
(1954) 06 GAU CK 0003
In the Gauhati High Court

Gopal Das	Vs	APPELLANT
State of Assam and Another		RESPONDENT

Date of Decision : 15-06-1954

Acts Referred:

Citation : AIR 1954 Guw 193 : (1954) CriLJ 1570

Hon'ble Judges : Sarjoo Prosad, C.J; Ram Labhaya, J; Deka, J

Bench : Full Bench

Judgement

Sarjoo Prosad, C.J.—This application u/s 24, Press (Objectionable Matter) Act, 1951 (Act 56 of 1951), hereinafter called the Tress Act is directed against an order, dated 4-3-1950, made by the Governor of Assam u/s 11 of the said Act, forfeiting to Government the booklet entitled "Samaj Tantrabad Kiya Lagey" written by one Panna Lal Das Gupta, printed at the Joyanti Art Press, Gauhati, and published by the petitioner Gopal Das. The State Government and the Chief Secretary of the State are the opposite parties to this application.

2. The petitioner claims to be a citizen of the Indian Union and Is the publisher of "Pragati Prakash Bhavan", Gauhati, a concern which is said to have been functioning since 1945 and publishing a number of books.

On 17-11-52, the petitioner published the booklet in question, all copies of which have since been directed to be forfeited to Government by the order of Government now impugned before us. The said booklet appears to be a rendering in in Assamese language of the original which was published in Bengali under the title "Samajtan-trik Biplab Aje Nay Kena" by the above concern on 1-10-1947.

That booklet underwent a second edition on 18-7-1948, and the petitioner alleges that in view of the public demand, a Hindi version thereof was also published in due course, and certain chapters of the booklet were translated, printed and published from time to time in the Assamese weekly "Panchayat" during 1947-48.

The petitioner claims that there is nothing in the booklet to bring it within the definition of "objectionable matter" as defined in Clauses (i) and (v) of Section 3 of the Press Act, as alleged in the Government order. The Government order in question runs thus :

The 27th February 1953.

No. C.136/53/6.- In exercise of the powers conferred by Section 11 of the Press (Objectionable Matter) Act, 1951 (Act No. 56 of 1951), the Governor of Assam, on the certificate of the Principal Law Officer of the State, is pleased to declare all copies, wherever found of the printed booklet in Assamese entitled "Samaj Tan-"trabad Kiya Lagey" written by Shri Pannalal Das Gupta, a R.C. P. I. leader, published by Shri Gopal Das, Pragati Prakash Bhaban, Gauhati, and printed by Shri Sukleswar Bora in Joyanti Art Press, Gauhati, and all other documents containing reprints, copies, translations of or extracts from, the said booklet to be forfeited to the Government of Assam on the ground that the said booklet contains objectionable matters as denned in Clauses (i) and (v) of Section 3 of the said Act.

Sd/- S.K. Datta,

Chief Secreary to the Government of Assam." The order has been assailed before us mainly on these grounds :

(1) That the order is incompetent and does not fulfil the essential requirements of Section 11 of the Press Act.

(2) That Section 11 of the Press Act under which the order appears to have been passed is ultra vires Article 19(1) (a) and (g) of the Constitution and is not saved by Clause (2) of that Article, and

(3) that the said booklet did not contain any objectionable matter.

I will initially examine the first two contentions together. Section 11 of the Press Act which in-"vests Government with power to declare certain publications forfeited, runs as follows :

The State Government may, on the certificate Of the Advocate General or the Principal Law Officer, as the case may be, of the State or of the Attorney General of India, that any issue of a newspaper or news-sheet or any book or other document, wherever made, contains any objectionable matter, by notification in the official Gazette, stating the grounds for the order, declare that every copy of such issue of the newspaper or news-sheet or of such book or document shall be forfeited to the Government.

"Objectionable matter" referred to in this section has been defined in Section 3 of the Act. We are in particular concerned with Clauses (i) and (v) of the definition to which reference has been made in the order of the Government.

According to this section, the expression "objectionable matter"

means any words, signs or visible representations which are likely to (i) incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area; or, ...(v) promote feelings of enmity or hatred between different sections of the people of India.

I need not refer to the other clauses for the present. The Explanations to the section are of great significance and I will have occasion to advert to them at a later stage.

