
(1959) 03 MAD CK 0002
In the Madras High Court

K.N. Ganesh

APPELLANT

Vs

The Chief Presidency Magistrate and Another

RESPONDENT

Date of Decision : 11-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Press and Registration of Books Act, 1867 — Section 5, 5(2), 5(5)

Citation : (1959) ILR (Mad) 978 : (1959) 2 MLJ 314

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

Ramachandra Iyer, J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari or other appropriate

writ calling for the record in R.O. C. No. 4561/56-E on the file of the Chief Presidency Magistrate and for quashing the order passed therein on

19th November, 1956.

2. The petitioner claims to have acquired for consideration the proprietorship of a Tamil quarterly journal entitled "Manikkodi" from its original

proprietor. It is stated that thereafter, that is on 3rd February, 1950, he declared himself a publisher of " Manikkodi" u/s 5 of the Press and

Registration of Books Act of 1867 which shall be hereafter referred to as the Act. That was followed by the publication of a monthly short story

journal under the name of " Manikkodi " for sometime. The publication of the journal was discontinued thereafter ; however the petitioner was

running his office in the same premises under the name of Manikkodi Kariyalayam dealing with books, journals, etc. He claims that his business

operations and trading transactions had become associated in the mind of the public with the name of "Manikkodi." With a view to renew the

publication of the journal the petitioner filed on 25th September, 1956, an application u/s 5(2) of the Act to make a declaration as a publisher of that journal.

3. Meanwhile one C.S. Krishna had applied and made a declaration on 11th August, 1956, to the first respondent for a similar purpose on the ground that he contemplated the starting of a journal under the name of "Manikkodi". That declaration, it is admitted, lapsed under the provisions of Section 5(2) A, so that on 25th September, 1956, there was only the application of the petitioner. On 31st October, 1956, the second respondent G.S. Krishna applied by means of a letter to the Chief Presidency Magistrate, Madras, that he intended to commence the journal as contemplated by him and applied to make a fresh declaration to that effect.

4. The Chief Presidency Magistrate, Madras, the first respondent obtained a report from the Police Commissioner and also the Press Registrar and heard both the petitioner as well as the second respondent and passed the following order on 17th November, 1956:

Heard Mr. K.M. Ganesan and C.S. Krishnan. C.S. Krishna will be allowed to declare himself as Editor and Publisher of "Manikkodi"

He followed this up with a communication to the petitioner R.O.C. No. 4561/56-E, dated 5th November, 1956, stating that as there was already

a journal published by C.S. Krishna under the name of "Manikkodi" the petitioner should change the title of his proposed journal. The assumption

that C.S. Krishna had already published a journal under the name of "Manikkodi" is inaccurate as he never implemented his declaration of nth

August, 1956, with a publication. The first respondent however by his order dated 19th November, 1956, allowed C.S. Krishna to declare himself

as editor and publisher of the journal "Manikkodi" and directed the petitioner to change the name of his proposed journal. The disappointed

publisher has come forward with this application for quashing the order of the first respondent.

5. The contention on behalf of the petitioner is that on 25th September, 1956, when the petitioner applied to the Chief Presidency Magistrate to

make the declaration in respect of his journal "Manikkodi", there was no publication in existence of any journal of that name as the declaration

made earlier by C.S. Krishna on nth August, 1956, had by virtue of Section 5(5)

of Act lapsed and that there was no impediment in his being allowed to make the declaration for his journal under the title "Manikkodi".

