

(2010) 09 DEL CK 0362
In the Delhi High Court
Case No : L.P.A. No. 631 of 2010

D.B. Corp. Ltd.

APPELLANT

Vs

Registrar of Newspapers for India

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11A
Press and Registration of Books Act, 1867 — Section 5, 5(2), 5(5), 6, 8B
Press Council Act, 1978 — Section 4, 4(2)

Citation : (2010) 172 DLT 646 : (2010) 119 DRJ 505

Hon'ble Judges : Vikramajit Sen, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Mukul Rohtagi, Vivek Tankha and N.K. Kaul, Divyakant Lahoti, Joydeep Mazumdar, Sidharth Datta, Kumar Kartikay, Aasheem Chandra, Siddharth Singhla, Vinod Kumar and Bobby Chandok, for the Appellant; Rajeev Nayyar and Sandeep Sethi, Mayank Mishra and Chetan Chopra, for the Respondent

Judgement

Vikramajit Sen, J.—This Appeal assails the Order of the learned Single Judge passed on 27.8.2010 granting the stay of the Order dated 17.8.2010 passed by the Sub Divisional Officer, Sadar Sub Division Office, Ranchi, Jharkhand authenticating the Declaration made on behalf of the Appellant u/s 6 of the Press and Registration of Books Act, 1867 (PRB Act for short) and all further steps consequent thereto, including the publication of Dainik Bhaskar in Ranchi shall be stayed. It has been argued by Mr. Mukul Rohtagi, learned Senior Counsel for the Appellant, that the learned Single Judge had fallen into error by entertaining applications seeking stay in an already disposed Writ Petition. The Writ Petition had earlier been disposed of by Orders dated 28.7.2010, the salient part of which reads as follows:

7. Dr. A.M. Singhvi, learned Senior counsel appearing for Respondent No. 3 raised an objection to the maintainability of the writ petition on the following

grounds:

(i) As of today, pursuant to the application made by the Respondent No. 3 to the RNI at Ranchi on 4th February 2010, no order has yet been passed u/s 6 of the PRB Act and, therefore, the writ petition is itself premature.

(ii) In view of the fact that no order has been passed u/s 6 of the PRB Act as yet, the occasion to file objections u/s 8B PRB Act did not arise.

(iii) Consequently, the impugned communication dated 30th June 2010 from the RNI to the Sub-Divisional Officer, Ranchi is of no consequence because the need for seeking such information and providing such information has not arisen as yet.

(iv) It will be open to the Petitioner to seek such appropriate remedies as are provided under the PRB Act after the Magistrate has passed necessary orders u/s 6 of the PRB Act on the application of Respondent No. 3.

8. In view of the above submissions of Dr. Singhvi, this Court proceeds on the basis that as of today no order has been passed by the Magistrate u/s 6 of the PRB Act. Therefore, the occasion for the Petitioner to file objections u/s 8B and the consequent impugned communication dated 30th June 2010 from the RNI to the SDO, Ranchi which is the subject matter of challenge in the present writ petition, did not arise and, is therefore, of no consequence.

9. It is clarified that as and when an order is passed by the Magistrate u/s 6 of the PRB Act, it will be open to the Petitioner, if aggrieved, to seek such appropriate remedies as are available to him in terms of the PRB Act.

10. The writ petition and the pending applications are disposed of in the above terms.

2. Thereafter, the Petitioner had filed two applications bearing CM No. 10452/2010, dated 5.8.2010, praying for recalling of the aforementioned Orders dated 28.7.2010 so that the Writ Petition should be disposed of on merits; and for restraining the publication of the Newspaper titled Dainik Bhaskar in Ranchi, Jharkhand. CM No. 11352/2010, dated 20.8.2010, also prayed for restraining the Appellant from publishing the Newspaper Dainik Bhaskar from Ranchi. Both these applications have been allowed by the learned Single Judge after recalling his earlier Orders dated 28.7.2010 in which he had disposed off the Writ Petition.

