A

# J. MOHAPATRA & CO AND ANOTHER

*v.*

# STATE OF ORISSA AND ANOTHER

B

*August 10, 1984*

[P. N. BHAGWATI AND D. P. MADON, JJ.]

*Education laws and rules—Books for general reading in Schools and colleges libraries, and text books selection of by administrative instructions—*
C *Challenge to the Constitution of Sub-Committee and the method of selection adopted—Whether can be made by a person who has neither submitted any book or by a person who has submitted his books for selection, out of which a few books only has been selected—Doctrine of locus standi—Justification of State's action in constituting a Committee—Doctrine of bias—Whether an author-member can be a member of any such committee or sub-committee—*
D *Rule of Doctrine of necessity, explained—Sufficiency of guidelines continued Contained in—Resolution of the Government dated November 24, 1983—Guidelines prescribed by the Supreme Court.*

Selection of text-books and books for reading to be kept in school and college libraries is a matter of vital importance to the imparting of
E proper education. Such selection must depend upon the ability and fitness for the purpose of those who are charged with that responsibility. In the State of Orissa, there was no statutory rule or regulation prescribing the procedure for selection of books for general reading to be kept in school and college libraries, except the State Government's periodical administrative instructions in the form of resolutions constituting committees namely, an
F Assessment Sub-Committee, a Distribution Sub-Committee and a Purchase Committee to which Government officials as well as non-officials were appointed as members. The procedure followed was that each year the Member-Secretary of the Purchase Committee would call upon publishers and authors by advertisements given in local newspapers to submit books
G for consideration. The Assessment Sub-Committee could then consider the books so submitted and thereafter recommend a list of books which, according to it, were suitable for general reading by school and college students. The Purchase Committee would consider the recommendations made by the Assessment Sub-Committee prepares a final list and submit it for approval to the State Government which could reject any book out of
H the list so submitted without giving any reason. The decision of the State

Government regarding the assessment, selection purchase and distribution of books was made final. A

The selection of the books for the years 1980, 1981 and 1982 was made in this fashion. Admittedly, some of the members of the Assessment Sub-Committee were themselves authors of books and some of the books written by them were selected and purchased. The Purchase Committee B restricted the list for the years 1980, 1981 and 1982 to 466 books out of 1,718 books submitted for selection, but as further funds became available the Government decided to select more books and accordingly a committee constituted under the Chairmanship of Director of Public Instruction (Schools), Orissa, selected a supplementary list of 105 books out of the said 1,718 books which had been submitted for selection. C

Before further steps could be taken, in the unprecedented floods and cyclones of August/September 1982, number of schools and colleges suffered in the calamity and the libraries of many schools and colleges were washed away. The Central Government thereupon, as part of its relief programme for the State, gave grants to the State during February and March, 1983 D aggregating to Rs. 45 lakhs for the purchase of books for the libraries of non-governmental schools and colleges and to be utilised before June 1983. Due to Paucity of time and delay in the normal process of selection of books, the State Government took a decision or April 5, 1983 to utilise the grant made by the Central Government by purchasing books out of the E books selected for the years 1980, 1981 and 1982 and the said supplementary list of 105 books. In the meeting convened on April 13, 1983, to consider the selection of books to be purchased, all the 466 books selected for the years 1980, 1981 and 1982 together with the 105 supplementary list of books were approved.

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Thereupon, the appellants who were publishers filed a Writ Petition under Article 226 of the Constitution against the State of Orissa and the Director of Public Instruction, Orissa to quash the list of books selected for the years 1980, 1981 and 1982 and the State Government's said decision with respect to purchasing books out of the cyclone and flood relief grant made by the Central Government, *inter alia* on the ground of bias on the part of some of the members of the Assessment Sub-Committee G whose books were submitted for selection. This Writ Petition was heard along with a similar Writ Petition filed by the Orissa Publishers and Book Sellers Association. The High Court by a common judgment delivered on August 10, 1983 dismissed both these Writ Petitions. Hence the appeals by Special Leave of the Court.

