

(2002) 09 DEL CK 0026
In the Delhi High Court
Case No : CW No. 861 of 2001

Kamlaish Vakil

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0026

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : P.K. Kaul, for the Appellant; Anamika Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner, Kamlaish Vakil, is the editor/owner of a Hindi daily "Bharati Vakil", printed and published from New Delhi. Petitioner claims that the predecessor of the present newspaper was "Vakil", which was the oldest paper in Kashmir Valley. However, due to the militancy and the prevailing situation in the valley, petitioner shifted to Delhi being a displaced person and commenced publication of "Bharati Vakil" in 1994.

2. Necessary declarations for the newspaper "Bharati Vakil" were made under the Press Registration of Books Act, 1867, and it was granted Registration No. 59300/94. The newspaper is also empanelled with Directorate of Advertising and Visual Publicity, hereinafter referred to as "DAVP", vide Code No. 124790 HINDLY (M). The DAVP had duly given the rate contract for the period 1.7.1999 to 30.6.2000, which enabled the petitioner's newspaper to receive Government advertisements. Petitioner claims that "Bharati Vakil" has a circulation of 30,000. Petitioner is aggrieved by the non-renewal of the rate contract by DAVP, which expired on 30.6.2000.

3. By the present writ petition, petitioner seeks a writ of certiorari for quashing the order and directions, contained in the impugned Annexures P-1, P-2 and P-9 to the writ petition. Annexure P-1 is the communication dated 4.8.2000 from the

DAVP, by which the petitioner was informed of the decision dated 31.7.2000, of the Empanelment Committee that petitioner's paper was not suitable for the issue of rate renewal contract for the year 2000-01, for publication of Government advertisements. This was due to poor printing quality and there being no parity between the date of issue and the advertisement date. Petitioner was given the option to represent his case, if so desired, along with issues of last two months with discrepancies removed within 90 days from the date of issue of letter i.e. Annexure P-1.

Annexure P-2 is the letter dated 8.9.2000, from the DAVP, vide which the petitioner was informed that the issues of June and July, 2000, sent by the petitioner vide letter of 8.8.2000, had been placed before the Empanelment Committee in a meeting held on 31.8.2000. The newspaper was not found suitable for issue of renewal of rate contract. Petitioner was asked to apply afresh with last six months issues after improving the quality of printing for Empanelment with DAVP.

Annexure P-9 is the letter dated 19.1.2001 from the Joint Director (Advertising) to the Publisher of Samachar Post, which is another newspaper of the petitioner, enclosing the application form for fresh Empanelment/renewal of rate contract. Petitioner assails the form employed for granting Empanelment or renewal, as seeking unwarranted information and such information which transgresses into the field and domain of the statutory authority under The Press & Registration of Books Act, 1867.

4. Learned counsel for the petitioner, Mr. Pyare Lal Kaul, and Ms. Anamika Aggarwal, counsel for the respondent have been heard. Counsel for the parties have also filed written synopsis. Respondent has also produced the records and after hearing counsel for the parties judgment was reserved on 7.8.2002.

5. Mr. Pyare Lal Kaul, learned counsel for the petitioner, submitted that once the newspaper had been selected and empanelled by the DAVP, which is a wing of the Information and Broadcasting Ministry. the renewal of rate contract, is a routine matter, unless there was some extra ordinary and incurable default committed by the newspaper or a case of gross violation, which would render the newspaper subject to suspension under Clauses 24,25 and 26 of Guidelines. He submitted that there was no violation at all by the petitioner. The non-renewal of the rate contract from 1.7.2000 was malafide act, against a migrant from Kashmir Valley, who was struggling to set up the newspaper after having been forced out of the Kashmir Valley. Learned counsel submitted that the advertisements, especially from the Government were the main source of revenue for sustenance of the newspaper. This was true especially of small newspapers like this Bharati Vakil. Not only the circulation, but its very survival depended on it. Any malafide or arbitrary action on the part of the respondent would thus affect and interfere with the independence, survival of the newspaper, thereby affecting right of freedom of speech and expression of the press.

6. Learned counsel argued that the denial and withholding of the renewal of the annual rate contract of "Bharati Vakil" was initially on the ground of poor printing quality and there being no parity between the issue date and the advertisement date. However, this was finally confined to poor printing quality. Learned counsel disputes that the petitioner's newspaper suffers from poor printing quality. He submitted that may be few issues could not be printed well on account of electricity fluctuation etc., but that would not justify the non-renewal.

7. Learned counsel also questions the rejection of the issues of two months submitted in response to Annexure P-1. He submits that after the second rejection, petitioner has been asked to apply after six months. This, he submits, amounts to punishment in the form of cancellation of empanelment, not warranted under the law. It is claimed to infringe the fundamental rights of the petitioner. The application form along with Annexure P-9 seeks information, which is nothing but harassment to small newspapers. Learned counsel also submitted that curiously the High Level Committee of Delhi Administration, had approved "Bharati Vakil" in its meeting held on 29.6.2000 to receive advertisements, which were to start from 1.7.2000. He submits Mr. Jitender Singh representative of DAVP attended the High Level Committee meeting. It is the same Jitender Singh, who as the Media Executive of DAVP, conveyed the rejection of the renewal by DAVP of the rate contract from 1.7.2000. Learned counsel submitted that this had happened on account of the arrogant and high handed manner of the functioning of the Director General, Mr. Sahib Singh, DAVP, who had been impleaded as a party in the writ petition. Learned counsel also submitted that in the meeting of 31.8.2000, while a lenient approach for renewal of rate contract of newspapers published from Kashmir Valley, was being considered and recommended, the said concession was irrationally not made application to those, who had been hounded out of their homes from the valley and were migrants living in exile.