3. It is to be seen that in this section, the law does not provide that before passing the order, Government should give any notice to the persons affected thereby to show cause against the action proposed to be taken. The declaration forfeiting the objectionable document can be made by Government without giving any hearing at all to the party concerned and without any inquiry by a Sessions Judge or a Jury as it is to be found in relation to the proceedings under Sections 4 and 5 or those under Sections 7 and 8 of the Act.

I am, however, not prepared to accede to the argument that the absence of such provisions would necessarily render Section 11 void as imposing an unreasonable restriction on the fundamental rights of freedom of speech and expression or the pursuit of any lawful avocation, provided the safeguards already mentioned in law are adequate and reasonable, in my opinion, it would be wrong to judge all the above sections of the Act in an identical perspective.

It must be borne in mind that the proceedings under Sections 4 and 5 or 7 and 8 of the Act are very different from those u/s 11. The object of those sections is to obtain security or additional security from the offending Press, whereas the object of Section 11 is to prevent immediately the circulation of a book or paper which contains objectionable matter. It would be impossible to safeguard public order or to prevent the mischief of circulation of such objectionable matter if the State had to wait for a judicial decision in order to forfeit the offending document.

The very essence of the power u/s 11 is that it should be exercised promptly and expeditiously. There must be, however, ample and reasonable check upon this power of the Executive and so long as there is some ultimate judicial corrective on the exercise of the power, it cannot be held to be unreasonable. It must, therefore, be seen whether there are such safeguards, if any, and whether those safeguards are real and substantial or merely illusory. It has also to be seen whether the safeguards in question have been respected or violated in the present case.

4. The two safeguards provided by the Act itself are that the Governor cannot act under 8. 11 unless the principal Law Officer or the Advocate General of the State, as the case may be, or the Attorney General of India certifies that the offending booklet or pamphlet contains "objectionable matter"-and the other, that u/s 24 of the Act the person aggrieved by the order of Government can move the High Court against that order within sixty days of the date of such order. If these

safeguards are real, then it must be held that the restrictions imposed on the fundamental rights of speech and expression by virtue of Section 11 are reasonable restrictions and the provision would be saved under Article 19(2) of the Constitution.

I shall first take up the question whether in the present case, the State Government acted "on the certificate of the Advocate General or the principal Law Officer as the case may be, of the State or of the Attorney General of India". It is conceded here that there was no certificate given by the Attorney General of India or by the Advocate General of the State. Mr. Medhi, on behalf of the State Government, urges that in the present case, the certificate had been given by the Legal Remembrancer of the State who was also the principal Law Officer.

The "principal Law Officer" has not been denned in the Act; but Mr. Medhi relies in this connection upon The Legal Remembrancer's Manual of 1930 (Government of Bengal). The Assam Law Department Manual, however, does not support Mr. Medhi. Indeed it is definitely against his contention. Rule 1 under Chapter IA of the Manual shows that the Advocate General is the principal Law Officer and Legal Adviser to Government. This would be evidently so, because whatever the position may have been earlier, u/s 55, Government of India Act (1935), the Governor had to appoint an Advocate General for the Province, whose duty was to give advice to the Government on such legal matters as might be referred to him. Assam was undoubtedly one of Governors' Provinces as provided by Section 46 of the Act. Section 55 of the old Act corresponds to Article 165 of the Constitution which applies not only to Part A States, in which Assam is included, but also to Part B States by virtue of Article 238 of the Constitution. Part C and D States are, however, differently administered and there is no specific provision for the appointment of an Advocate General in those States (see Articles 239 and 243).

Therefore, there can be no question that, so far as Assam is concerned, it had to be certified by the Advocate General that the booklet in question contained "objectionable matter". The Legal Remembrancer, in the first place, does not even come under the designation of the "principal Law Officer of the State"; it is the Advocate General who is designated as such in the Manual. In the second place, the words "as the case may be" which qualify the disjunctive terms, the "Advocate General" or the "principal Law Officer of the State" clearly show that they have reference only to those States where there is no Advocate General. This conclusion is also supported by the statement of the Home Minister during the Parliamentary debates when the Bill, which is the foundation of the Press Act, was on the legislative anvil. For the reasons aforesaid, I cannot but come to the conclusion that the Legal Remembrancer was not competent to certify that the booklet contained "objectionable matter".