Allowing the appeal, the Court H

A HELD : 1. The law with respect to *locus standi* has considerably advanced both in this country and in England and in the case of public interest litigation it is not necessary that a petitioner should himself have a personal interest in the matter. Merely by submitting books for selection, of which some might have been selected, a person cannot be said to have waived the objection which he may have to the constitution of the committee which selects the books. Similarly, merely because a person does not submit any book for selection, it cannot, be said that he is not a person aggrieved. [331 E; D]

2. In the absence of any statutory rule or regulation with respect to selection of books and the selection being made each year as an administrative measure it was open to the State Government to change both the constitution of the committee and sub-committees as also the procedure for selecting books to be purchased. Since the procedure normally adopted by the State Government would have taken more time than what the time bound grant of the Central Government would have permitted, the State Government was justified in convening the meeting on April 13, 1983 and selecting the books to be purchased from the Central Government grant. [331 G-H]

3:1. *Nemo judex in causa sua*, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing *in camera*. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. The principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings. [332 G-H]

*A. K. Kraipak and others* v. *Union of India and others*, [1970] 1. S.C.R. 457, followed.

3:2. A person who has written a book which is submitted for selection either by himself or by his publishers, is interested in the matter of selection and therefore an author-member should not be a member of any such committee or sub-committee for several considerations namely : (a) Authors stand to benefit financially in several ways by getting either royalty from the publishers or by direct sales ; (b) Though an author-member may be only one of the members of the Assessment Sub-Committees and that the ultimate decision of selection may rest with the State Government which may reject any book out of the list of the approved books, normally the State would be guided by the list of books approved by the Assessment Committee ; (c) The author-member can certainly influence the minds of the other members against selecting books by other authors in preference

to his own ; (d) Books by some of the other members may also have been submitted for selection and there can be between them a *quid pro quo* or, in other words you see that my book is selected and in return I will do the same for you. In either case, when a book of an author-member comes up for consideration, the other members would feel themselves embrassed in frankly discussing its merits ; (e) Such author-member may also be a person holding a high official position whom the other members may not want to displease ; and (f) Though it may be that the other members may not be influenced by the fact that the book which they are considering for approval was written by one of their members, whether they were so influenced or not would, however, be a matter impossible to determine. It is not, therefore, the actual bias in favour of the author-member that is material but the possibility of such bias. [333 F-H; 334A-G]

4 : 1. The doctrine of necessity is, however, an exception to the doctrine of bias, that no man shall be a judge in his own cause. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases, the principal of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. [334 H; 335 A-B]

*The Judges* v. *Attorney-General for Saskatchewan*, 53 The Times Law Reports 464 (1937) quoted with approval.

4:2. In the instant case, the High Court wrongly applied the doctrine of necessity to the author-member of the Assessment Sub-Committee. Though the members of this Sub-Committee were appointed by a Government resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of the Government of Orissa, and the Director, Higher Education, etc., there was, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such non-official author-members from resigning from the committee on the ground of their interest in the matter. [335 C-E]

5:1. The High Court, however, was justified in refusing to grant any relief in respect of the books selected for the year 1980, 1981 and

A 1982 inasmuch as the books selected for those years had already been purchased. Since a similar *fait accompli* stared at the Supreme Court not only in respect of the books selected and purchased for those years, but also with respect to the books selected to be purchased from the Central Government grant, in the instant fase, the Court could lay down only certain guide-lines to be followed in future in selecting not only books for libraries B in educational institutions but also in prescribing text-books and in constituting committees for these purposes. The Supreme Court accordingly laid down such guidelines. [335 F-H]

5:2. However, the guide-lines laid down by a court can only ensure the selection of worthwhile books. This must necessarily depend C upon the social consciousness and moral fibre of the members of the committee. Further, no judgment of a court can eliminate the evil of behind—the scene influence. Here, one must perforce trust the sense of responsibility of the members of the committee in the discharge of the important duty with which they are entrusted. [338 B-C]

D 6:1. Clause 8 of the Government resolution dated November 24, 1983, issued after the grant of Special Leave Petition to Appeal does not satisfy the principle of natural justice and fair play. Since several books would come up for consideration before the committee, one or more of them by one of the member and the other or others by some of the other members, mere non-participation in the discussion by the member concerned E or even his withdrawing from the deliberations of the committee while his or her book or books are being considered is not sufficient because the evil of *quid pro quo* cannot be eliminated by such a resolution. Members deliberating would bear in mind that the turn for selecting their books would also come and the concerned member who had not participated or had withdrawn would not then be favourably inclined to select their books. F [336 B; E-G]

