STATE OF M.P. & ANR. ETC.

v.

RAM RAGHUBIR PRASAD AGARWAL & ORS.

February 7, 1979

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.]

Madhya Pradesh Prathmik Middle School Tatha Madhyamik Shiksha (Pathya Pusthakon Sambandhi Vyavastha) Adhiniyam, 1973. (MP. Act No. 13 of 1973). Ss. 2(d), 3, 4 and 5—Whether state has power to compile and distribute its own text books. Mention of topics in bare outline whether constitutes 'syllabi' in S. 2(d).

Mere communication to concerned officials or Departments whether sufficient for 'publication' in s. (3).

The M. P. Prathmik Middle School Tatha Madhyamik Shiksha (Pathya Pusthakon Sambandhi Vyavastha) Adhiniyam 1973 empowered the State Government to prescribe text books according to syllabus laid down and to undertake the preparation, printing and distribution of text books.

Section 2(d) of the Act defines "syllabi" as a document containing courses of instructions for each standard of primary, middle school and secondary education. Section 3 empowers the State Government, in the case of primary and middle school education, and the Board in the case of secondary education, to lay down the syllabi and publish the same. Section 4 makes the State Government the competent authority to prescribe the text-books in accordance with the syllabus laid down under s. 3. Section 5 empowers the State Government to undertake the preparation, printing and distribution of text-books itself or cause them to be done through such agency as it deems fit and on such terms and conditions as may be prescribed.

The appellant (State Government) exercised its power under s. 5 of the Act and produced the necessary text-book for "Rapid Reading" an item in the syllabus for secondary schools and distributed it among the students in many schools. Until then, the books of the respondent, a private publisher were in use.

The respondent challenged the action of the State Government in the High Court on the ground that the State Government had not given consideration to the availability of text-books in terms of the "syllabi" with private publishers as required by s. 5 of the Act, before it produced and distributed the text-books compiled by itself among the students of the secondary schools. The High Court upheld the challenge and held that the statutory exercise envisaged under the Act had not been carried out before preparing and distributing the Government text books.

In the State Government's appeal to this Court it was contended that (1) as s. 2(d) envisages syllabus as a document containing courses of instruction, a broad outline, a demarcation if the topic would be sufficient compliance and that there need not be particularisation of details, and (2) 'publication' of the syllabus, essential under s. 3 means communication by the Board to the Government or the concerned authorities. On behalf of the respondent it was submitted that the mere mention of topics in bare outline, as in the instant case did not constitute 'syllabi' as defined in s. 2(d) and that to fulfil,

A the statutory requisites a syllabus for a subject must concretise and constellate courses of instruction, short of which it is no syllabus in the eye of law.

Allowing the appeal in part,

HELD : 1. The syllabus for 'Rapid Reading', suffers invalidation under s. 3 because it has not been *published*. The publication must precede the prescription of text-books under s. 4 or their preparation under s. 5. [56C]

B

In the instant case the syllabus was published only on June 30, 1978 while the text-books were prescribed in October, 1977. So ss. 3 and 4 have been breached and a fresh decision by Government prescribing text books for 'Rapid Reading' must be taken. [56D]

2. The State Government shall take a fresh decision under ss. 4 and 5 read
C together. If publishers of text-books or *pro bono publico* representationists communicate relevant matters bearing on the selection of text-books, their merits will be examined departmentally. If, thereafter, Government considers it proper to take over the text-books business under s. 5 it is free to do so. The private sector has no 'right' and Government's jurisdiction is wide, although the State need not be allergic to private publishers if books of excellence, inexpensive and well-designed, are readily available. [56G-H]

D

3. The laying down of the syllabus is a condition precedent to the prescription of text-books, because the courses of instruction follow upon and should be in conformity with the syllabus and text books are in implementation of the courses of instruction. [50B]

4. To fulfil the statutory requisites, a syllabus for a subject must concretise and constellate courses of instruction, short of which it is no syllabus
E in the eye of law. [51D]

5. No private publisher has a right under s. 4 that his text-book shall be prescribed or necessarily considered by Government. No such right as is claimed by the respondent-publisher has, therefore, been violated by the State Government. [54C]

6. The syllabus for 'Rapid Reading' is not bad as falling short of definiF tional needs, although it is desirable for the Board to be more expressive when laying it down. Wilful vagueness in syllabi will invite an adverse verdict. [56A]