6. To appreciate and ascertain the scope of the jurisdiction of the powers of the Magistrate u/s 5 it is necessary to refer briefly to the historical

background. The first Press Ordinance was passed on December 18th, 1823, during the Governor-Generalship of John Adam. The Ordinance

required that all matters printed in a press or published thereafter except certain specified items of news should be printed and published under

licence from the Governor-General in Council. The application for a licence should give the name or names of the printer and publisher of the

proprietors, their place of residence, the location of the press and the title of the newspaper, magazine, register, pamphlet, or other printed book or

paper. A fresh licence was necessary if the printer or publisher or proprietor changed his address. There were also provisions which reserved to

the Governor-General a right to call for a fresh application and the issue of such notice invalidated the previous licence, and there was also a power

for resuming or recalling a licence, which was thereafter to be treated as null and void. A penalty was imposed for contravention of the provisions

of the Ordinance. This Ordinance was, however, repealed by Act XXI of 1835 which was due to the efforts of the great champion of the Indian

Press, Sir Charles Metcalfe when he was for a short time the Governor-General.

7. That Act provided for a declaration by the printer and publisher of a newspaper giving a true and precise account of the premises of publication

with an obligation to inform the change of place in which case a fresh declaration was made necessary. There was also a penalty for non-

declaration. The effect of that enactment was that no licence or previous permission was necessary for either publishing or conducting a

newspaper. A mere declaration alone was sufficient. The object of the declaration was to make known who the proprietor, printer or editor was in

regard to a newspaper or other publication so that the responsibility for an improper publication might be fastened on the proper person. Any

person who was a major could declare himself as a publisher and such declaration did not depend on the grant of a permission by any authority.

Change of place of the publication or the publisher and of the latter leaving India necessitated a fresh declaration. Failure to make a declaration

entailed penal consequences.

8. The Act underwent certain amendments in the subsequent years till finally Act XXV of 1867 was passed. It has been said that the Act is only a

regulating Act. Section 5 makes it obligatory on all newspapers published in British India to be in conformity with the rules laid down thereafter.

Section 5(2) states that the printer and publisher of every newspaper shall appear in person or by agent duly authorised before a Magistrate

specified in that section and shall make and subscribe in duplicate a declaration that he is the printer or publisher or the printer and publisher of the

newspaper entitled (enter the name of the paper) and printed at a particular place. The other provisions about change of place and also the

necessity for a new declaration were also enacted. The Act was the subject-matter of scrutiny by the Press Commission, and as a result of their

recommendations certain amendments were introduced in the Act under Act LV of 1955. Section 5 was amended by introducing certain new

provisions. Sub-section (5) introduced by the amending Act is as follows:

Every declaration made in respect of a newspaper shall be void where the newspaper does not commence the publication (a) within six weeks of

the declaration in the case of a newspaper to be published once a week or oftener and (b) within 3 months of the declaration in the case of any

other newspaper and in every such case a new declaration shall be necessary before the newspaper can be published.

Sub-section (7) of that section states:

Where any other newspaper has ceased publication for a period exceeding twelve months every declaration made in respect thereof shall cease to

have effect, and a new declaration shall be necessary before the newspaper can be republished.

Sub-section (8) states:

Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed

in respect of the name.

9. The first paragraph of Section 6 has been amended by the introduction of a proviso. The former required that each of the two originals of every

declaration made shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration was made. The

proviso to that section introduced by the Amending Act states:

Provided that where any declaration is made and subscribed u/s 5 in respect of a newspaper, the declaration shall not, save in the case of

newspapers owned by the same person, be so authenticated unless the Magistrate is satisfied from such inquiry as he thinks fit to make from the

Press Registrar or otherwise that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other

newspaper published either in the same language or in the same State.

10. The proviso prevents any person from declaring himself as an editor or a publisher of a newspaper if there existed already a newspaper of that

name either in the same language or in the same State. It was evidently intended to prevent unfair competition between two newspapers published

by different persons under the same name and title. The proviso would have the effect of protecting an existing newspaper in regard to its name.