6:2. Many a person falls a victim to the disease called *cacoethes scribendi*. It would, therefore, be unfair to prohibit publishers from submitting books for selection merely because they had at one time published a G book written by any one of the members of the committee or sub-committee concerned with the selection of books. The number of publishers is large but good publishers are few and such publishers will, therefore, be publishing the majority of books. To lay down such a guide-line would be to eliminate a large number of books which may be worthy of selection. [337 A-C]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10026 of 1983.

From the Judgment and Order dated the 10th August, 1983 of the Orissa High Court in O. J. C. No. 1239 of 1983. A

*Vinoo Bhagat* for the appellants.

*K. Parasaran*, Attorney General and *R. K. Mehta* for the respondents. B

*Bharati Anand* for the respondent.

The Judgment of the Court was delivered by

MADON, J. The destiny of a nation rests with its youth. As we shape its mind and mould its character, so do we fashion our country's progress, prestige and prosperity. Wordsworth truly said, "The Child is father of the Man", and Alexander Pope was equally right in saying in the first of his 'Moral Essays'—'Epistle I to Sir Richard Temple, Lord Cobham' : C D

"Tis Education forms the common mind,
Just as the Twig is bent, the Tree's inclin'd."

It is, therefore, essential for a country to have a proper educational system. The general pattern of education in our country is, however, the traditional one of studying from prescribed text-books, attending lectures based on such books and answering questions in examinations set from them. The study of text-books is often supplemented by reading books which are kept in school and college libraries. These books may be on various subjects—literature, history, art, science, geography, and even works of fiction. General reading is as essential for a student as it is for any man, for it is reading which broadens the mind and widens the horizon. It was for this reason that Bacon said in his essay, 'Of Studies', "Reading maketh a full man", General reading is, therefore, as important as studying from prescribed text-books if the students of today are to become worthy citizens of tomorrow. E F G

The selection of these books—both text-books and books for general reading to be kept in school and college libraries—is thus a matter of vital importance to the imparting of proper education. Such selection must necessarily depend upon the ability and fitness for the purpose of those who are charged with that responsibility. This question has come up for our consideration in this Appeal by Special Leave from the judgment and order of the High Court of H

A Orissa dismissing, with no order as to costs, the petition under Article 226 of the Constitution filed by the Appellants.

There does not exist any statutory rule or regulation in the State of Orissa prescribing the method for selection of books for general reading to be kept in school and college libraries. The B State Government, however, periodically issues administrative instructions in the form of Government Resolutions constituting committees and laying down the procedure for selecting books. Broadly speaking, three committees are constituted, namely, an Assessment Sub-Committee, a Distribution Sub-Committee and a Purchase C Committee. Government officials as well as non-officials are appointed as members on these committees and sub-committees. Each year the State Government makes available a specific sum for purchase of books for libraries to be distributed among individual schools and colleges. The procedure followed is that each year the Member-Secretary of the Purchase Committee calls upon publishers D and authors by advertisements given in local newspapers to submit books for consideration. The Assessment Sub-Committee then considers the books so submitted and thereafter recommends a list of books which, according to it, are suitable for general reading by school and college students. The Purchase Committee considers the recommendations made by the Assessment Sub-Committee and E prepares a final list. It is open to the State Government to reject any book out of the list so submitted without giving any reason and the decision of the State Government regarding the assessment, selection, purchase and distribution of books is made final. Though a separate Government Resolution is issued each year, by and large the same pattern and procedure are maintained and only a few F committee and sub-committee members are changed and new members appointed in their place. The selection of books for the years 1980, 1981 and 1982 was made in this fashion. Admittedly, some of the members of the Assessment Sub-Committee were themselves authors of books and some of the books written by them were selected and purchased. The annual grant sanctioned by the G State Government fer this purpose for the years 1980, 1981 and 1982 was Rs. 5,00,000. So far as the year 1982 was concerned, this annual grant fell short of the requirement by almost 50 per cent. Accordingly the Puachase Committee restricted the list of 466 books out of 1,718 books submitted for selection, but as further funds became available the Government decided to select more books and accordingly constituted a Committee under the H Chairmanship of Director of Public Instruction (Schools), Orissa.