In the absence of any such certificate by the Advocate General of the State or the Attorney General of India, the order of forfeiture is. illegal and ultra vires Section 11 of the Act itself. The certificate of the Advocate General is the very

foundation of the jurisdiction conferred on the Governor or for the matter of that, on the Government of the State, to make the order of forfeiture u/s 11 of the Act, and there being no such foundation for the order, it cannot stand. The Legal Remembrancer, even though he may be a Judicial Officer, in some States, acts merely as an Executive Officer and the certificate given by such an officer would not inspire the same amount of confidence in its accuracy and disinterestedness as the certificate of the Advocate General or the Attorney General of India.

These other officers, by virtue of their constitutional position, their legal acumen and integrity are expected to take a more impartial and independent view of things and are pre-eminently competent to certify as to whether the document complained of does contain objectionable matter. " They are expected to give the correct advice to the Governor and the safeguard thus provided u/s 11 is a legitimate safeguard. In the present case, even this essential safeguard has been violated, as we have already found. The result is that the order in question passed by the Government is quite illegal and incompetent inasmuch as the essential requirement of Section 11 of the Act itself has not been fulfilled, and the contention of the learned Counsel on this ground must prevail.

5. It has, however, been argued that Section 11 itself is ultra vires. There can be no doubt that Section 11 of the Press Act purports to impose restrictions on the right of circulation. Freedom of speech and expression evidently includes freedom of propagation of ideas. Those ideas may be one's own or those of others, and this freedom is ensured by the freedom of publication and circulation. The restriction, therefore, sought to be put by Section 11 would come into conflict with the fundamental rights provided under Article 19(1) (a) and (g) unless the said provision is saved under Clause (2) of the Article. In other words, it will have to be seen whether it imposes reasonable restriction on the exercise of the aforesaid rights and that the restriction is in the interest of public security. The use of the term "reasonable" in Clause (2) of Article 19, as it is well established now, imports the doctrine of judicial review and what is reasonable restriction of the freedoms guaranteed under Article 19 is a matter to be decided by the Court in the light of the attendant circumstances in each case. In doing so, it should be the Court's duty to examine not only the substantive part of the law but also the procedural part of it. In other words, it has to see that in imposing the restrictions in question, the State does not arrogate to itself more powers than are absolutely necessary to circumscribe the fundamental rights indicated above. The objective test which the Court has to apply is to ascertain whether the restriction has reasonable relation to the authorised purpose of the legislation or is an arbitrary abridgment of the guaranteed freedoms under cloak of any of the exceptions.

6. The above principles are accepted, but in view of the fact that we have already held that the order impugned before us does not fulfil even the requirements of Section 11 of the Press Act and is, therefore, illegal and without jurisdiction, it would be unnecessary for us to probe this matter any further.

The learned Counsel for the petitioner has, however, vehemently argued that the safeguard provided u/s 24 of the Act is almost nugatory. Section 24 says that any person aggrieved by an order of forfeiture passed by the State Government u/s 11, may, within 60 days of the publication of such order, apply to the High Court to set aside such order, and upon such application, the High Court may pass any order that it thinks fit, confirming, varying or reversing the order of the State Government.

The learned Counsel submits that in the absence of any provision in the law for any service of notice of the order on the person aggrieved, it is possible to conceive of cases where the period of limitation may run out without any knowledge of the order passed against him, and, as such, he may be deprived of his remedy to move the High Court against the order in question. The learned Counsel, therefore, contends that it was essential in such cases to provide for service of the order containing the Government declaration upon the persons affected thereby, in particular, upon the author of the document and the printer and the publisher thereof.

Mere notification in the Official Gazette, it is urged, would not be adequate notice in such cases, and individual notices were essential to safeguard the remedy provided u/s 24 of the Act. The learned Counsel relies on the decision in - V.G. Row Vs. The State of Madras, , affirmed in - State of Madras Vs. V.G. Row, and also upon a Full Bench decision in - George Chadayammur v. State AIR 1952 Ker 217 (C).

Ordinarily, under the General Clauses Act, a notification in the official Gazette would be, in law, deemed to be sufficient notice, specially where the notification is of a general character intended for the members of the public, and not for any particular set of individuals. On behalf of the Government, it has also been pointed out that the actual act of forfeiture or confiscation itself would amount to notice to the person affected. This would be normally so.

We think, however, that there should be some distinction made between a member of the public possessing a copy or some copies of the offending booklet or document and the author, printer or publisher thereof. These latter persons are vitally and mainly affected by the order of forfeiture or confiscation passed by the Government u/s 11. The confiscation of the offending booklet from any member of the public may not necessarily come to the knowledge of the author, the printer or the publisher thereof, and it is possible to think of cases where these people may remain completely in the dark about the action taken by the Government until it is too late.

