

(1964) 11 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 290 of 1964

Madanlal

APPELLANT

Vs

Sub-Divisional Magistrate (City) and Another

RESPONDENT

Date of Decision : 16-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Press and Registration of Books Act, 1867 — Section 5(2), 6, 8B, 8C

Citation : AIR 1965 MP 128 : (1967) ILR (MP) 162 : (1965) JLJ 479 : (1965) 10 MPLJ 227 : (1965) MPLJ 227

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and M.V. Tamasker, for the Appellant; A.P. Sen, B.V. Shukla and S. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

The petitioner in this case, who is the Manager of "Nav Bharat", a Hindi daily newspaper published from Jabalpur, seeks a writ of certiorari for quashing an order, dated 2nd March, 1964, of the Sub-Divisional Magistrate (City), Jabalpur, rejecting his application u/s 8B of the Press and Registration of Books Act, 1867, (hereinafter referred to as the Act), for cancellation of a declaration under the Act made by the respondent No. 2, Munder Sharma, in respect of "Nai Duniya" daily, also a newspaper published from Jabalpur. The petitioner also prays that the Sub-Divisional Magistrate (City), Jabalpur, be commanded by a direction to cancel the declaration under the Act made by the non-applicant No. 2.

Section 5 of the Act prohibits the publication of any newspaper except in conformity with the rules laid down therein. One of the rules requires that the printer and publisher of every newspaper shall appear in person or by agent duly authorised before a Magistrate specified in Section 5(2) and shall make and subscribe in duplicate a declaration that he is the printer or publisher, or the

printer and publisher, of the newspaper in question bearing a certain title and printed at a particular press. Rule 3 of the Rules framed u/s 20A of the Act says that every declaration made u/s 5 of the Act shall be in Form I appended to the rules and the person making the declaration shall give full and true particulars therein, On 1st January, 1963, the non-applicant No. 2, Muncler Sharma, made a declaration in respect of the newspaper "Nai Duniya". In that declaration the "owner's name" was stated in column 10 as under;

"M/s. Jabalpur Journals (Private) Ltd. heretobefore as licensee "NAI DUNIYA", Indore. This is the firm which is the owner of all the three editions of "NAT DUNIYA", Indore, Raipur and Jabalpur."

This declaration was authenticated u/s 6 of the Act by the Sub-Divisional Magistrate (City), Jabalpur, on 2nd January, 1963. The proviso to Section 6 of the Act states that--

"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, on inquiry from the Press Registrar, satisfied that the news, paper 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."

The printing and publishing of the newspaper "Nai Duniya" commenced after the authentication of the declaration. In October, 1963, the petitioner filed an application u/s 8B of the Act for cancellation of the declaration filed by Shri Sarma alleging that the declaration filed by him was on the false representation that the newspaper "Nai Duniya" published from Indore, Jabaipur and Raipur were owned by the same persons or body; that the three publications were owned by different set of persons; and that, therefore, the publication from these three places, in the State, of the newspaper in Hindi language bearing the same title, namely, "Nai Duniya", was in violation of the proviso to Section 6 of the Act.

On receipt of the petitioner's application u/s 8B, the Sub-Divisional Magistrate (City), Jabaipur, held an enquiry after giving an opportunity of hearing to the respondent No. 2, and at the end of it came to the conclusion that the newspaper "Nai Duniya" published from Indore and Jabaipur was owned by the same persons; and that the firm, M/s Jabaipur Journals (Private) Ltd., was only a licensee of the Indore firm "Nai Duniya", in regard to the printing and publication of the newspaper from Jabaipur, and thus there was no infringement of Section 8B(ii) of the Act or of the proviso to Section 6. He, however, found that there was an infringement on the part of the non-applicant No. 2 of Section 5(1) of the Act in that instead of publishing the names of the owners of the newspaper as required by that section, the names of the persons constituting M/s Jabalpur journals (Private) Ltd., were published.

