

(1995) 07 AHC CK 0076
In the Allahabad High Court
Case No : C.M.W.P. No. 5402 of 1991

Jagran Prakashan Ltd. and others

APPELLANT

Vs

Press Council of India and others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Press Council Act, 1978 — Section 14, 14(1), 4
Press Council Regulations, 1978 — Regulation 3, 5, 5(1), 5(2)

Citation : AIR 1996 All 84

Hon'ble Judges : J.S. Sidhu, J;B.M. Lal, J

Bench : Division Bench

Advocate : Mr. Rakesh Tiwari, for the Appellant; S.C. and Mr. Pankaj Naqvi, for the Respondent

Final Decision : Allowed

Judgement

B.M. Lal, J.—By this petition under Art. 226 of the Constitution, petitioners have challenged resolution dated 21/22-1-1991, passed by respondent No. 1, the Press Council of India, (contained in Annexure 6 to the writ petition) whereby the respondent No. 1 invoking the provisions of Section 14 of the Press Council Act 1978 (hereinafter referred to as the Act) censured Hindi daily "DAINIK JAGRAN".

2. The short facts leading to this petition are as under:

Petitioner No. 1 is a limited Company publishing Hindi newspaper in the name of Dainik Jagaran from Kanpur, Lucknow, Gorakhpur, Agra, Meerut, Allahabad Bareilly, Varanasi and New Delhi. Dainik Jagaran is published from different places but petitioner No. 2 who is "Editor" is concerned in this case only with the editions published from Agra, Meerut, Varanasi, Allahabad, Bareilly and New Delhi. Petitioner No. 3 publishes newspaper from Varanasi and Allahabad.

3. The case of petitioners is that besides their own news service and news reporters they also get news from various news agencies, public places,

information departments of the State and Union, Television, Radio, Akashvani, foreign news services, political and non-political bodies and from public men as well.

4. The "RAM JANAM BHOOMI AND BABRI MASJID" issue has been engaging public attention for several years and in that regard claims and counter claims and stands of Central as well as State Government was the burning news and the public at large has been anxious to know the situation all over the country and the views of religious leaders, politicians, intellectuals and public leaders etc.,

5. According to the petitioners they have been expressing views from time to time in editorials and columns under the heading "VICHAR PRAVAH taking balanced and independent views which were of great public importance.

6. Thus, what transpired in respect of Ayodhya right from 20th Oct. 1990 when the then popular Government headed by Sri Mulayam Singh as its Chief Minister was in power for the first time, was published by the petitioners. They also published as to how entire city of Ayodhya was surrounded by paramilitary and other forces of the State as well as Central Governments so that the devotees and pilgrims may not reach Ayodhya, the holy city of Ram and also published about the atrocities meted out to the devotees and pilgrims who were going to Ayodhya.

7. Press Council of India, the respondent No. 1 is constituted under the provisions of the Act and is empowered for the purpose of preserving the freedom of the Press and for maintaining and improving the standards of newspapers and news agencies in India and also to warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist as the case may be for the reasons to be recorded in writing that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct.

8. u/s 14(1) of the Act Council may after giving the newspaper, or news agency, the editor or journalist concerned, an opportunity of being heard may hold an enquiry in such manner as may be provided by regulations made under the Act (hereinafter referred to as the Regulations).

9. Under Regulation 5 of the Regulations published in the Gazette of India Part III Section 4 dated 14-11-1979, a copy of the complaint shall be sent to the newspaper, news agency, editor or other working journalist against which or whom the complaint has been made along with a notice requiring the newspaper, news agency, editor or other working journalist as the case may be to show cause as to why action should not be taken u/s 14 of the Act.

10. Under Regulation 5(2) of the Regulations notice issued under sub-regulation (1) of Regulation 5, shall be sent to the newspaper, news agency, editor or other working journalist concerned by registered post, acknowledgment due, at the

address furnished in the complaint.