An obvious instance which I have in mind is where a particular edition of the offending booklet has been exhausted in the hands of the editor, the printer and the publisher and has gone out into the open market, The Government having knowledge of the fact, may refrain from taking any action on the foot of the forfeiture order against these persons until another edition of the booklet is

ready for circulation, which may be much beyond the period of 60 days mentioned in Section 24. In doing so, the Government would not be acting indiscreetly or even deliberately, but the effect may be to defeat their lawful remedy. In the mean time there is nothing to stop Government from preventing the circulation of the booklet in the open market by forfeiture or otherwise. But does it mean necessarily that the editor, the printer and the publisher will have notice of the order by such action? I say, necessarily. The answer must be in the negative.

As against other undefined persons, therefore, their address being unknown, the Gazette notification would be sufficient; but as against the editor, the printer and the publisher, whose address must be known to the Government, there is some justification for the contention that they should have individual notices of the order. In my opinion, therefore, it would have been better to make some independent provision u/s 11 of the Act in the following terms :

On such notification in the Official Gazette, the declaration made by Government in the previous paragraph shall take effect, but a copy of the declaration shall be served upon the author, the printer and the publisher of the document (etc.) ordered to be forfeited with a view to enable them to take action, if so advised, u/s 24 of the Act within the period of limitation provided therein.

A notice of the declaration can be served upon the persons indicated above either by a registered cover or in the manner provided u/s 28 of the Act for service of notice. This would be entirely a matter of detail. The above suggestion is indeed a matter for the Legislature to take into consideration in order to make the provisions unexceptionable and to avoid any criticism on this score. But for the present, I would refrain from expressing any final opinion in the matter and from declaring on this ground, that Section 11 of the Act is ultra vires Article 19(1) (a) and (g) of the Constitution.

7. Turning now to the next contention of the learned Counsel, I find it difficult to hold that the pamphlet falls under the definition of "objectionable matter" u/s 3(i) and (v) of the Act.

For the petitioner, it has been argued that the booklet merely discusses the political philosophy and economic theory underlying socialism; it shows that capitalism has no progressive role to play in solving the manifold problems that face the country and that the socialistic order alone can release all the productive forces of society. The booklet, therefore, according to the petitioner, appeals to the people to unite to establish a Kisan-Mazdoor Panchayat Raj in order to emancipate humanity from all its bondage.

Government have not, in their order, objected to any particular portion of the booklet. In the submission of the learned Government Advocate, the whole booklet is objectionable. Therefore, we had to examine the entire translation of the booklet in order to find if there is anything objectionable contained in it, as stated in the order of Government.

Clause (i) of Section 3 of the Press Act requires that there must be something in the words which are likely to incite or encourage a person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or any State thereof or its authority in any area. The meaning of the term "sabotage" has been explained under Explanation III of the section which means the doing of damage to plant or stocks, or bridges, roads and the like with intent to destroy or injuriously to affect the utility of any plant or service or means of communication.

I have not come across any words or passage in the whole of the booklet which tend to or are likely to incite or encourage any person to the doing of any such act. So, sabotage is ruled out of consideration. So far as Clause (v) of Section 3 is concerned, I should also at once observe that it has no application to the case at all. The booklet, of course, contains a tirage against capitalists and capitalism. It does suggest that all the evils of society and the country are due to capitalism and that it should be exterminated at once; but the position is well settled that the words "capitalism or capitalist" do not denote any determinate section of people so as to attract the application of Clause (v) of Section 3 to such cases. The decision of the Punjab High Court in - "Pratap" Urdu daily newspaper v. The Crown AIR 1949 EP 305 (SB) (D) and my own decision in - Shaila Bala Devi v. Chief Secretary to the Govt. of Bihar AIR 1951 Pat 12 (SB) (E) relying upon an earlier decision of the same Court, are cases in point.

The only point, therefore, which remains to be seen is, whether the pamphlet is likely to incite or encourage any person to resort to violence for the purpose of overthrowing or undermining the Government. The explanations to the section are important. They state that

Comments expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means, and words pointing out, with a view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different sections of the people of India, shall not be deemed to be objectionable matter within the meaning of this section.

It is also provided that

in judging whether any matter is objectionable matter under this Act, the effect of the words, signs or visible representations, and not the intention of the keeper of the press or the publisher of the newspaper or news-sheet, as the case may be, shall be taken into account.