7. A syllabus may helpfully give general features but may not cease to be so solely because only an outline is silhouetted. 'Courses of Instruction' in s. 2(d) simply means the rubric for teaching, not more. It must be a syllabus
G of courses and so the courses must be spelt with relevancy, even though with brevity. [51G, 52A]

8. Functionally the syllabus must tell the publisher and *pundits* in the concerned field sufficient to enable them to help Government under s. 4 to choose text-books. If this minimum is not complied with the court will use the lancet and issue an appropriate writ. [52C-D]

H

9. The expression "syllabi" must be so interpreted as to fulfil the purpose of ss. 3 and 4 which means there must be sufficient information for those concerned to know generally what courses of instruction are broadly covered

under the heading mentioned, so that they may offer text-books for such courses. If there is total failure here the elements of syllabi may well be held to be non-existent, even though experts might claim otherwise. The law is what the Judges interpret the statute to be, not what the experts in their monopoly of wisdom assert it to be. [52E-F] A

10. 'Publication' means more than mere communication to concerned officials or departments. The purpose of s. 3 animates the meaning of the expression 'publish'. 'Publication is "the act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny.... an advising of the public; a making known of something to them for a purpose." [52H, 53A-B] B

11. The legislative objective is to ensure that when the Board lays down the 'syllabi' it must publish 'the same' so that when the stage of prescribing text-books according to such syllabi arrives, both the publishers and the State Government and even the educationists among the public may have some precise conception about the relevant syllabi to enable Government to decide upon suitable text-books from the private market or compiled under s. 5 by the State Government. [53C] C

12. "Publication" to the educational world is the connotation of the expression. Even the student and the teaching community may have to know what the relevant syllabus for a subject is, which means wider publicity than minimal communication to the departmental officialdom. [53D] D

Only when they come to know about the syllabi prescribed representatives in the educational field or in the public sector may be able to tell the State Government what type of text-books are available, what kind of books will make for excellence in teaching and what manner of material will promote the interests of the students in the subjects of study. [53H—54A] E

13. Government has plenary power under s. 5 to produce its own text-books in tune with the syllabi prescribed under s. 3. No private publisher can quarrel with it on the ground that his profit is affected or that the State sector acquires a monopoly in text book production. The legislature has empowered the State to do so and there is no vice of unconstitutionality whatever. The caveat built into s. 5 by the legislature is that it authorises Government to enter the text-book field as a monopolist "if it considers so to do." [54E-F] F

14. Nationalisation of the activity of preparation, printing or distribution of text-books is a serious step and resort to that measure calls for a policy judgment. [54G]

15. The Court should not sit in judgment over Government decisions in these matters save in exceptional cases. The law is complied with if Government has, before undertaking action under s. 5, bestowed consideration on matters of relevance which may vary from time to time and from subject to subject. Government may like to avoid expenditure from the public exchequer if books, inexpensive and qualitatively acceptable, are easily available. The decision is that of the Government and it has a wide discretion. Publishers have no right to complain, and if the mind of the Government has been relevantly applied to the subject, courts must keep their hands off. [55B-C] G H

Naraindas Indurkhya v. *State of M.P. & Ors.*, [1974] 3 SCR 624; Black's Legal Dictionary, p. 1386, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2062-2063/78.

Appeals by Special Leave from the Judgment and Order dated 20-9-78 of the Madhya Pradesh High Court in Civil Misc. Petition No. 403/78.

B *A. K. Sen, K. K. Adhikari, S. K. Gambhir* and *Miss B. Ramrikhyanai* for the Appellant.

N. C. Upadhaya, K. P. Gupta and *B. B. Tawakley* for Respondents 1-2.

The Judgment of the Court was delivered by

C KRISHNA IYER, J.—If King Midas suffered from the course of turning into gold everything he touched, Indo-Anglian legalism suffers from the pathology of making mystiques of simple words of common usage when they are found in the *Corpus Juris.* We cannot afford this luxury of legalistics, the besetting sin of law-in-action. This D acid comment is provoked by the prolonged debate carried on with logomachic dexterity in this appeal against a meticulous judgment where the semantic complexity and definitional intricacy of innocent words like 'syllabus', 'courses of instruction' and 'publish' and the procedural mechanics for prescribing text-books for secondary education set out in a fasciculus of sections have been investigated.