11. u/s 5(2) of the Act it will be open to any person to declare his intention of starting a newspaper. There would be no restriction in the choice of

a title or name of his paper : so long as there has been no newspaper of that name either in the same language in India or in the same State, he

would be entitled to adopt that name for his publication. That would mean that on the date when he seeks to make a declaration u/s 5(2) there

should be no other paper of that name and of the kind contemplated in the proviso to Section 6. If there was none such, there would be no

discretion left in the Magistrate to direct the publisher to adopt any other name. Section 5 does not invest the Magistrate concerned with

jurisdiction to decide the matter as to who would be entitled to make a declaration as editor of a newspaper with a particular name. It would

follow that he who comes first should be entitled to make a declaration u/s 5. Under the proviso to Section 6 a limited jurisdiction is no doubt given

to the Magistrate to enquire as to whether there is any other newspaper published in the same language or in the same State having the same name

by some other person and if there was one such he should refuse to authenticate the proposed declaration. That provision does not invest the

Magistrate with jurisdiction to decide between two rival claimants for using the same name or title to their newspapers. Under the law there is no

right to prevent the use of a name by any person in connection with his trade or

business except where one has acquired a property to it under the ordinary law or under the statutes like Trade Marks Act, etc. If two persons want to use the same name for their respective newspapers no question of right would arise for neither of them would have the exclusive right to a name. I have indicated already that the right to start a paper and to make a declaration does not depend on any licence to be granted by any authority. It follows that there could be no discretion on the concerned Magistrate to refuse to record a declaration except in the case provided for in Section 6, Proviso. The duty of the Magistrate is merely administrative, that is to record the declaration or to refuse to authenticate it in the event of there being a newspaper of the kind referred to in the Proviso to Section 6. If, therefore, on the day when the petitioner applied to make a declaration with respect to his journal under the title of "Manikkodi" there was no published newspaper having the same or similar title, he would be entitled to make the declaration u/s 5(2) and there would be no jurisdiction in the Magistrate to assess the comparative merits between him and a rival who applied later and decide as to which of them would be entitled to the name or title.

12. I cannot however agree with another contention urged on behalf of the petitioner. In the petition it has been suggested that the petitioner had a property in the name "Manikkodi" by reason of the public associating his publications with that name. That question cannot be considered in proceedings u/s 5(2) of the Act which as I stated is not concerned with adjudication of rights. If the petitioner has acquired a right to use a particular name for his publication either by reputation or under the provisions of the Trade Marks Act, the remedy for him will be in the Civil Court.

13. Though no question of title is involved, permitting the publication of a newspaper or journal under the same name or title adopted by an existing publication may lead to fraud, confusion or affect the reputation of the existing paper or occasion pecuniary loss to its proprietors. The Proviso to Section 6 is intended to safeguard an existing newspaper and it imposes a limit to the otherwise unrestricted right of a newcomer in regard to the choice of a title to his paper.

14. A difficulty may no doubt arise in a case where two persons simultaneously

want to make a declaration in respect of a newspaper having a particular name. There is no provision under the Act for deciding a dispute in such cases.

15. In the present case, however, there is no such difficulty. Admittedly the declaration made by C. S. Krishna had lapsed and on 25th September, 1956, when the petitioner sought to declare himself as the Editor of "Manikkodi," there was no subsisting journal of the name of " Manikkodi."

The petitioner having applied to make the declaration at a time when Krishna's declaration had lapsed would be entitled to make a declaration in respect of his journal " Manikkodi" before the first respondent u/s 5(2).

16. The learned Chief Presidency Magistrate was, therefore, in error in proceeding to decide between the second respondent and the petitioner.

There is, however, one impediment in the way of issuing the writ to quash the purported judicial order. It is admitted that neither the petitioner nor

C. S. Krishna ever commenced any publication of any journal under the name of "Manikkodi" after the date of the order of the first respondent. It

may be that after that date another person might have started a journal of that name. In the absence of evidence in regard to that matter a writ

quashing the order and directing the Chief Presidency Magistrate to allow the petitioner to make a declaration could not be issued. The petitioner

can now apply to the Magistrate again u/s 5 and if the Magistrate finds there is no prohibition under the proviso to Section 6, for allowing him to

make the declaration that he desires, he would be entitled to make the declaration.

17. With these observations this petition is dismissed. There will be no order as to costs.