8. Counsel submits that the availability of advertisements and increased circulation were essential for the necessity of freedom of press. Learned counsel relied on the following authorities, while assailing the respondents' action as arbitrary and against rule of law:-

1. Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others,
2. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,
3. Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation,
- 4 Sushil Choudhury and Another Vs. State of Tripura and Others, and
5. Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others,
9. Respondents have averred in counter affidavit that respondents have acted in accordance with the advertisement policy for empanelment of newspapers and periodicals, for publication of Government advertisements. The rate contract is a

yearly exercise. The DAVP issues a questionnaire to the publisher, which is filled up together with supporting documents and specimen copies. The particulars are scrutinized and after scrutiny if it is found to be in order, DAVP issues the rate contract to the newspaper, periodicals or grants renewal, as the case may be. Respondents submitted that the printing of the daily "Bharati Vakil" during the scrutiny was found to be very poor. Besides, there was no parity between the date of publication of paper and date of advertisement. The Empanelment Committee had notified the petitioner about the objection on 4.8.2000 and petitioner was asked to forward two months' specimen copies after improvement of quality. Petitioner submitted the same on 9.8.2000 itself. On examination these were again found to be of poor printing and frequent repetition of matters in the issues. Petitioner was thus asked to apply afresh with last six months issues.

10. Respondents denied any arbitrary approach or existence of malafides against the petitioner or any high handed functioning of the Director General. Respondents also denied that they are encroaching upon the powers and jurisdiction of the statutory authority under The Press & Regulating of Books Act, 1867. It is urged that as for fresh empanelment or for renewal of empanelment or request for upgradation in the higher slab of circulation, the newspapers are required to substantiate that they are published maintaining a reasonable standard. Reasonable standard would require that a) the printing matter should be legible, neat, clear and without smudges and overwriting; b) there should not be any repetition or reproduction of news item or articles in the newspaper/journal; c) mast head of its front page should carry the title of the newspaper, place, date and day of publication etc.. It is stated that it is not mandatory on the part of the DAVP to issue rate contract to newspaper/periodicals, who do not fulfill the minimum norms as per the Government of India Advertising Policy. Further, that when DAVP issues advertisements in a newspaper, it should target the audience for which it is aimed. DAVP has full right to ascertain from all sources that message reaches to the target audience. The functions of the respondent are different than those as laid down for the statutory authority under the Press and Registration of the Books Act, 1867.

11. Respondents had also produced for the perusal of the Court, the minutes of the meetings as also the issues of "Bharati Vakil", which were found to be of poor printing. In the meeting held on 31.7.2000, it was not as if the petitioner had been singled out on account of any malafide action. The rate renewal had not recommended in the case of nearly 575 publications and petitioner's newspaper happened to be just one of them.

12. I find considerable merit in the submission of the learned counsel for the respondent that the charge of malafides was not at all established. It is pointed out by the respondents that in fact another newspaper of the petitioner, "Samachar Post" of which the petitioner is the editor, continues to enjoy empanelment. In judicial review, it is not the function of this court to sit in

judgment over the opinion and findings reached by the Empanelment Committee. Nevertheless to satisfy the judicial conscience, the issues of the newspapers, produced by the respondents were seen. These left much to be desired as the portions pointed out were barely legible or readable. In these circumstances, though the petitioner may have its own justification or reasons for the poor quality of printing pointed out of claim the same to be occasional, the existence and factum of the defects can not be disputed. It appears that the petitioner after receiving the communication of 4.8.2000 (Annexure P-1) immediately without taking any further step for ensuring improvement in printing, submitted the last two months issues on 9.8.2000, where again the defects of printing were noticed. I also do not find any merit in the petitioner's submission that information sought in the form for empanelment, amounts to harassment and is a fetter on their independence. Counsel has not been able to point out the information, which may be considered irrelevant for evaluation in accordance with the policy and guidelines. As regards the apparent contradiction in the views of the High Level Committee of Delhi Government, having a representative of DAVP approving the petitioner's newspaper for empanelment and the DAVP rejecting the same, respondents have rightly explained that on the day it considered the petitioner's case, namely, 29.6.2000, petitioner was duly empanelled with DAVP and it is one of the factors considered by the Committee. In any case, although, it may be a factor to be reckoned with, the grant of renewal by the Delhi Government would not ipso facto entitle or be determinative of grant of renewal by the DAVP. Besides, the DAVP or Ministry of Information and Broadcasting cannot be faulted with, if they wish to insist on certain minimum standards being observed by the newspapers, which are to become the recipients of the Central Government advertisements. In these circumstances, the action of the respondents cannot be said to be without any justification, arbitrary or vitiated by malafides. In any case, six months period for which the petitioner was required to seek fresh empanelment has already expired.

13. No ground is made out for interference as regards the rejection of request for renewal of rate contract. It is hoped and expected that the petitioner's application as and when made would be considered keeping in mind all relevant factors, including the fact that petitioner happens to be a migrant from Kashmir Valley and deserves sympathetic consideration on this account.

The writ petition is dismissed with these observations.