E Law, in a democratic, pluralist society spreads over vast spaces where the Constitution of developing countries, like ours, commands the State to adventure into a profusion of welfare measures and commits to the judicial process the interpretation of legislation, not to obfuscate but to objectify the meaning of enactments. The Justice F System ceases to be functional if courts do not make the technology of statutory construction serve the betterment of society. In Cardozo's lofty diction :

> "We may figure the task of the judge, if we please, as the task of a translator, the reading of signs and symbols given from without. None the less, we will not set men to G such a task, unless they have absorbed the spirit, and have filled themselves with a love, of the language they must read."(1)

If a broad and viable reading of statutory language were not adopted by Judges filled with the wish to make things work according to social H justice courts may be classed with the dinosaurs.

(1) The Nature of the Judicial Process by Benjamin N. Cardozo, p. 174.

The State of Madhya Pradesh, alive to its obligation to promote education in widest commonalty, with accent on quality and cost, among the impressionable generation, undertook the task of statutory regulation of teaching material for 'primary education', 'middle school education', and 'secondary education'. Then followed, in conformance with the rule of law, executive action, legislative measures, regulatory procedures and infra-structures, necessary for the incarnation of a State-directed but expert-oriented scheme of pre-university education. A painstakingly accurate and comprehensively detailed statement of the project, with an integrated analysis of the statutory provisions and erudite enunciation of the law, is found in the judgment of Bhagwati, J. in *Naraindas*(1), if we may say so with respect, that a repeat performance here again may be supererogatory. We read that ruling into this judgment by incorporations, as it were, and content ourselves with a skeletal projection of the legislation with special reference to the key sections, viz, ss. 3, 4 and 5 of the Madhya Pradesh Act No. 13 of 1973. Its title is Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhiniyam (hereinafter referred to, for short, as the 1973 Act).

The respondent before us who was the petitioner before the High Court—is a private publisher. It may be cynical to say that text-books are commodity for consumers of school education and there is big money in the trade especially when the private sector in the book business has been enjoying a ready market provided by the proliferation of schools and the obligatory purchase of text-books, once Government prescribes them. So, behind the veil of educational excellence formulation of syllabi and competent text-books is the vast profit pouring into private publishers. In our system, unalloyed public interest litigation, through organisations crusading in the field, is yet 'a consummation devoutly to be wished', and private vested interests are the vociferous ventriloquists of public causes. Democratic participation in the justice process gains reality only when popular organs blossom from the desert and enter the litigative oasis with fighting faiths.

Here the respondent successfully challenged before the High Court the validity of the prescription of the State's text-book for 'Rapid Reading', an item in the syllabus for secondary schools. Once Government books were chased out, the respondent filled the vacuum since prior to the entry of the State his book on the subject had admittedly been legally in vogue. The State has, by special leave, come up in appeal and secured a stay of operation of the judgment of the High

(1) *Naraindas Indurkhya* v. *State of Madhya Pradesh & Ors.* [1974] 3 S.C.R. 624.

A Court, and its books are back in circulation in the schools. A brief calendar of events shows that since the opening of schools this academic year Government text-books have been in use uptil now, barring for about a month between the judgment of the High Court and the stay ordered by this Court. This bears upon moulding the relief since the benign power under Art. 226 is a special instrument of justice B which, with flexible pragmatism and genius for equity inhibits social trauma even while upholding individual rights. The writ jurisdiction is geared to community good.

There is a trichotomy of school education in Madhya Pradesh as in many other States—Primary, Middle and Secondary. We are C concerned in this case with the text-book controversy for secondary schools. The Board of Secondary Education, Appellant No. 2, was constituted under Act No. 23 of 1965 which also conferred power on it to prescribe courses of instruction in such branches of secondary education as it deemed fit. Indeed, the Board was a functional entity with expert capability and entrusted with secondary education in its D many facets. Even the power to make regulations was given to the Board and it did make such regulations providing for appointment of Committees on Courses which, in turn, could lay down syllabi in the various subjects and recommend suitable text-books when required. The courses approved by the Committee went to the Board and when E sanctioned by the Board found their way in the printed prospectus which served as the guide-book for study and examination for the students. All that we need emphasise here is that the provisions of the 1965 Act and the regulations framed by the Board took good care of the Rule of Law as against behavioral caprice of administrative organs in this branch of education.

