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**(1977) 11 RAJ CK 0001**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No"s. 226 and 352 of 1977

Daya Ram K. Joshi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 01-11-1977

**Acts Referred:**

Constitution of India, 1950 — Article 19, 226

Press and Registration of Books Act, 1867 — Section 5, 8B

**Citation :** (1978) RLW 17 : (1977) WLN 538

**Hon'ble Judges :** M.L. Jain, J

**Bench :** Single Bench

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## Judgement

M.L. Jain, J.—This order will dispose of two writ petitions Nos. 226/1977 & 352/1977. They have arisen in the following circumstances.

2. The petitioner Dayaram K. Joshi is a resident of Barmer. He submitted a declaration in Form I on 8.9.69 under Rule 3 of the Registration of Newspapers (Central; Rules, 1956, to the District Magistrate, Barmer, declaring that he is the publisher and printer of a weekly newspaper ".Marumanthan" to be printed and published at Barmer. In the column No. 8 relating to the name of the printing press where printing is to be conducted and the true and precise description of the premises on which (he press is installed, the petitioner wrote meaning "according to convenience." The declaration was authenticated by the Sub-divisional Magistrate, Barmer. The Registrar, Newspapers for India had also registered the weekly. Then after, the aforesaid newspaper commenced and continued to be published since October 2, 1969.

3. On 25.8 75, the District Magistrate, Barmer, issued a notice to the petitioner that during the period of its publication, the paper was printed in the Sirhal Printing Press for the first four years but then the petitioner changed his press four times during the 5th and 6th years of publications without making new declaration in respect thereof. He thus committed contravention of sub-Section (3) of Section 5 of the Press and Registration of Books Act, 1867 He was also

accused of charging 30 paisa as against the declared price of 15 paisa only. He was required to appear and show cause why the declaration be not cancelled.

4. The petitioner in his reply said that at the time when he launched his publication, the condition of printing presses in Barmer was not satisfactory and therefore, in the declaration he mentioned that the publication shall be printed in the press whichever may be available. The declaration Form was also forwarded to the Registrar of Newspapers for India, where the paper was registered. He admitted that in column 4 of the declaration Form he inserted the price as 15 paisa per copy though it should have been 30 paisa per copy but he pleaded that the mistake occurred on account of slip of pen in good faith.

5. The learned District Magistrate did not accept the explanation found the two charges against him and cancelled the declaration by his order dated 4.7.75.

6. On appeal being preferred, the Press and Registration Appellate Board, Delhi held that the District Magistrate was wrong in holding that there was change in the place of printing or publication because in all the cases pointed out by the District Magistrate, the printing had taken place in Barmer town. But the learned Members of the Board found that the declaration was liable to cancellation u/s 8B(1) of the aforesaid Act because the petitioner had failed to give as required by Section 5(2) a true and precise account of the premises where the printing or publication was to be conducted by simply inserting the word Lqfo/kk vuqlkj The inaction or complacency on the part of the District Magistrate for a period of six years will not absolve the petitioner of this initial lapse as an infraction of a regulatory statute makes a person guilty without an element of mens rea. The order of the Appellate Board is dated 31.12.1976 by which it upheld the order of the District Magistrate, Barmer not on the ground that there was change of place of printing but on a new ground that the declaration itself was in contravention of second para of Rule 2 of Section 5 of the said Act. No mention was made of the second charge at all.

7. The petitioner (hen made a fresh declaration on 22-1-77. But the District Magistrate by his order dated 28-3-1977 refused to authenticate the declaration on the following grounds:

(1) Upon seeking guidance from the State Government the State Government forwarded to him, the opinion of its Law Department that if once the declaration has been cancelled on account of irregularities, the same paper cannot be allowed to be published again.

(2) If the petitioner were allowed to resume publication of the same paper, it will frustrate the order of the Appellate Board.