It was further held that while making the declaration u/s 5 of the Act the non-applicant No. 2 Sharma did not comply with Section 5(2B) of the Act under which

M/s Jabaipur Journals (Private) Ltd., not being the owners of the newspaper, the said non-applicant was required to file with the declaration an authority in writing from the Indore firm Nai Duniya authorising him to make and subscribe the declaration. The Sub-Divisional Magistrate took the view that the breaches of Sections 5(1) and 5(2B) were technical and did not Justify the action of cancellation of the declaration. He, however, directed the non-applicant No. 2 to publish the names of the owners on every copy of the newspaper as laid down by Section 5(1) of the Act and also to produce within a fortnight the authority from the Indore-firm Nai Duniya for the declaration which had been filed.

Shri Dharmadhikari, learned counsel appearing for the petitioner, argued that the view of the Sub-Divisional Magistrate that the newspaper Nai Duniya published from Jabaipur and the newspaper published from Indore were owned by the same persons, was not correct on the material on record; that if the firm Nai Duniya of Indore were to be taken as the owner of the two newspapers, then the declaration made by the respondent No. 2 did not correctly state the ownership of the newspapers, as the declaration mentioned M/s Jabaipur Journals (Private) Ltd., as the owner of Nai Duniya published from Jabaipur. It was further submitted that having found that the respondent No. 2 had infringed Sections 5(1) and 5(2B) of the Act, the Sub-Divisional Magistrate had no other alternative but to cancel the declaration made by the respondent Sharma.

In reply, Shri Sen, teamed counsel for the respondent No. 2, contended that on the terms of the "deed of Licence" concluded between M/s Jabalpur Journals (Private) Ltd. Jabalpur and the partners of the firm Nai Duniya of Indore, there could be no doubt that the firm Nai Duniya of Indore was the owner of both the newspapers; that Section 8B of the Act did not make it obligatory on the Magistrate to cancel the declaration on satisfying himself that the newspaper, in respect of which a declaration had been made, was being published in contravention of the Act or the rules made thereunder or that it bore a title which was the same as or similar to any other newspaper published either in the same language or in the same State or that the printer or publisher had ceased to be the printer or publisher of the newspaper mentioned in the declaration or that the declaration was made on a false representation or on a concealment of material facts; and that even in the circumstances mentioned in Section 8B, the Magistrate had discretion to make any direction to regularise the printing and publication of the newspaper or the declaration made in respect of it instead of taking the action of cancelling the declaration.

Learned counsel proceeded to say that in authenticating or in refusing to authenticate a declaration u/s 6 or in cancelling a declaration u/s 8B the Magistrate discharges a purely administrative act and does not function in a judicial or quasi judicial capacity; and that, therefore, the order of the Sub-Divisional Magistrate (City), Jabaipur, refusing to cancel the respondent No. 2's declaration could not be interfered with in proceedings under Article 226 of the Constitution.

We are unable to accede to the contentions advanced on behalf of the petitioner. u/s 5(2) of the Act, it is open to any person to make a declaration of his intention of starting a newspaper bearing certain title. That provision does not put any restriction in the matter of selection of title or name of the newspaper if there is already no newspaper of that name either in the same language in India or in the same State. The proviso to Section 6 no doubt puts a restriction on the choice of title of a newspaper. If there is already a newspaper owned by a different person and of the type described in the proviso. A Magistrate cannot therefore, refuse to authenticate a declaration unless he is satisfied on enquiry from the Press Registrar that the proviso to Section 6 is attracted. As is clear from the wording of the proviso to Section 6, the decision of the question whether there is any other newspaper published in the same language or in the same State having the same name by some other person depends entirely on the satisfaction of the Magistrate in regard to those matters. So also, the cancellation u/s 8B of a declaration once made, depends on the subjective opinion of the Magistrate that the declaration should be cancelled and on his satisfaction in regard to any of the matters mentioned in Section 8B. This is clear from the wording of Section 8B which is as follows :