F

In 1973 the legislature enacted Act 13 of 1973, referred to earlier in this Judgment. The provisions of this Act form the basis of the powers claimed by the appellants and the nidus of rights of the respondent alleged to have been violated.

G The scheme of the statute runs as follows : Section 2 contains definitions and we are concerned particularly with s. 2(d) which tells us what the legislature means by the expression 'syllabi'. The Section also defines 'text-book', although there is not much quarrel about its connotation in the case before us. One of the basic disputes between the parties turns on the conceptual clarity of 'syllabi' as defined in H s. 2(d). Section 3 clothes the State Government and the Board with powers *vis-a-vis* laying down of syllabi. To narrow the scope of the dispute we may straightway state that s. 3(2) empowers the Board

to lay down 'syllabi' in the case of secondary education. We may have to take a close-up of this provision a little later. But suffice it to say for the present that the syllabus for 'Rapid Reading', which is the bone of contention before us, is within the province of the Board to lay down. A

We may vivify the discussion by quoting the provisions of direct concern in this case and they are ss. 2(d), 3 and 5. B

> "2. (d) syllabi" means a document containing courses of instructions for each standard of primary education, middle school education and secondary education; C
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> 3. (1) Subject to the provisions of sub-section (2) the State Government may, from time to time, in relation to primary education and middle school education and the Board may, from time to time, in relation to secondary education lay down syllabi and publish the same in such manner as may be prescribed. D
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> (2) The syllabi laid down under the authority of the State Government in the case of primary education and middle school education and by the Board, in the case of the secondary education and in force immediately before the appointed day shall be the syllabi laid down and published for the purpose of sub-section (1). E
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> 4. (1) The State Government may, by order, prescribe the text books according to syllabi laid down under section 3 : F
>
> Provided that text books for secondary education shall not be prescribed without prior consultation with the Board. G
>
> (2) The text books prescribed by the State Government or the Board according to the syllabi referred to in sub-section (2) of section 3 and in force immediately before the appointed day shall, till they are changed in accordance with the provisions of this Act, be the text books prescribed for the purpose of sub-section (1). H

(3) As from the appointed day, no books other than the text books prescribed under sub-section (1) or referred to in sub-section (2) shall be used in any approved school or recognised school for imparting instructions in accordance with syllabi in primary education, middle school education or secondary education.

5. The State Government may, if it considers it necessary so to do, undertake the preparation, printing or distribution of text books itself or cause the text books to be prepared, printed or distributed through such agency as it may deem fit on such terms and conditions as may be prescribed."

Section 2(d) conceptualises 'syllabi'; s. 3 statutorises the *modus operandi* for fixing the 'syllabus'. Once the syllabus is fixed, the follow-up is the prescription of text books in accordance with the syllabus. Section 4 makes the State Government, the competent authority, to prescribe text-books in accordance with the syllabus laid down under s. 3. Of course, even the provisions of text books for secondary education must be made by Government only after prior consultation with the Board. This is obviously intended to ensure the quality of the text books which sometimes suffers at the hands of unenlightened departmental officers or unheeding political bosses too hubristic to listen to experts in the field.

It is vital to notice that until valid prescription of text-books under s. 4(1) the books prescribed and in vogue immediately before the change shall continue; that is to say, the legislature has taken care to avoid a gap when there would be no text books for the students to study and take their examinations.

The scheme of s. 4 is for the State Government to prescribe text-books. This may be done in one of the two ways. Government may select from the private sector when text books are offered by publishers, if they satisfy quality control, price, social perspective and other relevant aspects. Indeed, many publishers compete in the text-book market because it assures purchasers and profit. However, for a variety of good reasons the State Government may consider it necessary to depart from the practice of picking and choosing from the private sector. May be, books are of sub-standard quality; may be, the paper on which they are printed or the manner and design may be unsatisfactory; may be the cost is such that the poor children may be

priced out. It may also be that Government thinks that more excellence and better educational direction may be imparted to the impressionable generation of students at the secondary school level by the public sector getting such text-books compiled in conformity with the syllabi laid down by the concerned authority. Section 5, therefore, makes it perfectly legitimate for the State Government to undertake the preparation, printing and distribution of text-books itself or cause them to be so done through such agency as it may deem fit and on such terms and conditions as may be prescribed. In short, the relevant provision creates a facultative public sector for text-book production and distribution. What is significant to note is that the departure from the private sector and the "nationalisation" of text-book manufacture may be undertaken only if the State Government "considers it necessary so to do". Once it comes to that judgment, the competence to deprive the private sector and entrust to the public sector is beyond challenge.