3. It seems to us that the learned Single Judge ought not to have recalled Orders passed on 28.7.2010 disposing off Writ Petition on the asking of the Respondent by means of the aforementioned two applications. Reliance has been placed on paragraph 7 of those Orders positing that the Appellant before us had made a concession to the effect that the communication dated 30.6.2010 from the Registrar of Newspapers for India (RNI) to the Sub Divisional Officer, Ranchi would not be acted upon. We do not find any concession of the nature argued by Mr. Rajeev Nayyar, learned Senior Counsel for the Respondent. As we see it, the

defence to the Writ Petition was predicated on Sections 5, 6, 8B and 8C of the PRB Act to contend that the Writ Petition ought not to be entertained till the Sub Divisional Officer had authenticated the subject Declaration. In the event, the Authentication made on behalf of the Appellant u/s 5 was granted by the Sub Divisional Officer, Ranchi on 17.8.2010. The Writ Petitioner/Applicant/Respondent had approached the Writ Court on the foundation of the said communication dated 30.6.2010 from the Office of RNI to the Sub Divisional Officer, Ranchi, Jharkhand.

4. On a plain reading of the Orders dated 28.7.2010, there was insufficient cause to revisit the said Orders. This is solely for the reason that this communication merely advises the Sub Divisional Officer, Ranchi; whereas what facially engaged by the learned Single Judge while disposing off the two applications was the Authentication Order passed u/s 6 of PRB Act. The learned Single Judge appears to have harboured the impression that the Appellant had hoodwinked the Court and presented it with a fait accompli, leaving the Writ Petitioner with no remedy. We are unable to subscribe to this view not merely because had the Authentication been the focal point of dispute, this High Court may have declined to exercise its extraordinary jurisdiction, leaving this task to the High Court of Jharkhand. However, the matter has been argued threadbare before us and we think it will be a gross waste of judicial time if we base our Orders only on legal punctilio and set aside the impugned Order, leaving the option open to the Respondent to file a fresh writ petition to argue the same contentions raised before us. We say this because we have heard arguments on both sides which effectively presage what would be argued if a fresh writ petition were to be filed. We have made this stance of ours clear to learned Senior Counsel for the parties during the hearings before us.

5. It is apposite to note that the approach of the learned Single Judge in the initial Order dated 28.7.2010 is similar to that adopted by him while passing Orders dated 25.8.2010 in WP(C) No. 9016/2008. Respondent No. 3 had challenged before this Court the Authentication of another Declaration made by the Appellant with respect to the publication of Dainik Bhaskar in Dehradun, Uttarakhand. That Writ Petition was also disposed off by leaving it open to the Respondent to challenge the Authentication u/s 8B of the PRB Act. We find that it was the consistent view of the learned Single Judge. This only accentuates our opinion that the learned Single Judge should have desisted from reentering upon the controversy, especially since remedial action was available to the Writ Petitioner/Respondent to have assailed that Order before the Division Bench. It is trite that the Court will abjure from virtually reversing its Orders by means of an application purporting to seek a Modification or a Review. Suchlike applications should be confined to correction of errors apparent on the face of the record.

6. We shall now briefly narrate the sequence of events which have created the present controversy. An application for Title Verification dated 5.1.2010 was filed by the Appellant before the Sub Divisional Officer, Ranchi in respect of Dainik

Bhaskar for proposed publication in Hindi in Ranchi, Jharkhand. This led to the letter dated 4.2.2010 from the Sub Divisional Officer, Ranchi, Jharkhand to the RNI requesting him to take further action on the application for Title Verification dated 5.1.2010. The RNI thereupon issued a Verification dated 15.2.2010 in favour of the Appellant in respect of Dainik Bhaskar, Hindi, proposed to be published in Ranchi, Jharkhand. After an unexplained lull of activity on the part of the Respondent, he eventually addressed a letter dated 13.5.2010 to the Sub Divisional Officer, Ranchi stating, inter alia, that" I would like to place on record that my consent, as a co-owner of the title, has not been obtained and as such any registration of the title in favour of D.B. Corp. Ltd. would be in contravention of the provisions of the Press and Registration of Books Act, 1867?. The Respondent also alluded to the Judgment of the Hon"ble Supreme Court in Civil Appeal No. 4782/1996 directing that the parties stood relegated to their respective positions as obtaining on 26.9.1992. Thereupon, a letter was issued by the RNI on 18.6.2004 containing the following Table:

S. No. Place of publication Name of the Owner 1. Gwalior M/s Bhaskar Publication & Allied Industry, Gwalior. 2. Indore M/s Bhaskar Graphic & Printing Arts Pvt. Ltd. Indore. 3. Jhansi Shri Sanjay Aggarwal 4. Jabalpur Shri B.D. Aggarwal 5. Bhopal M/s Writers & Publishers Limited, Bhopal.

7. It would be appropriate to immediately mention that it is not in dispute that the Respondent is publishing Dainik Bhaskar only in Jhansi, Uttar Pradesh; he has also filed for Authentication u/s 6 in respect of the same paper for Gautam Budh Nagar, Noida. It is apparent that the Respondent's activity is restricted to the state of Uttar Pradesh. It is further not disputed that the Appellant is already publishing daily newspaper titled Dainik Bhaskar from the following places, as per the Table below. In addition, publication in Jamshedpur and Dhanbad has also been permitted very recently.

Name of Newspaper	Nature of Language	Place of Publish
Dainik Bhaskar Daily Hindi	Bhopal	Dainik Bhaskar Daily Hindi Sagar
Dainik Bhaskar Daily Hindi	Indore	Dainik Bhaskar Daily Hindi Ujjain
Dainik Bhaskar Daily Hindi	Ratlam	Dainik Bhaskar Daily Hindi Chindwada
Dainik Bhaskar Daily Hindi	Raipur	Dainik Bhaskar Daily Hindi Bilaspur
Dainik Bhaskar Daily Hindi	Jaipur	Dainik Bhaskar Daily Hindi Ajmer
Dainik Bhaskar Daily Hindi	Jodhpur	Dainik Bhaskar Daily Hindi Pali
Dainik Bhaskar Daily Hindi	Bikaner	Dainik Bhaskar Daily Hindi Udaipur
Dainik Bhaskar Daily Hindi	Kota	Dainik Bhaskar Daily Hindi Chandigarh
Dainik Bhaskar Daily Hindi	Shimla	Dainik Bhaskar Daily Hindi Panipat
Dainik Bhaskar Daily Hindi	Hisar	Dainik Bhaskar Daily Hindi Jalandhar
Dainik Bhaskar Daily Hindi	Amritsar	Dainik Bhaskar Daily Hindi Ludhiana
Dainik Bhaskar Daily Hindi	Faridabad	Dainik Bhaskar Daily Hindi New Delhi
Dainik Bhaskar Daily Hindi	Akola	

8. Our attention has also been drawn to the fact that an application, similar to the present one, that is, for publication of Dainik Bhaskar in Hindi in Ranchi, was made by the Appellant as far back as on 10.1.2008.

9. Mr. Mukul Rohtagi has submitted that an application for Authentication has also been made in Jammu in respect of which a stay order had been obtained by the Respondent but this Order has been vacated. It has also been emphasized that the Appellant has never even endeavoured to commence publication of Dainik Bhaskar in the State of Uttar Pradesh since the Respondent is engaged in the publication of Dainik Bhaskar in this territory. It has also been highlighted by Mr. Rohtagi that in the Red Herring Prospectus relating to the Public Issue by the Appellant, it had been clearly stated that the Respondent is the owner of title Dainik Bhaskar so far as the State of Uttar Pradesh is concerned.

