

(1933) 07 CAL CK 0012
In the Calcutta High Court

**In Re: Brojendra Nath Gupta, Editor, Printer and Publisher of The
"Advance" and Another**

Date of Decision : 14-07-1933

Acts Referred:

Citation : 145 Ind. Cas. 881

Hon'ble Judges : C.C. Ghose, Acting C.J.;Panckridge, J;Mukerji, J

Bench : Full Bench

Judgement

C.C. Ghose, Actg. C.J.

1. This is an application by two persons named" Brojendra Nath Gupta who is described as the Editor, Printer and Publisher of the "Advance" newspaper and Anil Chandra Dutt Gupta who is described as the keeper of the Sudhan Press where the newspaper in question is printed, u/s 23 of Act XXIII, of 1931 [The Indian Press (Emergency Powers) Act, 1931] praying that certain orders of His Excellency the Governor of Bengal in Council dated June 9, 1933, calling upon these two petitioners to deposit cash or security to the extent of Rs. 2,000 each may be set aside in the circumstances stated in the petition.

2. Under orders of His Excellency the Governor of Bengal in Council notices under Sub-section 3 of Section 7 and Sub-section 3 of Section 3 of the said Act were served on these two petitioners directing them to deposit with the Chief Presidency Magistrate, Calcutta, security to the amount of Rs. 2,000 each in money or the equivalent thereof in security of the Government of India on or before June 20, 1933. We are informed by learned Counsel for the petitioners that the securities demanded have been deposited with the Magistrate.

3. According to the Local Government the petitioners have published and printed in the "Advance" newspaper on May 20, 1933, what is described as an article but which in reality is a news item. This is an annexure to the said orders of the Governor of Bengal in Council containing, it is alleged, words of the nature described in Sub-section 1 of Section 4 of the Indian Press (Emergency Powers) Act, 1931. This Act was amended by the Criminal Law Amendment Act of 1932

being Act XXIII of 1932 and the question now for our decision is whether the said news item reproduced in the said annexure does or does not contain any words of the nature described in Sub-section 1 of Section 4 of the said Act as amended. The learned Advocate General on behalf of the Crown informs us that the words in question were considered objectionable by Government as in their opinion they were hit by Clauses (d) and (f) of Section 16 of the Criminal Law Amendment Act, 1932 (Act XXIII of 1932).

4. It is not necessary for me to set out the words originally appearing in Sub-section 4 of the Indian Press (Emergency Powers) Act, 1931, nor is it necessary for me to set out the whole of the amending section, namely Section 16 of Act XXIII of 1932. It would be sufficient for me to set out the relevant sub-clauses", namely Sub-clauses (d) and (f) of the said Act. In Section 16 Sub-clause (d) and sub-clause (f) any words, which tend directly or indirectly to do or to have the effect hereinafter described, are hit and in order to fully explain I set out below the two Sub-clauses in question

Sub-clause (d) "To bring into hatred or contempt His Majesty's or the Government established bylaw in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India or to excite disaffection towards "His Majesty or the said Government, or" and Sub-clause (f); "To encourage or incite any person to interfere with the administration of law or with the maintenance of law and order or to commit any offence, or to refuse or defer payment of any land revenue, tax, rate, cess or other due or amount payable to Government or to any local authority or any rent of agricultural land or anything recoverable as arrears of or along with such rent, or

5. Mr. H. D. Bose, who appears in support of the petition of these two petitioners, has made a sort of half-hearted complaint before us that the order of the Local Government did not specify which of the clauses of Sub-section 1 of Section 4" as amended had been contravened by the petitioners and that in the circumstances the order of the local Government was vague. As regards this point, this has been the subject of debate and decision in two previous cases in this Court and I am of opinion that having regard to the very wise language used in the relevant sections of the Indian Press (Emergency Powers) Act, 1931, there has been sufficient compliance on the part of the local Government and that in law the action taken by the local Government cannot be questioned or attacked on the technical ground put forward by Mr. Bose.

6. In my opinion, we are not entitled on any application of this nature to discuss profitably whether the petitioners were put to any disadvantage, we can only proceed upon the words used in the Indian Press (Emergency Powers) Act, 1931. Leaving therefore, this technical argument aside, the real question we have got to determine is whether the words reproduced in the annexure to the order of the local Government are such as are hit by sub-clause. (d) and {f) of section 16 of Act XXIII of 1932.

7. Now, the words reproduced in the annexure run as follows:

Maulana Hasrat Mohamed in an interview to the Associated Press on the suspension of the Civil Disobedience Movement said that an acknowledgment of defeat would not further the cause of national progress. He supported the opinion expressed by Messrs. Bose and Patel in Europe and stated that the fight should be continued till the freedom was attained.

8. The words reproduced in the annexure obviously are a news item transmitted by a news agency called the Associated Press of India and it appears from a copy of the Advance newspaper dated May 20, 1933, which has been shown to us that the message in question was sent by post from Calcutta by the Associated Press. It was published as a news item and the substance of the words in question is that in the opinion of a person named Maulana Hasrat Mohammad the suspension of the Civil Disobedience Movement amounted to an acknowledgment of defeat and that such acknowledgment of defeat was not likely to further the cause of what is called national progress. The person concerned stated that in an interview with a representative or representatives of the Associated Press and he went on to refer to certain opinions expressed somewhere in Europe by two persons named Bose and Patel and expressed the opinion that the fight be continued till freedom was attained.