In the present case, one of the subjects of secondary education is "Rapid Reading". The syllabus has to be laid down in this behalf. Text-books need to be prescribed in conformity with the syllabi and then a decision has to be taken by the Government either to choose extant text-books from the private publishers or take over the operation itself if it considers it necessary so to do. The first appellant, in the present case, chose to exercise its power under s. 5 and produced the necessary text-book for "Rapid Reading" and distributed it among the students in many schools. Until then, the respondent's books were in use for "Rapid Reading". Naturally, when his customers vanished and his profit was extinguished he came up to the Court contending that the statutory exercise had not been carried out before preparing and distributing the text books under s. 5 and that, for that reason, the Government text-books had to be withdrawn as invalid and his books, instead, resuscitated for circulation.

The specific grounds of invalidation relied on by the Writ Petitioner are many and the long Judgment of the High Court has lavished discussion on these aspects. Counsel have sought to repeat the rival contentions before us. But we do not think that it is necessary to embark upon the labyrinthine details or prolix analyses which have engaged the learned Judges of the High Court. Nor do we think that extensive or intensive consideration of the decision in *Naraindas's case* (supra) is called for since its ratio is clear and does not come in for serious application in the present dispute. In this view, we proceed to specificate the precise issues pertaining to the decision as to whether

A the production and distribution of text-books by the State Government, on its own, is liable to be voided on the score of any fatal statutory infirmity.

The laying down of the syllabus is a condition precedent to the prescription of text-books, because the courses of instruction follow B upon and should be in conformity with the syllabus and text-books are in implementation of the courses of instruction. The first question that falls for consideration, therefore, is as to whether there has been a legally sustainable laying down of the syllabus for "Rapid Reading". If there has been, the second crucial issue of importance is as to whether the State Government has given consideration to the C availability of text-books in terms of the 'syllabi' with the publishers. If such publishers have offered their text-books, Government may consider them from many angles and reach a conclusion that it is necessary for the Government itself to undertake the preparation, printing and distribution of text-books in this regard or entrust these operations to a choosen agency. The question is whether such a D consideration had been bestowed by the Government as required by s. 5 before it produced and distributed the text-books compiled by itself among the students of the secondary schools. Assuming there is any breach, the next question is whether such non-compliance spells invalidation of the text-books altogether. Finally, assuming all the E points against the State Government, should the Court make a realistic appraisal of the situation as it exists currently and mould the relief appropriately so that the student community, which has to take the examinations in a couple of months or so, may not be obliged to switch text-books belatedly in taking their examinations. The ultimate concern of the judicial process is not to guarantee the profit of the private F producers or to condone every executive sin but, within statutory parameters, to promote the educational welfare of the student community.

The core of the controversy turns on whether there is statutorily solemnised syllabus at all under s. 3(2) of the 1973 Act and, whether the State has the facultative power to compile and distribute its own G text books under s. 5, even if there are private publishers in the field with ready-made text-books. This duplex challenge once disposed of, the other disputes do not merit much discussion. *Naraindas* (supra), heavily relied on by the respondent, is impeccable law but inapplicable here.

H True many points arise, according to counsel. But abbreviation, without amputation, does justice to the *lis* and avoids forensic prolixity, and so we turn the focus on these two points and, in the light of

our answers, structure the relief to promote the interests of the invisible and inarticulate student sector for whose sake the law was made. The real party, in many litigative battles under Art. 226, is the community whose processual participation is alien to the adversary system inherited from an individualistic legal culture. The judges are the guardians of that silent sector until our system of procedure is re-structured. This observation assumes prominence as we shape the remedy finally.

Section 3 as well as s. 5 must now come under the legal microscope. Before that, we must bestow attention on a preliminary plea which respondent's counsel, encouraged by his success at the High Court level, has urged before us. He argues that the mere mention of topics in bare outline, such as has been done here by the Board of Secondary Education, does not constitute 'syllabi' as defined in s. 2(d). To fulfil the statutory requisites, a syllabus for a subject must concretise and constellate courses of instruction, short of which it is no syllabus in the eye of law. If this be valid, no syllabus, no text-book; and no text-book, the *status quo ante;* and the book of the respondent being admittedly extant immediately before, it gains legal re-incarnation and all the students shall have to do 'rapid reading' of his book for which they must first buy them.

