter referred to as "the Act") to provide, in the interests of the general public, for the control of, production, supply and distribution of, and trade and commerce in, course books and for matters connected therewith or incidental thereto. The expression "course book" has been defined in Clause (b) of Section 2 of the Act, which is as follows:

(b) "Course book" means any book prescribed or recommended by or written according to the syllabi of the Department of Education, Uttar Pradesh or the Board, or any University as defined in Clause (2) of Section 2 of the Uttar Pradesh State Universities Act, 1973 and specified or referred to in the notification u/s 7.

Section 3 of the Act prohibits dealer (as defined in Sub-clause (d) of Section 2) from withholding from sale any course book held in stock by him, or charging for any course book a price which exceeds its notified price. Certain restrictions have been imposed on the publishers in the matter of printing or publishing the text books in Sub-section (2) of Section 3 of the Act. Restrictions have also been imposed on prescribing text books by the recognised institutions by virtue of provisions of Section 5 of the Act. The prescribed authority, i.e., the District Magistrate or any officer authorised by him, in writing to perform any of his functions under the Act has been authorised by Section 6 to:

(a) require any person to make any statement or to furnish any information or statistics;

(b) require any person believed to be a dealer to maintain and produce for inspection such books, accounts and records relating to his business or to the stock of course books under his custody or control as may be specified;

(c) require any dealer or any person employed by a dealer to produce such books, accounts and other documents relating to the stock of course books under his custody or control as may be specified;

(d) examine and seize any books, accounts or other documents which in the opinion of such officer would be useful for, or, relevant to any proceedings in respect of any contravention of the Act and return such books, accounts and other documents to the person from whom they were seized after copies thereof or extracts therefrom, certified under his hand, have been taken; or

(e) search any premises, vehicle or vessel and prepare an inventory of any course books found therein, or seize any course books in respect of which he has reason to believe that a contravention of this Act has been, is being or is about to be committed and thereafter take or authorise the taking of all measures necessary for securing the production of stock so seized in Court and for its safe custody pending such production.

7. Section 7 vests power in the State Government to notify prices of course books. Elaborate provisions have been made in the Act for cognizance, trial and punishment of the offenders, namely, publishers, printers and dealers or any other person who attempts to contravene or abets a contravention of any provisions of the Act.

8. The brief resume of the above provisions of the Act clearly indicates that the State Government has the power and authority to fix the fair price of course books, regulate the activities of the dealers, printers and publishers of the course books, insofar as, these activities relate to production, supply and distribution of and trade and commerce in course books. The prescribed authority under the Act has also the power to search any premises and to seize any course books in respect of which he has reason to believe that a contravention of the provisions of the Act has been, is being, or is about to be committed and thereafter take, or, authorise the taking of all measures necessary or securing production of seized stock in Court and keeping them in safe custody pending such production. The provisions of the Act are comprehensive and all pervading. It is the duty of the State Government to faithfully and sincerely implement the various provisions of the Act, which have been enacted in the interest of general public.

9. From the material brought on record, particularly the averments made in the counter-affidavit filed by Sri Iftekhar Nazim, Deputy Secretary, Department of Education, U.P. Government, it appears that it brings forth a hoary picture and alarming situation to light. Unmindful of the various stringent provisions of the Act, the printers, publishers and dealers have flooded the market with unauthorised and duplicate, fake and bogus books without paying royalty on them thereby causing serious loss to the public exchequer. The books which have been dumped in the market are in a bad shape and are not printed on the paper of the specified quality. A well organised racket is going on in the printing, publishing and marketing of the course books by those who, it appears, have no regard for law and the needs of the students community. To curb the widespread and deep rooted evil, the State Government, as of necessity, has to deal with the situation sternly and with strong hand. The State Government, in its wisdom, issued an appeal to all and sundry, resorting to malpractices in the commercialization of the course books with an open threat that if the books are not removed from the market, they will be seized and destroyed.

10. It is common knowledge that there is mounting surge all around in the prices of the various commodities. The printing, publishing and marketing of course books are also affected by the spiral rise in price. The State Government has taken an objective view of the matter and in its wisdom, has take a policy decision to revise/enhance the price of the books by means of the impugned orders. A bare look of the price list of various course books makes it clear that the rise is not unconscionable but is well within the fair and permissible limits.

11. As regards the plea that the fundamental rights of the various printers, publishers and dealers of the course books are infringed by various orders of the State Government, it may be made clear that in the seasonal decision of the Supreme Court in [Naraindas Indurkha Vs. The State of Madhya Pradesh and Others](#), following its earlier decision in [Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab](#), it was held that State may take over the business in text books in its own hands and can enter into the business of publishing and selling the text books through the exercise of its executive power without legislation. In the instant case, there is specific legislation (Act No. 7 of 1979), referred to above under which the State Government is authorised to take various steps to streamline printing, publication and marketing of the course books for the benefit of the general, public and student community in particular. It is true that, as observed by Krishna Iyer, J. in State of Madhya Pradesh v. Raghubir Prasad Agarwal AIR 1979 SC 88, that the dispute touching this field has also been raised on account of irresponsible "unenlightened departmental officers and authorities or unheeding political bosses too hubristic to listen to experts in the field." Fortunately, in the present case, there is no such instance where the departmental officers have acted in a callous manner. The various steps taken by the State Government to achieve the excellence in the field of education by regulating the printing, publishing and marketing of the course books are to be commended rather than condemned and that too at the hands of the shrewd law breakers whose only goal is to amass wealth by crooked means. The Courts have been quite reluctant to interfere with the policy decisions taken by the State Government and have respected the opinion of the expert committees, particularly, in those cases where the policy decision is based on objective considerations, arrived at to curb a rampant evil.