The underlying principle of these Explanations is that the document has to be freely and fairly construed and mere criticism of a particular system or policy or administrative measure, even if couched in harsh, exaggerated or indiscreet language, should not be held to be objectionable unless it definitely incites or is likely to lead to violence. To see if the document is offensive, as such, one has to read the document as a whole. The Courts, in a case of this kind, have to put

themselves, as far as possible, in the place of a jury and to take a broad view without refining overmuch any particular words or phrases used in the document.

As observed by Sir Maurice Gwyer in - *Ninarendu Dutt v. Emperor* AIR 1942 22 (P) if the Courts :

assume in part the functions of jurymen when they hear these cases, they will generally be able to come to a decision not only in harmony with the true principles of the law, but also not obnoxious to commonsense and the circumstances of the time. And in holding the scales evenly between Government and citizen they will be forgetful neither of the obligation of the one towards the public at large nor of the individual and private rights of the other; for the preservation of order is a thing in which all citizens have an interest no less than in the maintenance of freedom of speech and the right to criticise all matters of public interest.

What is, therefore, required is that the Court should in every such case, consider the book or newspaper article as a whole and in a fair and free and liberal spirit not dwelling too much upon isolated passages or upon a strong word here and there which may be qualified by the context, but endeavouring to gather the general effect which the whole composition is likely to produce on the mind of the reader; (See - AIR 1949 EP 305 (SB) (D)). These well established principles have to be kept in the forefront.

I agree with the petitioner's counsel that the booklet is a mere thesis on the virtues of socialism. It seeks to analyse the various evils of society, attributes all those evils to capitalistic exploitation and suggests that the only panacea is socialism. It, therefore, pleads for the introduction of socialism with the utmost speed and expedition and thus advocates an all-round revolution in the country. There is, however, nothing either directly or indirectly to indicate that this revolution must be brought about by violent means. Many of the criticisms which are levelled against the prevailing conditions of society and politics at the time when the booklet first came into being have been out-dated. It appears that the book was written at the time of the partition of the country in 1947 and on the eve of the Congress rule. The author was of the view that no reorganisation plan based on capitalist exploitation would ever succeed. The only solution, according to him, was socialism and it was on the foundation of socialism alone that the country could progress and develop into a peaceful and prosperous country. This is the underlying object at the publication and it is for this reason that the booklet was entitled "why socialism is wanted".

In passing, the author severely criticises the capitalists and all those who are not genuine believers in socialism and are in a way opposed to the reforms which the author presses for. The author laments the inefficiency and unfitness of the present ruling class, which, according to him, has been the topic of discussion everywhere, and that though the revolutionary powers in India were becoming self-conscious, they were not as wide awake as the anti-revolutionists were.

A large part of the discussion in the booklet seeks to analyse the prevailing political and social evils and then it proceeds in the last few pages to suggest remedies. It differentiates between socialism or the rule of peasants and workers and what the author calls a bourgeois democratic revolution. It examines the contentions of those who claim that bourgeois democratic revolution must precede socialism and the latter should follow in the wake of the former, and not simultaneously. The author does not believe in the latter school of thought and appeals for a general revolution in all spheres of political activity. In all this analysis, the target of attack is capitalism and the author winds up with glowing tributes to socialism which, he claims, can alone bring about the millennium of which the author dreams.

The book also discusses the means to increase production and the income of the masses. This is the scheme of the booklet. One may not agree with the premises or the reasonings of the author, but it is impossible to find fault with the discussions on the ground that they do or are likely to incite or encourage violence.

It is true that the author advocates revolution in almost all spheres of political life, but that does not necessarily imply that the revolution, of which he is thinking, must be a revolution brought about by violence. There is nothing in law to prevent a particular party in placing its philosophy and programme before the public, so long as it does not directly or indirectly incite violence or subversion of the Government established by law. A party may even criticise the machinery of the State, may suggest that the old State machine is bound by thousands of threads to the bourgeois and permeated through and through with routine and inertia and, therefore, that machine has to be destroyed and replaced by a new one. This need not necessarily lead to the inference that the author advocates violent revolution.

8. Mr. Medhi, the learned Senior Government Advocate, contends that the booklet contains a scurrilous attack on capitalists, industrialists and zemindars whose existence may be necessary to build up the economics of the country; it also suggests that any delay in destroying these bodies is dangerous in the interest of the country, and that, therefore, an all-round revolution is necessary on the pattern of the Russian Revolution. The document, therefore, by necessary implication, according to the learned Counsel, incites or tends to incite violence. He contends that the author does not seem to have any patience for the ballot box or constitutional methods. He refers to certain passages in particular, which, according to him, are clearly offensive.