The Board is the legislative instrument for laying down the syllabi and must be presumed to possess academic expertise sufficient to understand what is a syllabus. Words of technical import whose signification is familiar for specialists in the field should not be petrified by courts based on verbalism. 'A little learning is a dangerous thing' and courts should not 'rush in', tempted by definitional attraction, where experts 'fear to tread'. Section 2(d) tells us that a syllabus is a document containing courses of instruction. A broad outline, a brief indication, a demarcation of the topic may well meet with lexical approval. Moreover, s. 2(d) speaks of a 'course of instruction'. This can be a bare outline, a bald mention of the matter and does not compel particularisation of details, even if it be desirable. That part is taken care of by the next step of prescription of text-books. A syllabus may helpfully give general features but may not cease to be so solely because only an outline is silhouetted. For instance, 'music' without more, is not syllabus, because it may range wildly from weird noises which make music among African tribes but to an Indian ear may offensively amount to 'sound and fury signifying nothing' to a concord of sweet sounds or continuous flow of micro-notes which thrills the West and the East. But if 'sitar' or 'violin' is mentioned it illumines, although it still leaves much for imagination to fill in a hundred details for instruction to be actually imparted in the class.

A 'Courses of Instruction' in s. 2(d) simply means the rubric for teaching, not more, although treacherous vagueness which disables text-book producers from responding to the Government by offering their books may be bad. It must be a syllabus of courses and so the courses must be spelt out with relevancy, even though with brevity. To
B exemplify again, 'Justice' is not enough, Indian Justice System may fill the bill. Brief may be, but not blank. While courts, will not surrender their decisional power to the vagarious experts non-interference by courts in fields of specialists, save in gross cases, is a wise rule of guidance. From this angle, we are not satisfied that for so elusive a subject as 'Rapid Reading', 'particularise or perish' should be
C the test. The absence of syllabus cannot defeat the case of the State. We stress, however, that, functionally speaking, the syllabus must tell the publishers and *pundits* in the concerned field sufficient to enable them to help Government under s. 4 to choose text-books. If this minimum is not complied with the court will use the lancet and issue an appropriate writ.

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Language permitting, the appropriate interpretational canon must be purpose-oriented. Therefore, the expression "syllabi" must be so interpreted as to fulfil the purpose of ss. 3 and 4 which means there must be sufficient information for those concerned to know generally what courses of instruction are broadly covered under the heading
E mentioned, so that they may offer text-books for such courses. If there is total failure here the elements of syllabi may well be held to be non-existent even though experts might claim otherwise. The law is what the Judges interpret the statute to be, not what the experts in their monopoly of wisdom assert it to be.

F Now we move on to s. 3 to verify what flaws vitiate the laying down of syllabi. In this case if we predicate the existence of syllabus the next ingredient is its publication "in such a manner as may be prescribed." Publication of the syllabus is thus essential under s. 3 and when confronted by this requirement, Shri A. K. Sen, counsel for
G the State, sought to construe that expression to mean communication by the Board to the Government or other concerned authorities. To publish, according to him, is to make known to those concerned. On the contrary, Shri Upadhyaya, counsel for the respondent, argued that "to publish" was more than to communicate to the Government Departments and really meant making known to the community or the
H concerned section of the community. Contextually speaking, we are satisfied that 'publication' means more than mere communication to concerned officials or Departments. To publish a news item is to

make known to people in general; "an advising of the public or making known of something to the public for a purpose" (Black's Legal Dictionary, p. 1386). In our view, the purpose of s. 3 animates the meaning of the expression 'publish'. 'Publication' is "the act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny.....an advising of the public; a making known of something to them for a purpose." Logomachic exercises need not detain us because the obvious legislative object is to ensure that when the Board lays down the 'syllabi' it must publish 'the same' so that when the stage of prescribing text-books according to such syllabi arrives, both the publishers and the State Government and even the educationists among the public may have some precise conception about the relevant syllabi to enable Government to decide upon suitable text-books from the private market or compiled under s. 5 by the State Government itself. In our view, therefore, "publication" to the educational world is the connotation of the expression. Even the student and the teaching community may have to know what the relevant syllabus for a subject is, which means wider publicity than minimal communication to the departmental officialdom.