11. The Regulation 3(c) of the Regulations provides that where a person makes a complaint to the Council in respect of publication or non publication of any matter in any news paper or news agency u/s 14(1) of the Act, he shall before-filing the complaint draw the attention of the newspaper, news agency, editor or other working journalist concerned to the matter appearing in the newspaper etc. or to the non-publication thereof which, in the opinion of the complainant is objectionable and he shall also furnish to the newspaper, news agency, editor or the working journalist as the case may be, the grounds for holding such opinion,

12. According to the petitioners, State of U.P. the respondent No. 3 lodged 5 complaints against various newspapers for committing breach of journalistic standard and one of them dated 8-11-1990 was against the petitioners (vide page 41 of the counter affidavit) but before filing the complaint the State of U. P. did not draw the attention of the petitioners as required under Regulation 3(c) of the Regulations and copy of the complaint was also never served on the petitioners by the Council as required under Regulation 5(2) of the Regulations.

13. It is submitted that the Council constituted a sub-committee for making a general enquiry by order dated 8-11-1990 (Annexure A to the counter affidavit) and a perusal of the same shows that the Committee was constituted to examine the conduct of the Press in publishing the news and views concerning "RAM JANAM BHOOMI BABRI MASJID" issue and that of the administration in their dealing with the Press and thus, it was a general enquiry and not an enquiry against the petitioners.

14. It is further submitted that the subcommittee also did not serve on the petitioners any copy of the complaint or notice as required under Regulation 5(2) of the Regulations nor any particular item which was said to be against journalistic standard was served on the petitioners. The petitioners also wrote a letter informing the Chairman of the Council that no opportunity has been given to them nor show cause notice or charge-sheet was served on them nor the procedure prescribed under the Regulations has been followed but aforesaid letter of petitioner was rejected by the sub-committee vide its order contained in Annexure "D" to the counter affidavit and finally Press Council delivered its judgment on 21/22-1-1991 censuring petitioner and passed the impugned resolution to that effect.

15. Sri J.N. Tiwari, learned counsel for the petitioner submitted that impugned resolution, and judgment of the Press Council censuring the petitioner is against the statutory provisions contained in Section 14 of the Act, Regulations 3 and 5 of the Regulations and the principles of AUDI ALTERAM PARTEM i.e. no one can be condemned unheard on the other hand Sri Pankaj Naqvi learned counsel appearing for the respondent No. 1, Press Council of India and others contended that impugned resolution and judgment dated 21/22-1-1991 and entire proceedings against the petitioners are in accordance with the provisions of the

Act, Regulations and Rules framed under the Act, and the same does not suffer from any legal infirmity warranting interference by this Court under Art. 226 of the Constitution and the writ petition having no merits deserves to be dismissed.

16. Mr. Naqvi, supporting the impugned order contended that accord of opportunity to the petitioners was necessary not only in accordance with the provisions of Regulation 5(1) but also in consonance with the fundamental principles of natural justice but these requirements were complied with by the Press Council of India by issuing an appeal through a press release on 7-11-1990 to all leading newspapers counselling restraint on the part of the State Authorities and also on the part of the Press and also saying that the Council had decided to appoint a sub-committee to hold detailed inquiry into the matter. The Press released the issue on 14-11-1990 which appeared in various newspapers all over India on 15-1-1990 proclaiming that for the purpose of on-the-spot inquiry, the Committee of the Council would tour U.P. from 21st to 26th Nov. 1990. According to the programme published, the State authorities, the Press and the people would be welcome to adduce evidence before the Committee. Further, the letter dated 15-11-1990 was addressed amongst others to the Editors of "Dainik Jagaran" editions at Agra, Jhansi, Meerut, Kanpur, Lucknow, Varanasi, Gorakhpur and Allahabad and the Editors were inter alia, informed that several reports had been received questioning the conduct of the Press in presenting news and views on the Ram-janambhommi Babri Masjid issue. The Editors were informed about the appointment of the sub-committee by Press Council and a copy of the order appointing the subcommittee was also forwarded to the Editors. The Editors were requested to assist the Committee by being present at the indicated venues, dates and time. Pursuant to it the representatives of Jagaran actually appeared before the Committee of Press Council at different places.