10. It is pointed out on behalf of the Appellant that the Respondent's understanding of the purpose of the PRB Act was also that the right of operation of publication is ordained Statewise. This is predicated, inter alia, on paragraph 4(b) of WP(C) No. 4497/2010 titled Sanjay Aggarwal v. Registrar of Newspapers for India filed by the Respondent, which reads as follows:

b. At various points of time different members of the Agarwal family, including the Petitioner, commenced publication of the newspaper "Dainik Bhaskar" in different parts of India. The Petitioner was given the right to publish the newspaper and ownership of the title "Dainik Bhaskar" in the State of Uttar Pradesh, which was recorded by the RNI.

It is pertinent to note that in one State, only one person can be given the right to publish a newspaper of a particular name by the RNI, which is evident from the proviso to Section 6 of the PRB Act. The Petitioner has been registered as the owner of the title Dainik Bhaskar in Jhansi, Uttar Pradesh; as per the communication dated June 18, 2004 issued by the RNI. As such, no other person can be permitted to publish a newspaper titled "Dainik Bhaskar".

11. Section 5 of the PRB Act prohibits the publication of any newspaper except in conformity with the Act and Rules. Sub-section (2) thereof requires the printer and publisher to make a Declaration before the local Authority within whose jurisdiction the proposed newspaper is to be printed or published, indicating the title of the newspaper, the language in which it is to be published, the periodicity of its publication, the premises from where the publication is printed or publication is conducted, specifying the name of the owners etc. Sub-section 2(d) thereof mandates that any change in the factors enumerated above will require a fresh Declaration. Similarly, where the ownership is changed, a new Declaration would become necessary under Sub-section 2(e). Sub-section (5) thereof is of significance inasmuch as it stipulates that if publication of the newspaper does not commence within six weeks or three months, as the case may be, of the authentication of the Declaration u/s 6 of the PRB Act, the Declaration shall be rendered void. We have highlighted only a few of the provisions of Section 5 of the PRB Act. Although we need not record any definitive finding in this regard, Mr. Rohtagi is right in pointing out that a piquant position may arise where publication is not possible because of a Restraint Order passed by a Court thereby necessitating fresh action with regard to furnishing a

Declaration after the passage of six weeks or three months as contemplated in Section 5(5) of the PRB Act. He elaborates his argument by alluding to the amendment in the Land Acquisition Act, 1894 whereby Section 11A came to be incorporated to remove this anomalous possibility. Earlier thereto, if an Award could not be published because of a stay order passed by any Court, it would become vulnerable after the passage of two years. On the other hand, the legal maxim to the effect that no party can be made to suffer because of an action of the Court is also apposite.

12. Section 6, 8B and 8C of the PRB Act, which form the fulcrum of the fight between the parties, are reproduced for facility of reference:

6. Authentication of declaration.-Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made:

Provided that where any declaration is made and subscribed u/s 5 in respect of a newspaper, the declaration shall not, save in the case of newspapers owned by the same person, be so authenticated unless the Magistrate is, on inquiry from the Press Registrar, satisfied that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State.

Deposit.-One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or other principal Civil Court of original jurisdiction for the place where the said declaration shall have been made.

Inspection and supply of copies.-The Officer in Charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying for a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

A copy of the declaration attested by the official seal of the Magistrate or a copy of the order refusing to authenticate the declaration, shall be forwarded as soon as possible to the person making and subscribing the declaration and also to the Press Registrar.

8B. Cancellation of declaration.-If, on an application made to him by the Press Registrar or any other person or otherwise, the Magistrate empowered to authenticate a declaration under this Act, is of opinion that any declaration made in respect of a newspaper should be cancelled, he may after giving the person concerned an opportunity of showing cause against the action proposed to be taken, hold an inquiry into the matter and if, after considering the cause, if any, shown by such person and after giving him an opportunity of being heard, he is satisfied that-

- (i) the newspaper, in respect of which the declaration has been made is being published in contravention of the provisions of this Act or rules made thereunder; or
- (ii) the newspaper mentioned in the declaration bears a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State; or
- (iii) the printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration; or
- (iv) the declaration was made on false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper;

the Magistrate may, by order, cancel the declaration and shall forward as soon as possible a copy of the order to the person making or subscribing the declaration and also to the Press Registrar.