9. It is not clear on the evidence before us who the interviewer was, whether he was, to use a colloquial expression, a man in the street or whether he was or (sic) is, a person of any importance whatsoever and whether the words expressed by him were likely to obtain, leaving aside wide-spread acceptance, acceptance among a considerable section of the intelligent public. We have no evidence before us as to who this person is, what his standing in the country is and whether the views expressed by him are worth listening to or whether they in the circumstances were calculated to directly or indirectly encourage or incite etc., what is referred to in sub-section (f). That is the first observation that I should like to make. The second observation is that in the context the "fight" that is referred to in the last sentence obviously had reference to the question of the continuance of the struggle by means of the Civil Disobedience. But here again the value of such an opinion on the part of this person depends upon a variety of circumstances to which I have alluded just now. In the absence, therefore, of evidence of that nature, it is impossible to say that the words in question can have directly or indirectly the effect described or referred to in clauses (d) and (f) of s. 16 of Act XXIII of 1932.

10. I leave out of my consideration clause (d) because although the learned Advocate General has in his argument referred to clause (d) as being one of the sections which can be used for the purpose of, if I may again use another colloquial expression, roping in the editor, printer and publisher of the words reproduced in the annexure, he has not really attempted to induce (sic) us to hold that clause (d) can be brought into effective operation in the present case.

11. The learned Advocate General's main contention is that the words in question are hit by sub-clause (f) of Section 16. In addition to what I have already said about the want of evidence regarding the character and standing of the interviewer I have got to consider in this case, as I attempted to say in previous case, the entirety of the words as they occur in the annexure in a fair and free spirit and not with an eye of narrow and fastidious criticism. In coming to a conclusion on the specific question raised I cannot shut my eyes to the nature and manner of the publication of the words transmitted as they were by a news agency and I must come straight to the point to discover for myself as to whether a mere expression of disapproval of suspension of the Civil Disobedience Movement on the part of a person in Cawnpore about whom nothing is known on the record before - us, can have the effect such as is referred to in Sub-section (f) of Section 16, Act XXIII of 1932. I am not unmindful of the fact that the editor or publisher published "news" at his own risk. But whether any real risk has been run in this case depends on circumstances. After giving my very earnest and most careful attention to the question raised I am of opinion that the words complained of are not hit in the circumstances of this case by sub-clause (f) of Section 16 of Act XXIII of 1932. It is not necessary for me to elaborate this point nor is it necessary for me to amplify it in any manner whatsoever. It is sufficient for me to say that the conclusion is that the words are not hit by Sub-clause (f) of Section 16.

12. In that view of the matter, in my opinion, this application ought to be allowed and an order should be made setting aside the orders passed by the local Government on June 9, 1933 and directing that the moneys or securities deposited with the Chief Presidency Magistrate be returned to the depositors. There will be no order for costs.

Mukerji, J.

13. I agree. I only wish to add that after all, it is the effect of the words as published in the newspaper and not merely the meaning of the words taken by themselves that has to be considered in order to see whether the statement which is complained of is hit by section 4. Taking the so-called offending statement as a news item, which it is, it is not possible to hold that it does come within the purview of any of the clauses of that section.

Panckridge, J.

14. I agree with the order proposed by my Lord for the reasons given by him and also for the reasons given by my learned brother "Mr. Justice Mukerjee. I desire, however, to add a very few words to what has fallen from them. In my opinion the learned Advocate General is amply justified in saying that the words attributed in the newspaper to Maulana Hasrat Mohani amount to an expression of approval of the Civil Disobedience Movement and of disapproval of any proposal for its suspension. I also agree with him that the conduct referred to in clause (f) of Section 16 is conduct which is connected with and characteristic of

that movement. I notice that in the petition, the petitioners submit that if the report of the interview is read along with the editorial paragraphs in the newspaper it would appear that the petitioners disagree with the view expressed in the interview regarding suspension of the Civil Disobedience Movement. Counsel for the petitioners did not elaborate this argument, but I desire to say that in my opinion the argument is without substance. It is idle for the publisher of a newspaper to say, "True, the article complained of j(sic) may amount to poison, but if you search the remaining columns of my newspaper you will find an effective antidote." It is notorious that newspaper readers seldom read the entire publication: many of them confine their attention to the news items and neglect reading articles and comments.

15. With regard to clause (d), it is clear to me that that can have no application. The Government established by law is not referred to in the interview either directly or by implication. With regard to clause (d) although, as I have said that clause clearly refers to the activities of those supporting the Civil Disobedience Movement, I cannot bring myself to think that a statement in a newspaper that a gentleman of whose existence I was Unaware until today, approves of the Civil Disobedience Movement has a tendency to encourage or incite the readers of the newspaper support it. It is perfectly true that the report of a speech may have a wider and more mischievous tendency than the speech itself, but in the circumstances of this particular case, I find it impossible to draw the conclusion that the words upon which the local Government seek to justify their order for security have such a tendency.

16. I concur in the order to be made.