

**(1950) 09 GUJ CK 0004**  
**In the Gujarat High Court**

**Case No :** Criminal Miscellaneous Applns No's. 40 and 41 of 1950

Indukumar Shankerlal Saherwalla and Another

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 11-09-1950

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19(1), 19(2)

Saurashtra State Public Safety Measures Ordinance, 1948 — Section 6, 6A, 6A(1)

**Citation :** (1950) 09 GUJ CK 0004

**Hon'ble Judges :** Divatia, C.J;Chhatpar, J

**Bench :** Division Bench

**Advocate :** V.G. Hathia, in Appellant No. 40 of 1950 and T.U. Mehta, in Appellant No. 41 of 1950, for the Appellant; C.N. Shah, General, for the Respondent

## Judgement

1. Both these applications involve a common question of law. The applicants are the Publishers of a Daily called Swarajya, and the publishers of a newspaper called Jai Hind in Rajkot. An order was served on them by the Chief Secretary, Government of Saurashtra, on 1-7-1950, to the effect that the publishers of all newspapers in Rajkot were required that any matter relating to the present disturbances in Rajkot shall be submitted by them before publication to the District Magistrate for scrutiny. The order was issued u/s 6A, Sub-section (1), Clause (b)(iii), Saurashtra State Public Safety Measures Ordinance, 1948 IX (9) of 1948 as modified by Ordinance No. XXXVIII (38) of 1948 and by Act VII (7) of 1950.

2. The applicant in the former application applied to the Chief Secretary, Government of Saurashtra, to rescind the order as it was "ultra vires" in view of the decision of the Supreme Court in Brij Bhushan and Another Vs. The State of Delhi, . The order was not, however, rescinded with the result that the two petitions were filed on the 7th and 8th July last respectively. About four days later, i.e., on the 11th of July the order was withdrawn by the Chief Secretary. We were not, therefore, concerned whether the applicants are now prejudiced by the

order, but in order to clarify the legal position, we directed that the petitions should be heard by us instead of the withdrawal of the order.

3. It is contended before us by the learned Advocate for the applicants that the recent decisions of the Supreme Court in *Brij Bhushan and Another Vs. The State of Delhi*, and *Romesh Thappar Vs. The State of Madras*, , make it quite clear that such an order offends the fundamental right of the publishers under Article 19(1) (a) which states that "all citizens shall have the right to freedom of speech and expression", and that an order of professorship like the one we have here, does impede the right to freedom of expression. The Supreme Court has laid down in the above two decisions that so long as the security of the State was not affected, such orders cannot be justified under the Article, because Article 19 (2) says that

Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State.

The effect of this provision is that if the order does undermine the security of the State, it is not affected by the provisions of Sub-clause (a) of Clause (1) of Article 19.

4. In both the cases before the Supreme Court, the words "Security of State" were not in the enactments. The learned Advocate General has conceded before us that the order passed is bad, not because it is directly covered by the two decisions of the Supreme Court, but because the words "Security of State" have not been inserted in Section 6A, which has been subsequently-added to the Ordinance No. IX(9) of 1948, and that therefore, although the two decisions do not directly apply, the order is bad because such an order could be justified only if it endangers the security of the State, and Section 6A does not contain the words "Security of State". After looking at the different amendments made by the Saurashtra Legislature, we think that the order is bad and "ultra vires" on that ground. In the material provision relating to pre-censorship, viz., Section 6A, the words "Security of State" are not mentioned. It might have been the intention to add the words "security of State" in all the relevant provisions, for instance, in the amendments which the Saurashtra Legislature made in April 1950 to the former Ordinance, the words "Security of State" have been added in Section 6 as well as 6B. But we are not concerned as to whether the omission is accidental as we have to construe the Section as it stands. The words "Security of State" are not to be found in the amended Section 6A with the result that the two decisions of the Supreme Court would apply, as there is no question of the Security of the State being affected if the pre-censorship order were not made. In our opinion therefore, the learned Advocate General is right in frankly conceding before us that unless the security of the State is endangered, there can be no restriction on the freedom of expression under Article 19 of the

Constitution of India. Section 6A would be "ultra vires" because the words "Security of State" are not there.

5. For these reasons we think that the order issued by the Chief Secretary, Government of Saurashtra, on 1-7-1950, is bad as well as "ultra vires", and must be set aside. We, therefore, quash the order of pre-censorship in both the cases, and allow the applications.