

(1932) 12 CAL CK 0037
In the Calcutta High Court

In Re: Anukul Chandra Parihal and Another; Dainik Nayak and Swadesh Press

Date of Decision : 22-12-1932

Acts Referred:

Government of India Act, 1915 — Section 72
Press (Emergency Powers) Act, 1931 — Section 23

Citation : AIR 1933 Cal 278

Hon'ble Judges : Rankin, C.J.; Mukerji, J.; Mitter, J

Bench : Full Bench

Judgement

Mukerji, J.—This is an application u/s 23, Press (Emergency Powers) Act 23 of 1931. Petitioner 1 is the printer and publisher of a newspaper "Dainik Nayak" and petitioner 2 is the keeper of the "Swadesh Press" in which it is printed. The Local Government having, by orders made on 1st October 1932, declared forfeited to His Majesty a sum of Rs. 100 out of the security deposit of Rs. 500 made by petitioner 1 and the whole amount of the security deposit of Rs. 100 made by petitioner 2, in the exercise of their powers u/s 8, Sub-section (1) and Section 4, Sub-section (1) respectively of the said Act, the petitioners have made this application to set aside the said orders. The offending article appeared in the issue of the said newspaper of date 24th August 1932. Two passages in that article appeared to the Governor-in-Council to contain words of the nature described in Sub-section (1), Section 4 of the Act, as amended by Section 77 of the Special Powers Ordinance No. 10 of 1932, as those words, in the opinion of the Governor-in-Council:

tend to bring into hatred or contempt the Government established by law in British India or to excite disaffection towards His Majesty's Government.

2. The first contention urged on behalf of the petitioners is that Section 77, Special Powers Ordinance No. 10 of 1932, was ultra vires. The argument is that Clauses (c) to (i) of this section, but for the words "or which tend, directly or indirectly," which precede the clauses, are mere reproduction of Clauses (c) to (i) as contained in Section 63, Special Powers Ordinance No. 2 of 1932, and

inasmuch as the latter Ordinance was promulgated on 4th January 1932, and the former on 30th June 1932, the reproduction of the clauses had the effect of prolonging the life of the earlier Ordinance against the express provision of Section 72, Government of India Act, as amended in 1919, which says that an Ordinance so promulgated shall be in force for six months only from the date of its promulgation. It has been argued also that if it is a state of emergency that gives the Governor-General authority to promulgate an Ordinance, the emergency which was caused by the conditions which existed on 4th January 1932 cannot be said to have continued as an emergency till 30th June 1932, because during the interval that elapsed there was ample time to have recourse to the legislature for such enactment as may have been necessary to meet the situation. The contention, in my opinion, is not well founded. It assumes that once a situation of emergency is created, it is the same emergency that continues; on the other hand, the same conditions, which may at one time create an emergency, may, whether they continue or disappear, well be regarded as again creating an emergency. Whether at any particular moment there is a state of emergency or not is a matter entirely for the Governor-General to judge: see AIR 1931 111 (Privy Council) . And there is nothing in Section 72, Government of India Act, which may be construed as indicating that an Ordinance, which under it, is to remain in force for six months, cannot be repeated.

3. The next contention of the petitioners is directed to establish that the passages which are said to be objectionable are not really so, if they are properly read and understood. Some objection has been taken to the translation of the article, it being said that the word "dharma" should be translated as "religion" and not righteousness, and the word "adharma" as "irreligion" and not "unrighteousness" or "evil," and that "Murari" means not "slayer of Mura" but only "enemy of Mura." I am prepared to concede that such meanings as the petitioners suggest are more literal. So far as "Murari" is concerned it is only an appellation of Sri Krishna and no sinister inference need, in any case, be drawn from the use of the word. As regards "dharma" and "adharma" I see no point in the difference as to their meaning, for "righteousness" is but the practical manifestation of "religion," and "religion" and "righteousness" are, in a sense, synonymous when used with reference to conduct of human beings or institutions.

4. Learned advocate for the petitioner, as I understand his arguments, desires us to read the article as meaning that as India at the present moment is being oppressed by wrongs done to her by her own people or by a section of her people on account of the irreligious lives into which they have plunged themselves, the writer was invoking Sri Krishna to manifest Himself on earth once again as He had bound Himself by promise to do when the cup of sin and iniquity would be full to its brim, and to destroy the irreligion that was being practised by her people and deliver her from her present miserable plight. He desires us to hold that Janmashtami, which is the day on which Sri Krishna was born, is an occasion when one may not inappropriately be given to thoughts of

this nature, because He took His birth to destroy those forces which were the embodiment of "irreligion" and lust of power, such as Kansa and Durjyodhana. He has argued that the expression "to set your mother in chains free from her shackles" has been used metaphorically to mean the deliverance of India from such prejudices and irreligious practices as have conduced to hamper her progress. I am of opinion that the article cannot possibly bear such an interpretation.

5. It is quite true that Janmashtami is a day for pious thoughts and wishes, and I am prepared to concede that for a subject nation to pray to Sri Krishna for attainment of political freedom is not a thing which can be legitimately condemned. But for an innocent sentiment of such character, expressions such as "uplifted hand of oppression," "oppressed and humiliated India," "India persecuted and under subjection," and "piteous wail of a suffering people" will have no place and would be wholly inapposite. It is possible that one will not be far wrong if he attributes the present condition of the country to want of reverence for religion, but the expressions to which I have referred clearly indicate something very different from that as being what is actually meant. The expressions assume the presence of an agency which has oppressed and humiliated her, has uplifted its hand for oppressing her further, and has been persecuting her by keeping her under subjection and being heedless of the piteous wails of her suffering people. The only agency for which it is possible to behave in that way is the Government established by law, and the expressions, having been used with reference to it, obviously tend to bring it into hatred or contempt and are calculated to excite disaffection towards it.

6. We have been asked to read the quotations from the Geeta which are to be found in the article in the light of their context. This, of course, we have to do, but I do not see what advantage the petitioners gain thereby. The Geeta no doubt embodies in its sayings the highest and noblest of truths. The three quotations are from the sayings of Sri Krishna in circumstances which, if they are at all taken into consideration, would put a still worse complexion on the article under consideration. In my judgment therefore the application should be dismissed.

Rankin, C.J.

7. I agree.

Mitter, J.

8. I also agree.