I will, therefore, refer to some of the most prominent of them to examine the contention of Mr. Medhi. He refers to a passage where the author says :

That is why we have always warned not to have any compromise with capitalists or capitalism and declared to carry on an uncompromising class struggle, against capitalism, foreign imperialism, feudalism and all the like on the basis of class

struggle.

There is nothing wrong in this expression of opinion. India had acquired a Dominion status and there was already the partition of the country And a General Election immient; and it was open to the author to educate the masses in his political theories. Indeed the author was right in assuming that any discussion on political topics was well understood by the intelligent mass and it was possible for it to judge the different principles and courses.

Then Mr. Medhi refers to another passage where the author says

the autocracy of the Native States is surviving to-day and will do so under shelter of capitalism. They will survive under different forms and names so long as the socialist movement throughout the whole of India is not transformed into a revolution now.

Here again, there is nothing objectionable in the passage Just quoted. Besides we all know that it is a historical anachronism now, the Native States have since merged in the Indian Union and the author's prophecy has been belied by the march of events.

Another passage runs thus :

The Indian Revolution will not await idly the move for the world revolution; rather the Indian revolution will be a prelude to world revolution.

The context shows that all the time the author is thinking of a socialistic revolution for the full freedom of India. He thinks that this freedom of India is bound up with socialism in the rest of the world. The author warns that war is a meaance to freedom and must be annihilated; he asserts that the previous wars were fought only to protect capitalism and such wars can be avoided by socialistic revolution, in the world. If at all, the passage only shows that the Indian revolution is to lead, and not to follow any previous pattern.

Mr. Medhi claims to read it with another passage which is as follows :

About 30 years ago Lenin brought about this revolution, the Socialist Revolution, in backward Russia. The socialist revolution set at naught the enmity of the entire world; he shaped Russia in such a pattern that even Hitler, the indomitable war-monger of the world, had to-surrender before Russia. At that time Russia had no example of any Socialist country from which it could learn. Today after 30 years, we have example from the history of Russia; we have seen their defects, & shortcomings, if any. We shall, therefore, be able to establish socialism in India in a more flawless way.

The author no doubt offers here a tribute of praise to Lenin and the Russian revolution, but at the same time he claims to be conscious of its shortcomings and wants to "establish socialism. in India in a more flawless way". This is not blindly adopting the Russian revolution with all its alleged orgies of blood-shed and violence.

At another place the author says "Frustration, in life is seen all round to-day. Life is to-day only a beast of burden; it is only conveying the explosion of destruction". I do not see what is wrong with this passage. The words "explosion of destruction" were only figurative.

Then again the author says :

The atmosphere of the country has been rendered poisonous; all sorts of protests are going down to the dust and all kinds of sense of responsibility and consciousness of society have been destroyed. Not a single moment more can be wasted from stopping this stinking state of society. The stagnant course of society must be released. The country is falling backward through delay and feeling of hesitation. There is no other way of salvation but socialism in these horrible circumstances arising out of murders of children and women, burning of villages, attack on helpless passerby, bribery, oppression, hooliganism, black-markets, etc. Hence the sooner the socialist revolution is brought about the better for all.

Another passage is :

The first thing that is needed is the steadfast. determination that we shall bring about socialism right now. Without that will, without that effort, the country will not itself turn socialist. No social revolution breaks out itself, only the ground becomes prepared; Man's will-power and conscious effort transform that prepared ground.

These passages would be largely covered by Explanation I to Section 3 itself.

Mr. Medhi lays some stress on the passage which runs thus :

They do not want to give political colour to the strikes of the labourers; they do not seek to make workers antagonistic to Government; they are not prepared to shoulder the entire responsibility to devise and plan a campaign based on the entire demands of the people; because they know that this will bring about the revolution. They are preparing the ground not for revolution but for election based on adult franchise.

Mr. Medhi contends, on the above passages, that the author is in favour of encouraging strikes and does not believe in election based on adult franchise. This may be so. Strike, by itself, is not illegal, nor is a disbelief in election based on adult franchise in the set up of things of which the author speaks. With reference to the context, it appears to me that the passage is in criticism of the conduct of the Stalinist Communists who, according to the author, helped in the last imperialist war falsely calling it the "Peoples" War" and then instead of preparing the people for attaining the socialist ideals, were merely thinking of the elections which were then impending.