This Committee selected a supplementary list of 105 books out of the said 1,718 books which had been submitted for selection. A

There were unprecedented floods and cyclones in the months of August and September 1982 and a large number of schools and colleges suffered in this calamity and the libraries of many schools and colleges were washed away. The Central Government thereupon, as part of its relief programme for the State, gave grants to the State during February and March 1983 aggregating to Rs. 45,00,000 for the purchase of books for the libraries of non-governmental schools and colleges. This was a time-bound grant to be utilized by June 1983. For this reason, the State Governme felt that it was not feasible to adopt for selection of books the procedure usually followed as it took a considerable time and, therefore, took a decision on April 5, 1983, to utilize the grant made by Central Government in purchasing books out of the books selected for the years 1980, 1981 and 1982 and the said supplementary list of 105 books. Accordingly, a meeting was convened on April 13, 1983, to consider the selection of books to be purchased. There is some controversy with respect to who convened the said meeting, who were present at that meeting and what transpired in that meeting, but we find it unnecessary to go into this controversy. Suffice it to say that books out of those selected for the years 1980, 1981 and 1982 and the said supplementary list were selected at this meeting. B C D E

Thereupon the Appellants who are publishers filed a petition under Article 226 of the Constitution against the State of Orissa and the Director of Public Instruction, Orissa, to quash the lists of books selected for the years 1980, 1981 and 1982 and the State Government's said decision with respect to purchasing books out of the cyclone and flood relief grant made by the Central Government *inter alia* on the ground of bias on the part of some of the members of the Assessment Sub-Committee whose books were submitted for selection. This writ petition was heard along with a similar writ petition filed by the Orissa Publishers and Book Sellers Association. The High Court by a common judgment delivered on August 10, 1983, dismissed both these writ petitions and made no order as to the costs thereof. It is against this judgment and order of the Orissa High Court that the Appellants have approached this Court by way of Appeal by Special Leave. F G

The High Court rested its decision on the following five H

A grounds, namely :

(1) For the year 1980-81, the First Appellants, a partnership firm, had not submitted any book persuant to the advertisemen issued by the State Goeernment. For the year 1981-82, it had submitted twenty-four books out of which one was selected. For B the year 1982-83, it had submitted twenty-nine books out of which six were selected. Having submitted books for selection and after being either partially successful in getting some books selected or having failed in getting books submitted by it selected, the First Appellant could not impugn the selection of books on the ground of bias on the part of the members of the Assessment Sub-Commi- C ttee. The Second Appellant had not submitted any book for selection pursuant to the advertisement in this behalf issued by the State Government for any of the years in question and, therefore, was not a "person aggrieved" by any of the selections made for those years.

D (2) Considering the exigency of the situation, the procedure followed by the State Government in setting up a committee for the selection to be made for purchase of books from the grant made by the Central Government was neither arbitrary nor against publi interest inasmuch as the procedure usually followed was laid down only by executive directions and was not a statutory procedure and could, therefore, be changed by the State Government.

(3) The final decision approving the selection of books was that of the State Government for it had the right to reject any book recommended by the Assessment Sub-Committee and, therefore, the fact that some members of the Assessment Sub-Committee had also F submitted their books for approval did not matter for the role played by an individual member of the Assessment Sub-Committee was insignificant and did not and could not influence the decision either of that Sub-Committee or of the State Government.

( 4) The presence of Government officials as members of the G Purchase Committee and the two Sub-Committees was required by the Government Resolution constituting the Committees and Sub-Committees and the fact that some of these Governmental officials had also submitted books for selection could not invalidate the selection made on the ground of bias for the doctrine of necessity applied in their case.