8C. Appeal.-(1) Any person aggrieved by an order of a Magistrate refusing to authenticate a declaration u/s 6 or cancelling a declaration u/s 8-B may, within sixty days from the date on which such order is communicated to him, prefer an appeal to the Appellate Board to be called the Press and Registration Appellate Board consisting of a Chairman and another member to be nominated by the Press Council of India, established u/s 4 of the Press Councils Act, 1978, from among its members:

Provided that the Appellate Board may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

- (2) One receipt of an appeal under this section, the Appellate Board may, after calling for the records from the Magistrate and after making such further inquiries as it thinks fit, confirm, modify or set aside the order appealed against.
- (3) Subject to the provisions contained in Sub-section (2), the Appellate Board may, by order, regulate its practice and procedure.
- (4) The decision of the Appellate Board shall be final.

13. The first aspect of the assault on the impugned Order is that a writ petition is not maintainable. The contention of Mr. Mukul Rohtagi is that the Writ Petitioner/Respondent was statutorily bound to carry his grievance to the Magistrate who had authenticated the Declaration, namely, the Sub Divisional Officer, Ranchi. This is so because it is the opinion of the Writ Petitioner/Respondent that the Declaration made in respect of the newspaper Dainik Bhaskar should be cancelled. A plain reading of Section 8B makes it evident that the Press Registrar or any other person has the statutorily vested right to file an application before the Magistrate concerned for cancellation of the Authentication. The Section then mandates that an opportunity to Show Cause against the cancellation would have to be granted to the party in whose favour and at whose instance the

Authentication has been carried out. Thereafter, an inquiry would have to be held by the Magistrate in which all affected persons would have to be heard. It should immediately be noted that Section 6 of the PRB Act does not prescribe any public hearing in contradistinction to that contemplated in Section 8B. Section 6 of the PRB Act enjoins that the Magistrate, after making an inquiry from the Press Registrar, should be satisfied that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State. Paraphrased by us in the premises of this Appeal, so far as authentication u/s 6 of the PRB Act is concerned, the Authentication would be effected by the Sub Divisional Officer, Ranchi only upon his being satisfied that there is no other newspaper with a title similar to Dainik Bhaskar published in Hindi. Furthermore, because of the employment of the words "either/or", the Magistrate would also have to be satisfied that there is no other newspaper under publication in the State of Jharkhand with the name similar to Dainik Bhaskar. The sweep of the powers of the Magistrate for cancellation of a Declaration is not confined to these considerations alone. The very fact that the inquiry u/s 8B of the PRB Act is broader than that u/s 6 of the PRB Act and requires the Authority to give an opportunity of showing cause to anyone who may be adversely affected and also providing such person with an opportunity of being heard is indicative of the absolute necessity of an aggrieved party to ventilate its grievances before the Magistrate. The cancellation of the Declaration u/s 8B of the PRB Act is postulated in as many as four circumstances. Firstly, where the publication of the newspaper is in contravention of the provisions of the PRB Act or Rules; which makes it immediately obvious that this ground is totally distinct to that mentioned in Section 6 of the PRB Act. The second ground is identical to that spelt out in Section 6 of the PRB Act. The third ground palpably arises after Authentication of the Declaration is carried out, and, therefore, bears little relevance to the legal and statutory correctness of the grant of authentication. This is because the third ground speaks of a situation where there has been a change in the person or the publication or the publisher. Fourthly, and most importantly for the purposes of the present litigation, the Magistrate may cancel a Declaration if it was made on false representations or on the concealment of any material fact etc. Obviously, the relief granted in the fourth factual matrix would become otiose and meaningless if a party were to be permitted to ventilate its objections before a Writ Court, bypassing the Magistrate concerned.

14. It is in this state of affairs that we are of the opinion that the Writ Petition should not be entertained until and unless the Petitioner has approached the concerned Magistrate, bringing all relevant facts before him. A conjoint reading of Sections 6 and 8, we reiterate, make it abundantly clear that the Objector is not to be heard at the stage where the Magistrate is to decide whether or not to authenticate the Declaration. If Authentication is not deserved, the remedy is provided by Section 8B of the PRB Act.