8. The petitioner then filed a writ petition No. 226/1977 on 10-6-1977 praying for quashing of the orders of the Appellate Board dated 31-12-1976 and of the District Magistrate dated 4-7-75 and 28-3-1977. Upon an objection being raised that the petitioner should file two separate petitions in respect of two different

causes of action, the petitioner presented the second petition No. 352/1977.

9. I have heard arguments. It appears to me that the Appellate Board has committed an error of law apparent on the face of the record in upholding the order of the District Magistrate upon entirely a new ground that is failure to enter in "the last blank in the form of declaration a line & precise account of the premises where the printing or publication is conducted" because the Board thought that an infraction of a regulatory statute without even an element of mens rea makes a person guilty of breach (liable) to a penalty under the Act. The law settled by the Supreme Court in *Nathu Lal v. State of M.P.* AIR 1965 SC 43 on the other hand is that unless excluded expressly or by necessary implication, mens rea is an essential ingredient of an offence and mens rea that would be implied in an offence depends on the objects of the Act and other provision thereof. It is not understood how consideration of mens rea was involved in this case. However, the declaration authentication and registration were made in the year 1969 and the authorities concerned had accepted that the paper could be printed in any press in Barmer according to convergence, and he has been printing the name of the press on its issues. I may also point out that the Board failed to notice that the Form of the declaration as given in Section 5(2) itself had been substituted by the detailed Form I prescribed under Rule 3 of the Registration of Newspapers (Central Rules, 1956). In such circumstances, to allow the publication to run for six years and then to tell the publisher at the appellate stage that it had such an initial defect in the declaration as at any rate justified its cancellation is to punish the petitioner for the omission and negligence on the part of the authorities concerned and without any culpable state of mind on his part. Further, there has been a violation of Section 8B of the said Act as well in as much as no inquiry was held in respect of this new ground as contemplated in the said section. The order of the Appellate Board therefore deserves to be cancelled.

10. As regards the second order of 28-3-77 the contention of the learned Deputy Government Advocate is that this was an appealable order and the petitioner should have exhausted the remedy of appeal before filing the second writ petition. The learned Counsel for the petitioner urged that since the impugned order dated 28th March, 1977, affects his fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) he is not required to pursue an alternative remedy as provided by the amended Article 226(1)(a) of the Constitution. I am unable, as at present I am disposed to think, to uphold the contention of the petitioner in this regard. The right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution is (unlike some others) not an absolute right but in virtue of Clause (2) of Article 19, it stands qualified or modified pro tanto by the provisions of the Press and Registration of Books Act, 1867. This Act imposes restrictions and also provides built-in safeguards against those restrictions. He has no doubt a right to publish his paper but only after a declaration and authentication thereof and if authentication is refused, to appeal. The petitioner can complain of breach of a

fundamental right under Article 19(1)(a) & (2) only when the safeguard of appeal provided in the Act is denied to him or he fails over there. If he himself does not avail of the safeguard, he cannot make a grievance that his fundamental right has been infringed. If that construction were not allowed to prevail, then the restrictions and safe guards permitted by the Constitution and so elaborately worked out by the legislature will just be rendered wasteful and nugatory. There is no doubt that the grounds on which the declaration has been refused to the petitioner are wholly unjustifiable but a refusal to authenticate a declaration at this stage only means an infringement of the provisions of the Act and the petitioner should first approach the Appellate Board in the first instance. If he fails there to succeed, then he may invoke the extraordinary jurisdiction perhaps in that case even without showing any substantial injury or any substantial failure of justice as it will then be a case of enforcement of a fundamental right. Having not filed an appeal, he cannot be heard against the impugned order. But I must hasten to add that I should not be understood to have laid down any proposition of law with regard to this aspect of the matter in this case as the matter was not considered in its depth and in all its details.

11. I, therefore, direct hereby that:

- (a) The writ petition No. 352/1977 be dismissed.
- (b) The writ petition No. 226/1977 be accepted and the orders of the Appellate Board and the District Magistrate of 4-7-75 be quashed.
- (c) No costs.