It would not be fair to put any other sinister complexion on it. Mr. Medhi similarly builds his arguments on another passage which is as follows :

It is not possible for such a person to understand the significance of mutiny in the navy; for him a revolt in the Police force or the army brings no significance; the present movement of the workers bears no political or social significance to him; he has no enthusiasm in the present revolution. Because all those discontent, rebellions and strikes herald the historic signal for a socialist revolution. Without the desire to make the revolution successful, the agitation becomes meaningless. The entire masses of the country seek today a drastic change of things.

Mr. Medhi contends that this clearly shows that the author encouraged mutiny in the army and the navy and the police force and is, as much, definitely encouraging violence.

In my opinion, it does nothing of the kind. It is common knowledge that near about that period there was some unrest in the navy leading to a Commission of Inquiry; there was also some revolt in the Police force. The author presumably refers to them and says that they were symptoms of unrest and dissatisfaction in the masses with the then existing state of things, of which the reformers omit to take notice and which could alone be remedied by a socialist revolution. This is clear from the passages which follow and have preceded the passage in question.

The most objectionable part of the booklet, according to the learned Government Advocate, is where the author attacks the State machinery and seeks its destruction. These passages may be collated here for the sake of convenience, though they may appear somewhat torn out of their context. The author says :

The common view is that this State is a kind of necessary machine. It has no politics of its own to guide or determine the course of action according to programme";

The machinery of the State is not such a flexible one as to render everything possible merely because a party is in the majority in the Assembly, nor to transform the appearance of a State";

The modern State is a legitimate monstrous plunderer on behalf of the capitalists;

With this machinery of the State, the minimum programme for full freedom in the country can never be implemented; and there will be no bigger farce than a statement to the contrary;

One after another, of the present "Socialist" Government of England has failed because they have termed regulated capitalism as "Socialism";

The capitalists of the world have many times let out their State apparatus to the so-called Socialists only to avoid impending danger of mass revolution and revolt and only after a few days they have become their old selves and taken over their own machinery;

Franchise for democracy based on capitalist inequality is a big hoax and a sheer mockery. Equality in franchise is meaningless without economic equality. The

capitalists can always Send their own men to the Legislatures by virtue of their wealth, influence, organised power, publicity machinery, aid of hired volunteers and by payment of money;

Legislatures cannot penetrate into the huge impregnable fortress of aristocracy constituted of the Government servants, military generals, police, military, the Judges of the Courts, etc.;

Rather day by day the machinery of administration is becoming the cause of all discontent and degradation. All the exploiters have kept their own visible and secret fortresses in every stem of this machinery; and unless this sort of the State is shattered to pieces, no work of reconstruction is possible.

9. Mr. Medhi contends that these passages, would incite people to violence and lead to a destruction of the State machinery by a process " of violence. This contention does not appeal to me. Most of these passages are mere stock-in-trade of some of the political parties who seek to change the existing order of things or who genuinely believe that the Government of the day has failed to deliver the goods. There may be something in the assertion that the State machinery is top-heavy and is not serving much useful purpose and requires drastic changes. The author may be right or may be wrong, but much of these criticisms would be saved by the Explanation to Section 3 of the Press Act itself. It is clear, however, that the author is not necessarily advocating violence. Indeed he explains what he means by shattering the "State apparatus". He poses the questions and answers thus :

When a real revolutionary says that the State apparatus should be shattered, what does he mean to say : He does not mean that all the buildings, houses, offices, Courts and forts should be shattered nor that every one who is serving Government to-day should be executed. The State is merely a party or an institution. an armed and powerful organisation. This party of Government is constituted of a variety of people; but its leadership and authority are entirely with the capitalists. This whole party will, therefore, have to be knocked down and a new one created. This institution must be torn asunder so that the people within it cannot remain united any longer but become disintegrated and mix with the masses. This work of destruction will never be accomplished unopposed; it will be rendered possible only through revolution; and destruction must be resorted to to the extent inevitable.

Again he follows it up with these remarks :

Whoever seek to transform capitalism gradually into socialism, are too happy in the achievement of this State as if this State will render the work of transformation possible. Capitalism will never transform itself into socialism. Capitalism and socialism are ever mutually antagonistic to each other; one is the biggest foe of the other. Socialism can be achieved only after destruction of capitalism. The effort to transform capitalism into socialism by peaceful means and by degrees with the aid of this State is the biggest humbug. Yet the different

parties to-day are busy with trick by uttering such things.