If this view be sound, the State Government has failed to comply with the requisite of publication of the syllabus before prescribing the text-books. On that ground alone the order of the Government prescribing text-books must fail because the condition preceding such prescription, namely, publishing of the syllabi has not been complied with. We confine our observations only to the item relating to "Rapid Reading" so that there is no need for reopening other subjects and syllabi and to create chaos or uncertainty.

What should be the follow-up action that the Court should adopt in issuing the necessary direction on this finding that, for want of publication of the syllabus, the prescription of text-books even under s. 5 must fail ?

Necessarily publication is important and we should insist that the State Government should not dismiss it as a ritual of little moment. As we have earlier indicated, but may repeat for emphasis that there is an object in publishing the syllabi and this public purpose will be stultified to the prejudice of the school-going community if the syllabi are not made known to the public generally. Only when they come to know about the syllabi prescribed, representatives in the educational field or in the public sector may be able to tell the State Government what type of text-books are available, what kinds of books will make for excellence in teaching and what manner of material will promote

A the interests of the students in the subjects of study. If there are existing text-books, Government may give consideration for them or may invite opinion of experts on their worth. Government may pay attention to the cost of the books so made available, their readability, their design and arrangement, the impression that they may produce on the B plastic minds and a host of other factors. All these possibilities may be frustrated if the syllabi are not published.

What has been done in the present case by the State Government is to exercise its power under s. 5 to prepare, print and distribute text-books of its own compilation. Certainly, this is well within the power C of Government under s. 5. To dispel misapprehension we emphasise that no private publisher has a right under s. 4 that his text-book shall be prescribed or necessarily considered by Government. No such right as is claimed by the respondent-publisher has, therefore, been violated by the State Government. We upset Government's text-books, not because the respondent-publisher has a right to have his books D necessarily considered by the Government, but because the syllabi have not been published prior to the prescription of text-books.

We must erase another possible confusion. Government has plenary power under s. 5 to produce its own text-books in tune with the syllabi prescribed under s. 3. No private published can quarrel E with it on the ground that his profit is affected or that the State sector acquires monopoly in text-book production. The legislature, in its wisdom, has empowered the State to do so and there is no vice of unconstitutionality whatever. But there is a *caveat* built into s. 5 by the legislature. Before the State Government undertakes the preparation, printing or distribution of text-books or causes them to be so F done by any other agency, it must bestow appropriate attention on the wisdom of the policy in the given circumstances. Section 5 authorises Government to enter the text-book field as a monopolist "*if it considers it necessary so to do.*" These are weighty words and cannot be slurred over. Nationalisation of the activity of preparation, printing or distri-G bution of text-books is a serious step and resort to that measure calls for a policy judgment. Government must consider it necessary so to do and this consideration must imply advertence to relevant factors. Myriad matters, material to a right decision, may be thought of since books are more than collection of information but mental companionship for good or evil. School children require uplifting books, not H such as pollute their minds or inject prurience. Their creativity must be kindled and not stifled. The presentation of subjects must be appetising, not inhibiting. The cost must be within the means of the

poor Indian parent. Availability of sufficient number of books within easy reach so as to avoid a scarcity situation may be yet another criterion. Indeed, it is beyond exhaustive enumeration to catalogue the considerations. We do not think that the Court should sit in judgment over Government decisions in these matters save in exceptional cases. The law is complied with if Government has, before undertaking action under s. 5, bestowed consideration on matters of relevance which may vary from time to time and from subject to subject. We need hardly say that Government may like to avoid expenditure from the public exchequer if books, inexpensive and qualitatively acceptable, are easily available. The decision is that of the Government and it has a wide discretion. Publishers have no right to complain, and if the mind of the Government has been relevantly applied to the subject, courts must keep their hands off.

The construction we have put upon s. 5 gives Government power which is also a responsible power. Indeed, all public power is a public trust and in that spirit ss. 4 and 5 must be executed. On this basis, the direction that we give is that the State Government will publish, under s. 3, the syllabus for 'Rapid Reading' as a first step. Thereupon, representations from any relevant quarters, if received, will be considered under s. 4 so as to reach a decision on the prescription of the text-books according to the syllabus. This decision may be either to choose some text-books available in the field or to compile text-books on its own. If the decision is the latter, Government is perfectly free to undertake preparation, printing and distribution.