H (5) No relief could be granted in respect of the books selected

for the years 1980, 1981 and 1982 inasmuch as the books selected for those years had already been purchased. A

We are unable to follow the reasoning behind the first ground upon which the High Court rested its decision. It appears to us paradoxical that when a person has submitted books for selection, it is to be said that he has waived the objection which he had to the constitution of the Sub-Committee and that when a person had not submitted any books for selection it is to be said that he is not a 'person aggrieved'. To say so would be a contradiction in terms. If the reasoning of the High Court were correct, the *sequitur* would be that nobody would be able to challenge any selection of books, for a person who challenges the selection must either be one who has submitted a book or books for selection or one who has not submitted any book for selection. In our opinion, the High Court was not right in the view it took. Merely by submitting books for selection of which some might have been selected, a person cannot be said to have waived the objection which he may have to the constitution of the committee which selects the books. Similarly, merely because a person does not submit any book for selection, it cannot be said that he is not a person aggrieved. Today, the law with respect to *locus standi* has considerably advanced both in this country and in England and in the case of public interest litigation it is not necessary that a petitioner should himself have a personal interest in the matter. It is unnecessary to refer to the decisions of this Court on the point or to dilate further upon it. We may, however, mention that at the hearing of this Appeal before us this ontention was not raised on behalf of the Respondents. B C D E

So far as the second ground given by the High Court for arriving at its decision is concerned, we are in agreement with the view which it took. There were no statutory rules or regulations with respect to selection of books and the selection was done each year as an administrative measure. It was, therefore, open to the State Government to change both the constitution of the committee and sub-committees as also the procedure for selecting books when books had to be purchased from the grant given by the Central Government. The grant given by the Central Government had to be expended within a particular period. The procedure normally adopted by the State Government would have taken more time than what the time-bound grant of the Central Government would have permitted. The State Government was, therefore, justified in setting up a committee for selecting books to be purchased from F G H

A the Central Government grant in the manner in which it did. There is, however, some controversy as regards the fact whether any publishers were present at the meeting of that committee. According to the Appellants, some publishers were present at that meeting and took part in the deliberations. According to the counter affidavit filed by the President of the Orissa Publishers and Book-Sellers B Association, a representative of that Association was called in at the end of that meeting to ascertain whether the said Association was prepared to shoulder the responsibility for arranging the timely supply of books and the said representative did not take part in the proceedings of the said meeting nor was he present at the deliberations thereof. A copy of the minutes of the said meeting which C has been annexed to the Petition for Special Leave to Appeal filed by the Appellants bears out this fact. According to the said minutes, it was decided at the said meeting that the publishers would prepare a list of books to be supplied to different schools in different lots within the amount sanctioned for each category of schools and that the total number of books for each title would be almost equal and D that the publishers would submit the list of such books for approval at the level of the directorate. It is further recorded in the said minutes that the said Association would take the responsibility of supplying the books in packets in the office of the concerned authorities by the specified dates. The urgency of the situation E demanded that the books which were selected should be available for supply and, therefore, there could not be anything wrong in asking a representative of the said Association to remain present.

It is, however, unnecessary to go further into this controversy for the real question in this Appeal is of far greater importance. That is the question of bias on the part of some of the members F of the Assessment Sub-Committee. This question has been answered against the Appellants and forms the subject-matter of the third and fourth grounds on which the High Court rested its decision. *Nemo judex in causa sua*, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice G should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing *in camera*. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative H proceedings. The position in law has been succinctly stated in

Halsbury's Laws of England, Fourth Edition, Volume 1, Para 68, as folws : A

> "*Disqualification for financial interest*—There is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating. Membership of a company, association or other organisation which is financially interested may operate as a bar to adjudicating, as may a bare liability to costs where the decision itself will involve no pecuniary loss." B

In the case of *A.K. Kraipak and others* v. *Union of India and Others*,(1) a list of State Forest Officers prepared by the Selection Board for appointment to posts in the senior and junior scales in the Indian Forest Service was set aside by this Court on the ground that the officiating Chief Conservator of forests, whose name was placed at the top of the list, was a member of the Selection Board even though he was not present at the time his name was considered for selection and even though the Selection Board was a recommendatory body and the list prepared by it was to be considered first by the Home Ministry and then by the Union Public Service Commission by whom the final recommendations were to be made. The Court held that the rule that no man should be a judge in his own cause was a principle of natural justice and applied equally to the exercise of qaasi judicial as well as administrative powers. C D E