15. It has been argued before us that Section 8C of the PRB Act does not, in fact,

provide a person, such as the Writ Petitioner/Respondent, with any right to appeal. The argument is that this right is confined to a person whose Declaration has not been authenticated or having been so done, it has been cancelled u/s 8B of the PRB Act. We shall abjure from going deeper into this question for the simple reason that neither of those eventualities has occurred. In the case in hand, the Declaration of the Appellant has been authenticated u/s 6 of the PRB Act and this has not been cancelled simply because the Respondent has, ill-advisedly, not elected to approach the concerned Magistrate u/s 8B of the PRB Act. However, the provisions of Section 8C of the PRB Act fortify our view that it is essential for a person opposed to the authentication of a Declaration to approach the Magistrate.

16. This is not our view alone. In the dispute between the present adversaries, the very same learned Single Judge has taken this view in WP(C) No. 9016/2008 titled Sanjay Aggarwal v. Union of India decided on 25.8.2010. The learned Single Judge had declined to exercise the extraordinary powers preserved in the Writ Court under Article 226 of the Constitution of India since an efficacious statutory remedy has been provided under the PRB Act but had not been availed of. Poignantly, this very Order records that the Respondent had approached the Appellate Board u/s 8C of the PRB Act to challenge the Cancellation Order passed against him in May, 2009. In this very case, the same learned Single Judge had dismissed the Writ Petition by Orders dated 28.7.2010, noting that the communication envisaged in Section 6 of the PRB Act had not been carried out by the Magistrate, thereby rendering the Petition premature. While doing so, the learned Single Judge had clarified that it was open to the Respondent/Writ Petitioner "to seek such appropriate remedy as are available to him in terms of the PRB Act". Liberty to invoke the extraordinary jurisdiction of the Court had not been granted.

17. This is sufficient reason for us to allow the Appeal and set aside the impugned Order. However, since the arguments have been heard in detail, and lest further controversy be created by the parties, it appears to us that the Appellant had not misled the Writ Court in any manner. On 28.7.2010, Authentication u/s 6 of the PRB Act had not been granted. This being the position, the occasion for filing of the Objections u/s 8B had not arisen. That event has only transpired on 17.8.2010 when the Authentication had been given. Whether the communication dated 30.6.2010 prohibits the Authentication and/or whether an inquiry made, or more appropriately guidance sought by the Sub Divisional Officer, Ranchi in his letter dated 14.8.2010 to the RNI at Delhi, preclude or prohibit the Sub Divisional Officer from granting Authentication. We do not propose to give a definitive answer to the argument raised by Mr. Rajeev Nayyar that it was improper for the Appellant to seek any clearance from the RNI in respect of the title of the publication before applying to the Sub Divisional Officer, Ranchi for Authentication u/s 6 of the PRB Act. This, at the highest, can be seen merely as a procedural aberration of the provisions of the PRB Act.

18. The circumstances of this case did not warrant the learned Single Judge to reopen a decided case and virtually overturn the previous decision even though it may have been his own.

19. In this analysis, it is our opinion that the Respondent must take recourse to Section 8B of the PRB Act. We must, therefore, clarify that our appreciation of the factual matrix is on a prima facie basis. Therefore, when the concerned Magistrate, namely, Sub Divisional Officer, Ranchi is approached for redress u/s 8B of the PRB Act, he shall do so assuming that he has a clean slate so far as the facts of the case are concerned. His final decision shall not be untrammelled by any of the observations made herein.

20. For these manifold and myriad reasons, we accept the Appeal and set aside the impugned Order. The effect will be that the Appellant shall be free to publish the newspaper Dainik Bhaskar in Ranchi, pursuant to the Authentication granted u/s 6 of the PRB Act. Needless to state, this will be without prejudice to any order that may come to be passed u/s 8B of the PRB Act.

21. There shall be no order as to costs.