"8B. If, on an application made to him by the Press Registrar or any other person or otherwise, the Magistrate empowered to authenticate a declaration under this Act, is of opinion that any declaration made in respect of a newspaper should be cancelled, he may, after giving the person concerned an opportunity of showing cause against the action proposed to be taken, hold an inquiry into the matter and if, after considering the cause, if any, shown by such person and after giving him an opportunity of being heard, he is satisfied that--

(i) the newspaper, in respect of which the declaration has been made is being published in contravention of the provisions of this Act or rules made thereunder; or

(ii) the newspaper mentioned in the declaration bears 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; or

(iii) the printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration; or

(iv) the declaration was made on false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper;

The Magistrate may, by order, cancel the declaration and shall forward as soon as possible a copy of the order to the person making or subscribing the declaration and also to the Press Registrar." It will be seen that u/s 8B, it is only in the circumstances enumerated in Clauses (i) to (iv) of that section that a declaration can be cancelled if the Magistrate empowered to authenticate a declaration forms the opinion that the declaration should be cancelled. If those circumstances exist, then the opinion of the Magistrate that a declaration should or should not

be cancelled is a subjective matter which is not open to an objective test. u/s 8B there is no obligation on the Magistrate to cancel a declaration. He has discretion in the matter and it is only after he forms an opinion that a declaration should be cancelled that he can cancel it if any of the circumstances mentioned in Clauses (i) to (iv) of Section 8B exists.

Thus the Legislature has made the formation of opinion by the Magistrate as to revocation of a declaration dependent on the conditions mentioned in Clauses (i) to (iv) of Section 8B. But the existence or absence of those conditions is left to the "satisfaction" of the Magistrate. This is clear from the words "he is satisfied that" used in Section 8B before the enumeration of Clauses (i) to (iv). The existence of the matters mentioned in Clauses (i) to (iv) being dependent on the subjective satisfaction of the Magistrate, the argument that the cancellation of a declaration or refusal to cancel it by the Magistrate after forming the opinion that the declaration should or should not be cancelled is a matter determined by the Magistrate in a quasi judicial manner and consequently it would be open to this Court to interfere into the grounds of the "opinion" or the "satisfaction" formed by the Magistrate or to consider the reasonableness or otherwise of that opinion, cannot be accepted. If the Magistrate has formed an "opinion" and arrived at the requisite "satisfaction" honestly, then this Court cannot substitute its own opinion or satisfaction for that of the Magistrate, or enquire into the validity of the grounds on which that "opinion" or "satisfaction" was formed.

Therefore, on the contention of the petitioner that the Sub-Divisional Magistrate's finding that the newspaper "Nai Duniya" published from Jabalpur and the newspaper published from Indore were owned by the same persons was erroneous and not justified on the material on record this Court cannot embark on an enquiry into the correctness of that finding. It may, however, be added that on that terms of the agreement entered into between M/s Jabalpur Journals (Private) Ltd., and the firm Nai Duniya of Indore with regard to the printing and publication of "Nai Duniya" from Jabalpur, which inter alia gave to the firm Nai Duniya of Indore the right of canvassing and accepting advertisements on a joint rate basis, the right of controlling the editorial policy of "Nai Duniya" published from Jabalpur, and of abrogating the agreement in the event of infringement of the editorial policy laid down by the firm Nai Duniya, Indore, and cast on the Indore firm the obligation of taking over the assets and liabilities of Nai Duniya, Jabalpur, in the event of the cancellation of the agreement, there can be no doubt that M/s. Jabalpur Journals (Private) Ltd., collaborated with the firm Nai Duniya of Indore in the printing and publication of the newspaper from Jabalpur and the firm Nai Duniya, Indore, became the owner. That being so, the Sub-Divisional Magistrate was right in holding that there was no infringement of Clause (ii) of Section 8B and in refusing to cancel the declaration.