In hardly requires any argument to show that a person who has written a book which is submitted for selection, either by himself or by his publisher, is interested in the matter of selection. Authors get their books published by publishers or may themselves publish them. In either case, they stand to benefit financially. In the first case, by getting royalty from publishers and in the second case, by making profits on the sale of books if the amount realized exceeds the cost of publication, or if the sales are not to that extent, by reducing the cost incurred in the publication of the book. The Appellants have filed statements showing the financial benefit which accrued to those members of the Assessment Sub-Committee whose books were selected. To give one instance from these statements, in the case of a member of the Assessment Sub-Committee who was a Government official and whose books were selected, books of the F G

(1) [1970] 1 S. C. R. 457, H

A aggregate value of Rs. 4,000 were purchased in the year 1980, of the aggregate value of Rs. 6,500 in the year 1981, and of the aggregate value of Rs. 72,500 in the year 1982. It was contended in the counter affidavit filed on behalf of the Respondents that the amount of royalty received by these member-authors was not much. This fact is immaterial. The amount of royalty depends on the agree-
B ment between the author and the publisher as also upon the sale price of the book. The fact, however, remains that by the books being selected and purchased for distribution to school and college libraries the sales of those books had gone up and correspondingly the royalty received by the author-members also went up and such
C author-members thus received financial benefit. It is no answer to say that an author-member is only one of the members of the Assessment Sub-Committee and that the ultimate decision rests with the State Government which may reject any book out of the list of approved books. A similar argument was rejected by this Court in *Kraipak's* case. The State Government would normally
D be guided by the list approved by the Assessment Sub-Committee. Further, to say that such author-member is only one of the members of the Assessment Sub-Committee is to overlook the fact that the author-member can subtly influence the minds of the other members against selecting books by other authors in preference to his own. It can also be that books by some of the other members may also
E have been submitted for selection and there can be between them a *quid pro quo* or, in other words, you see that my book is selected and in return I will do the same for you. In either case, when a book of an author-member comes up for consideration, the other members would feel themselves embarassed in frankly discussing its merits. Such author-member may also be a person holding a high
F official position whom the other members may not want to displease. It can be that the other members may not be influenced by the fact that the book which they are considering for approval was written by one of their members. Whether they were so influenced or not is, however, a matter impossible to determine. It is not, therefore, the actual bias in favour of the author-member that is material
G but the possibility of such bias. All these considerations require that an author-member should not be a member of any such committee or sub-committee.

There is, however, an exception to the above rule that no men shall be a judge in his own cause, namely, the doctrine of
H necessity. An adjudicator, who is subject to disqualification on the

ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. Thus, in *The Judges* v. *Attorney-General for Saskatchewan*,(1) the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King's Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the Income-tax Act, 1932, of Saskatchwan on the ground that they were bound to act *ex necessitate*. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. The High Court, however, wrongly applied this doctrine to the author-members of the Assessment Sub-Committee. It is true, the members of this Sub-Committee were appointed by a Government Resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of the Government of Orissa, and the Director, Higher Education, etc. There was, however, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its Resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such non-official author-members from resigning from the committee on the ground of their interest in the matter.

A B C D E

So far as the fifth and last ground on which the High Court rested its decision is concerned, it must be held that the High Court was justified in refusing to grant relief on this ground in respect of the books selected for the years 1980, 1981 and 1982. We are also faced with a similar *fait accompli* as the High Court was, not only in respect of the books selected and purchased for those years but also with respect to the books selected and to be purchased from the Central Government grant because these books have also by now been purchased and distributed among the various school and college libraries. All that we can, therefore, do in this Appeal is to lay down guide-lines which should be followed in the future in selecting not only books for libraries in educational institutions but

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(1) 53 The Times Law Reports 464. (1937)

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also in prescribing text-books and in constituting committees for these purposes.