17. Thus, Mr. Naqvi submitted that the Press release is the sufficient compliance of the Regulations and no further notice as required under the Regulation 5(2) was to be sent. However, during the course of arguments entire record of proceedings was summoned for making ready reference to this court but Mr. Naqvi failed to point out that notice as contemplated under Regulation 5(2) of the Regulations which speaks of registered notice was ever given to the petitioners. The record placed before us also does not reveal that Regulation 5(2) of the Regulations was ever complied with. Similarly the provisions of the Regulation 3(c) which speaks of supply of grounds for holding complaint against the newspaper concerned before filing the complaint, were also not complied with as no complaint was served on the petitioners as required under the Regulations.

18. For the brevity of the case it is necessary to reproduce the Regulations 5(1) and 5(2) hereto below:

"5. ISSUE OF NOTICE: (1). As soon as possible, and in any case not later than fifteen days from the date of receipt of a complaint, under the direction of the

Chairman, a copy thereof shall be sent to the newspaper, news agency, editor or other working journalist against which or whom the complaint has been made, under Regulation 3 along with a notice requiring the newspaper news agency, editor or other working journalist, as the case may be, to show cause why action should not be taken u/s 14 of the Act. Provided that in appropriate cases the Chairman shall have the discretion to extend time for the issuance of the notice.

Provided further that the Chairman may decide not to issue a notice to show cause to the newspaper, news agency, editor or working journalist where, in his opinion, there is no sufficient ground for holding an enquiry. The Council at its next meeting shall be apprised by the Chairman of the reasons for his decision not to issue a "show cause" notice and it may pass such orders as it deems fit.

(2). The notice issued under sub-regulation (1) above shall be sent to the newspaper, news agency, editor or other working journalist concerned by registered post, acknowledgment due, at the address furnished in the complaint."

A bare perusal of these provisions postulates that the provisions are in imperative form and the well settled principle of interpretation is that whenever the statute contains stringent provisions they must be literally and strictly construed so to promote the object of the Act, (See A. Madan Mohan Vs. Kalavakunta Chandrasekhara, . Therefore, considering the ratio laid down in the above referred case we are of the opinion that where a specific procedure for inflicting punishment of censure has been provided in the Act and in the Regulations referred to above, the Council has no option but to observe the same strictly and in the same manner as is provided in the Act and the Regulations as procedural fairness is as much essence of right and liberty as the substantial law itself and its violation renders the order a nullity. Besides this where a Statute requires a thing to be done in a particular manner it should be done in the same manner as provided under the Statute and no other method is permissible. (See Taylor v. Taylor (1875) 1 Ch D 426:45 LJ Ch 373 , State of Uttar Pradesh Vs. Singhara Singh and Others, , Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , AIR 1936 253 (Privy Council) and Miss Raj Soni Vs. Air Officer in Charge Administration and another, .

19. The law in this regard that an order of an authority exercising judicial or quasi-judicial powers passed in violation of principles of AUDI ALTERAM PARTEM is procedurally ultra vires, cannot be brushed aside. In the instant case impugned resolution and judgment have been passed in violation of the principles of natural justice inasmuch as copy of the complaint was not supplied to the petitioners, therefore, in the absence of prior knowledge of specific complaint or grounds for having complaint, petitioners were deprived of adequate opportunity of defending themselves effectively. (See Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others,

20. In this regard we may also observe that mere publication of notice in the newspaper or sheer information about the proceedings cannot be presumed to

he sufficient compliance of mandatory provisions of the Regulations and fundamental principles of natural justice as these requirements are not empty formality.

21. Thus in view of the discussions made above we are of the considered opinion that the mandatory procedure provided in the statutory provisions of the Act, Regulations and the Rules as well as fundamental principles of audi alteram partem have not been observed and followed in the same manner, therefore, at this stage without entering into merits of impugned resolution dated 21/22-1-91, the same is liable to be quashed leaving it open for the respondents to proceed against the petitioners if they so like, in accordance with the principles of natural justice and the provisions of Act, Rules and Regulations.

22. In the result, writ petition succeeds and is allowed, impugned resolution dated 21/22-1-91 so far as it relates to the present petitioners is quashed. However, there shall be no order as to costs.

23. Petition allowed.