12. The submission of Sri Yatindra Singh, learned Additional Advocate General appearing on behalf of the Respondents that the present petition in the nature of public interest litigation is nothing but an abuse of the process of the Court is quite weighty. The question of locus standi has necessitated us to have a fresh look into the precedents of public interest litigation, vis-a-vis, the scope, ambit and power of the Court to grant reliefs in the matters arising from real and true public interest litigation, in which the condition of locus standi has been relaxed and public spirited persons, not motivated by pressure tactics for ultimate ends, are encouraged to work for the poor, under-privileged or with regard to the segments of the society, who are otherwise, unable to avail of judicial process for grant of general reliefs to

such group of persons.

13. At the outset, it may be mentioned here that the public interest litigation is not adversarial. It is one of collaboration and co-operation between the State and the Court. Therefore, the rigour of the pleadings or the reliefs sought for in adversarial litigation has been softened, new methods, tools and procedure were evolved to meet out justice and to enforce the fundamental rights. The various instances of public interest litigation may be mentioned with reference to the decisions of the Supreme Court on the point. In *Labourers Working on Salal Hydro Project Vs. State of Jammu and Kashmir and Others*, it was brought to the notice of the Supreme Court that a large number of migrant workmen were subjected to exploitation and violation of various welfare laws made for them. Intervention was sought to prohibit exploitation and to grant different reliefs to them. In *Dr. Upendra Baxi and Others (II) Vs. State of U.P. and Others*, a noted humanist and champion of human rights, had addressed a letter to the Supreme Court, which was treated as public interest litigation, to protect the girls living in the Government Protective Homes at Agra who were being denied right to live with basic human dignity by the State of Uttar Pradesh which was running the Home. *Vincent Panikurlangara v. Union of India and Ors.* JT 1987 (1) SC 610 : (1987) 2 SCC 165, related to manufacture of drugs and involved examination of evidence to determine the character of the action taken by the Government on the basis of advice tendered to it to prohibit the manufacture and trade of drugs in the interest of patients who required the drugs for that treatment. *Bandhua Mukti Morcha v. Union of India* 1984 (3) SCC 141 was filed to release the bonded labourers in the country. In *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, issue relating to public interest litigation concerning the ecological imbalances created due to mining operations and denudation of forest were raised. In *M.C. Mehta and another Vs. Union of India and others*, a constitutional Bench of the Hon'ble Supreme Court was to consider the scope of the public interest litigation to grant compensation to the victims of hazardous or dangerous activities when deaths or injuries were caused to them on account of the accident during the operation of such activities. In *Santhal Pargana Antyodaya Ashram Vs. State of Bihar and Others*, in a public interest litigation, Hon'ble Supreme Court obtained a report of the Committee appointed by it, accepted the report and gave directions to release and rehabilitate the bonded labours identified by the Committee and to implement the Committee's recommendations.

14. It would thus appear that in a public interest litigation, there are no adversaries. If there is a dispute between two rival parties, the litigation would cease to be a public interest litigation as keenly contested matters cannot be made the subject-matter of public interest litigation. The public Interest litigation has to be processed and dealt with great care, caution and circumspection so that the Judges may not be accused of over-stepping their jurisdiction or of reacting sharply against any steps taken by the Government. Public interest litigation can never be used as a

handle to cover up illegal activities and to encourage violation of laws. In case where there has been a brazen and bizarre exploitation of the public in general and students, in particular, by floating in the market substandard, unauthorised and duplicate course books printed, published on a weak and undurable paper without paying royalty and in defiance of the orders of the State Government passed under the provisions of the Act, exercise of jurisdiction by this Court on a petition of a person who is nowhere connected either with publication, or printing, or sale or distribution of the course books (as per the own assertion contained in paragraph 1 of the writ petition) will be nothing but a mockery. The Petitioner, Arun Pathak, in the circumstances, cannot be said to be a public spirited person or a social worker who has come to the Court with a feeling of general good. As a matter of fact, he has come forward to espouse the cause of errant and law breaker printers, publishers and dealers in the pseudo name. We are of the categoric view that the present petition is not in the nature of public interest litigation and, therefore, it is not maintainable at the instance of Sri Arun Pathak. To say the least, it is a mala fide petition to abuse the process of the Court to seek protection of those persons who are a menace to the society on account of their illegal activities,

15. For the reasons stated above, the writ petition fails both on legal and factual matrix. It is accordingly dismissed.