The contention of the petitioner that the Magistrate should have cancelled the declaration when he found that the respondent No. 2 had infringed Sections 5(1) and 5(2B) of the Act is without any substance. As we have endeavoured to point

out earlier, Section 8B does not cast any obligation on the Magistrate to cancel a declaration even if he is satisfied in regard to the existence of any of the matters mentioned in Clauses (i) to (iv) of that section. The expression "the Magistrate empowered to authenticate a declaration under this Act, is of opinion that any declaration should be cancelled" occurring in Section 8B clearly shows that the Magistrate has full discretion in the matter of appropriate action that should be taken if he is satisfied about the existence of any of the matters stated in Clauses (i) to (iv).

The infringement of Sections 5(1) and 5(2B) of the Act in the present case on the part of the respondent No. 2 was technical which in no way impaired the validity of the declaration made by the said respondent or its authentication. It is no doubt true that in column 10 of the declaration relating to the owner's name, it is first stated that "M/s. Jabalpur Journals (Private) Ltd. as heretofore as licensees "Nai Duniya" Indore". This statement at first sight gives the impression that M/s. Jabalpur Journals (Private) Ltd. are the owners of the paper. But the further statement in the column, namely, "This is a firm which is the owner of all the three editions of Nai Duniya of Indore, Raipur and Jabalpur" leaves no doubt that it is the firm Nai Duniya of Indore that is the owner of the paper "Nai Duniya" published from Indore and Jabalpur. If there is any error in the description of owner" in column 10, it is merely of form and not of substance,

Learned counsel for the applicant made a plea that this Court should under Article 226 of the Constitution review the decision of the Sub-Divisional Magistrate that the declaration did not in any way offend Clause (ii) of Section 8B as the petitioner has no other remedy. We are not impressed by this argument. The object of the proviso to Section 6 and Clause (ii) of Section 8B permitting the cancellation of a declaration, is clearly to prevent unfair competition between two newspapers published by different persons under the same name and title. The petitioner is not the printer or publisher or owner of any newspaper bearing a title which is the same as or similar to "Nai-Duniya". He cannot, therefore, be said to be a person really affected by the printing and publication of "Nai-Duniya" from Jabalpur on the declaration filed by the respondent No. 2.

It was said that the publication "Nai-Duniya" from Jabalpur on the declaration filed by the respondent No. 2 gave to the paper the advantage of claiming the joint circulation of "Nai-Duniya" of Jabalpur and "Nai-Duniya" of Indore as its own and this adversely affected the petitioner's interest in the matter of securing advertisement on the basis of circulation of his paper, namely, "Nav-Bharat". The short answer to this contention is that the question of circulation of any paper for the purpose of securing advertisement is not a matter which can be taken into account in proceedings for authentication of a declaration or its cancellation.

It is important to note that if this Court were to accede to the petitioner's contention and grant his prayer for the issue of a writ of mandamus directing the Sub-Divisional Magistrate to cancel the respondent No. 2's declaration, then this

Court would be placing itself in a very unhappy position of having its decision commanding the Sub-Divisional Magistrate reviewed by the Appellate Board constituted u/s 8C of the Act. That section provides that any person aggrieved by an order of a Magistrate cancelling a declaration u/s 8B may prefer an appeal to the Appellate Board. The Magistrate to whom a writ of mandamus is issued for cancelling a declaration is bound to comply with it, and when pursuant to that direction he cancels that declaration, then his order would be open to appeal u/s 8C of the Act. It would, therefore, be altogether improper for this Court to issue any direction to the Magistrate asking him to refuse to authenticate a declaration u/s 6 or cancel a declaration u/s 8B of the Act. The question whether the decision of the Appellate Board can be brought up here for judicial examination by proceedings under Article 226 of the Constitution does not arise for consideration, and we express no opinion on it.

For the above reasons, there is no ground for allowing this petition. It is accordingly dismissed. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.