It was, however, submitted on behalf of the Respondents that it was not necessary for this Court to lay down any guide-lines inasmuch as after the Special Leave to Appeal was granted in this case, the State Government had issued a fresh Government Resolution dated November 24, 1983, whereby it constituted a new Purchase Committee and Assessment Committee consisting of Government officials and non-official members, clause (8) of which Resolution satisfied the principles of fair play and natural justice by eliminating the possibility of any author-member of the committee influencing author-members in selecting his book. Clause (8) of the said Resolution reads as follows :

> "No member of the Purchase/Assessment Committee shall remain present in discussion while considering a book in which he/she is interested as author/editor/publisher."

In the alternative, it was submitted that if the Court desires to lay down guide-lines, it should do so by adopting clause (8) of the said Government Resolution dated November 24, 1983.

We are unable to accept either of the above two submissions. Several books would come up for consideration before the committee, one or more of them by one of the members and the other or others by some of the other members. Mere non-participation in the discussion by the member concerned or even his withdrawing from the deliberations of the committee while his or her book or books are being considered is not sufficient because the evil of *quid pro quo* cannot be eliminated by this. Members deliberating would bear in mind that the turn for selecting their books would also come and the concerned member who had not participated or had withdrawn would not then be favourably inclined to select their books.

It was suggested on behalf of the Appellants that in laying down the guide-lines we should provide that if a publisher has published a book written by one of the members of the committee or sub-committee concerned with the selection of books, such publisher should not be permitted to submit any book for selection even though no book by that author-member had been submitted for selection. It was urged that in such a case the author-member would be favourably inclined to select or approve the book of that publisher in order

to maintain good relations with him. We find this suggestion to be unrealistic. Many a person falls a victim to that disease which Jnvenal called *cacoethes scribendi* (the writer's itch), for as Byron said in his 'English Bards and Scottish Reviewers' :

> "'Tis pleasant, sure, to see one's name in print;
> A book's a book, although there's nothing in't."

It would, therefore, be unfair to prohibit publishers from submitting books for selection merely because they had at one time published a book written by one of the members of the committee or sub-committee concerned with the selection of books. The number of publishers is large but good publishers are few and such publishers will, therefore, be publishing the majority of books. To lay down such a guide-line would be to eliminate a large number of books which may be worthy of selection.

In the light of the above discussion we lay down the following guide-lines to be adopted by the State Government, governmental authorities and all committees constituted for the selection to text-books as also books for libraries of educational institutions whether such committee be called a committee or sub-committee or be described by some other nomenclature :

(1) The committee should not consist merely of Government officials or have a preponderance of Government officials on it, for Government officials, with few exceptions, have by and large only administrative experience. In addition to Government officials, therefore, the committee should also consist of men eminent in the particular fields of knowledge for which the books are to be selected. Non-official members should not be appointed as a matter of political patronage or out of political considerations or on party lines but should be appointed only on merit.

(2) No member of the committee, a book written or edited by whom is submitted either by himself or his publisher for approval or selection; should continue to remain a member of the committee. If he is a non-official member, he should submit his resignation from the committee on this ground. If he is a Government official, he should intimate to the Government or the authority appointing him on that committee the fact that a book written or edited by him has been submitted for approval or selection and the Government or the concerned authority should substitute in place

A of such member another person, whether official or non-official, none of whose books has been submitted for approval or selection.

(3) No publisher of books or his representative should be appointed a member of the committee or be allowed to remain present at or participate in the deliberations of the committee.

B

The guide-lines we have laid down above are not intended to be exhaustive but contain the bare essentials of what is required. We are conscious that no guide-lines laid down by a court can ensure the selection of really worthwhile books. This must necessarily depend upon the social consciousness and moral fibre of the C members of the committee. Similarly, no judgment of a court can eliminate the evil of behind-the-scene influence. Here, one must perforce trust the sense of responsibility of the members of the committee in the discharge of the important duty with which they are entrusted.

D For the reasons mentioned above, we allow this Appeal and direct the State of Orissa to amend suitably the Government Resolution dated November 24, 1983, or to issue a fresh notification in supersession of that notification, incorporating the guide-lines laid down by us above, as expeditiously as possible and in any event before the next selection of books is made, without affecting any E selection already made.

In the particular facts and circumstances of this case there will be no order as to the costs of this Appeal.

S.R. *Appeal allowed.*