10. The pamphlet, as I have said, is a fairly long one, containing about 71 full size typed pages, and I have picked out only some of the important passages on which Mr. Medhi relied in support of the order of Government. I can find nothing in the booklet to lead us to hold that it is objectionable in the sense in which it is understood in law. No argument can be founded on stray passages or strong expressions here and there standing in their isolation and apart from the context. Some allowance has also to be made for figures of speech and expression.

11. The word "revolution" itself need not be a bug-bear in the present age and conjure up all those hideous images of blood and carnage in the mind with which it was wont to be associated earlier. We have in our life known of a far-reaching non-violent revolution which transformed the face of almost a continent like India and wrought extraordinary changes in its political and social life. We are long past that stage when the word "revolution" was an anathema to most of us. With the advance of political knowledge and consciousness, revolution may mean nothing more than a rapid and radical change of ideas and ideals necessitating re-orientation of the society, polity and the State machinery on the lines of those changes. All this may come about without resort to violence.

I find myself in respectful agreement on this point with all that has been observed by Chagla C. J., in - *Manohar Damodar Patil and Another Vs. The Government of Bombay*, where he says :

It is true that the article does state that the working class and the toiling masses can get hold of power through the path of revolution alone. But the expression "revolution" is used here, as is clear from the context, in contradistinction to reformism or gradual evolution. The revolution preached is not necessarily a violent revolution. It is a matter of history how that our own country achieved a revolution- and a very important revolution-by non-violent method, and it cannot be suggested that the only revolution that history knows of is necessarily a violent revolution. It is open to a writer to suggest that ordinary revolutionary method is either too slow or not adequate to achieve a particular purpose and that purpose can only be achieved by a revolution. But by advocating revolution, it does not necessarily follow that he is advocating a type of revolution which would come within the mischief of Section 4 (1) (f). As the writer has not stated in this article that the toiling masses should take up arms and fight for their rights and thus achieve a revolution, we refuse to read this expression as inciting the masses to violent methods.

We have no hesitation in making the same observation in respect of this booklet and in holding that on a fair reading of it there is nothing to bring it within the definition of "objectionable matter" as held by Government.

12. I may recall here what has been stated earlier that the booklet was originally published in Bengali as early as 1947 and underwent two editions by 1948. Excerpts from this booklet were published in the Assamese weekly "Panchayat"

from time to time during 1947-48 and the Assamese version of it was published only in November 1952. During all this period no objection was taken to the publication by the Government. In July 1950, the Revolutionary Communist Party of India was banned in Assam, but that ban was withdrawn in November 1952. It is, therefore, somewhat difficult to understand why even after the withdrawal of this ban, the Government considered it wise to pass an order of forfeiture against this publication.

13. For the reasons set out above, we are of opinion that the order of Government cannot be sustained. The application should be allowed and the declaration made by the Government forfeiting the booklet in question should be set aside.

14. The petitioner is entitled to his cost; hearing fee Rs. 100/-.

15. When this judgment was about to be delivered, the learned Senior Government Advocate drew our attention to Government Notification No. JJD. 77/46/76, dated 12-4-51, on the basis of which he contended that the Rule in the Assam Departmental Manual under which the Advocate General had been designated as the Principal Law Officer of the State, stood abrogated. This case was heard on various dates and it was even set down to be mentioned on another date subsequently, but during all these stages, the above notification was never brought to our notice. For obvious reasons, the Court cannot favour the procedure adopted. It is hardly necessary to observe that it is the clear duty of parties and their counsel to be adequately briefed when their cases are posted on the Cause List for hearing, and submissions made from stage to stage cannot be entertained as they are both inconvenient and improper.

We have, however, looked into the notification aforesaid and we see no reason to alter our decision. As a matter of fact, there is nothing in the notification to indicate as to who is the Principal Law Officer of the State. In fact, it merely defines the duties of the Advocate General and his remuneration, etc., and does not abrogate the previous rule. Even if it did, we have already said that in view of the words "as the case may be" occurring in Section 11 of the Press Act, the certificate contemplated by that section must be given by the Advocate General in those States where there is an Advocate General, and in the absence of such a certificate, action u/s 11 could not be taken.

Deka, J.

16. I agree.

Ram Labhaya, J.

17. I agree.