It may be right to caution the State while choosing text-books from the private sector or preparing such books on their own to remember the vital constitutional values of our nation. Social justice is the corner stone of our Constitution. Freedom of expression is basic to our democratic progress. The right to know, awareness of the implications of a sovereign, secular, socialist republic and its membership and the broad national goals incorporated in the Constitution are fundamental. When education is a State obligation, when prescription of syllabi and text-books falls within the governmental function, when the constellation of values mandated by the Constitution is basic to our citizenship, the play of ss. 3, 4 and 5 must respond to this script. Instruction at the secondary school level must be promotional of these paramount principles. Ultimately, it is Youth Power that makes for a Human Tomorrow. The felt necessities of our cultural integration and constitutional creed are fostered essentially at the school level. Books are not merely the best companions but make or mar the rising generation.

A We have reached the final. What remains is to crystallise the conclusions and to formulate the directions. The syllabus for 'rapid reading' is not bad as falling short of definitional needs, although it is desirable for the Board to be more expressive when laying it down. Wilful vagueness in syllabi will invite an adverse verdict. 'Rapid
B Reading', as a rubric, in itself, somewhat slippery as a substantive topic and so the syllabus for it also may share that trait. The new plea urged specifically for the first time at the argument stage in this Court (and controverted by the State) that no syllabus has been laid down, as a fact, for 'Rapid Reading' is too late to be permitted.

C The syllabus for 'Rapid Reading' suffers invalidation under s. 3 because it has not been *published*. The publication must precede the prescription of text-books under s. 4 or their preparation under s. 5. Here the case of the State show that the syllabus was published only on June 30, 1978, while the text-books were prescribed in October 1977. So ss. 3 and 4 have been breached and a fresh decision by Government
D prescribing text-books for 'Rapid Reading' must be taken.

We are not disposed, even as in the case of the plea of no syllabus for 'Rapid Reading', to consider the nascent discovery of Sri Upadhyaya, counsel for the respondent, that the two text-books prescribed for 'Rapid Reading' were not even in printed existence
E when they were prescribed. Judicial proceedings, especially at the earlier stages, should not ordinarily be allowed to become the scene of newly discovered points of contention. There is no substitute for proper briefs and good home-work. Never can controverted facts he raised *de novo* here. We disallow the contention of non-existence of text-books in print or otherwise, when they were prescribed.

F Reverting to the project of providing for the future course of action and to obviate the untowardness of a void in the syllabus and text-books, we hold that the State Government shall take a fresh decision under ss. 4 and 5 read together. If publishers of text-books or *pro-bono publico* representationists communicate relevant matters bearing
G on the selection of text-books and the wisdom of the State itself undertaking the task, Government will give thought to them. There is no need to wait idefinitely for such representations. If *within one month from now* they are received, their merits will be examined departmentally. If, thereafter, Government considers it proper to take over the text-book business under s. 5 it is free to do so. We make it clear that the
H private sector has no "right" and Government's jurisdiction is wide although the State need not be allergic to private publishers if books of excellence, inexpensive and well-designed, are readily available.

These directions take care of the future. But what about the current academic year? To change horses mid-stream may be disastrous. Throughout the better part of the year, except for around a month, Government text-books have been in use. The examinations are impending. To harass the young alumni by putting them through fresh books of the respondent (though in circulation last year) is an avoidable infliction. Therefore, for the nonce, Government books for 'Rapid Reading' will continue in this year's classes. We direct so. Before the next academic year begins, Government will *decide,* under ss. 4 and 5, on preparing text-books itself or selecting from the private sector. This will be done *on or before March* 31, 1979. If the decision taken is either way, the books shall be well-stocked *by the end of May.*

We allow the appeal in part and dismiss in part and as a corollary, ing dates and months but governmental processes are often 'paper-logged'. The fear that the State Government may not be sufficiently conscious of the due priority to be given to the tasks now set before it has persuaded us to issue these time-bound directions.

We allow the appeal in part and dismiss in part and as a corollary, order the parties to bear their costs throughout.

N.V.K. *Appeal allowed in part.*