
(1916) 10 MAD CK 0010
In the Madras High Court

Mrs. Annie Besant

APPELLANT

Vs

The Government of Madras

RESPONDENT

Date of Decision : 18-10-1916

Acts Referred:

Government of India Act, 1858 — Section 65
Press Act, 1910 — Section 17, 22, 3, 4

Citation : (1916) ILR (Mad) 1164 : 37 Ind. Cas. 525

Hon'ble Judges : Abdur Rahim, O.C.J.; William Ayling, J; Seshagiri Aiyar, J

Bench : Full Bench

Judgement

Abdur Rahim, Offg, C.J.—This is an application u/s 17 of the Indian Press Act of 1910 by Mrs. Annie Besant, the keeper and printer of the

"New India" Printing Works, and the Editor of the news paper, ""New India."" The applicant seeks to have set aside an order of the Chief

Presidency Magistrate of Madras, dated 22nd May 1916, requiring her to deposit security of Rs. 2,000 u/s 3 (1) of the Act an order of the

Governor-in-Council, dated 25th August 1916, declaring u/s 4(1) the security so deposited and all copies of ""New India"" wherever found to be

forfeited to His Majesty. No copies of "New India,"" it may be mentioned, have actually been seized.

2. The order of the Chief Presidency Magistrate is attacked, firstly, on the ground that inasmuch as the press and the newspaper in question were

in existence before the passing of the Press Act under the names and styles respectively of The Standard Press" and ""The Madras Standard,"" the

fact that the applicant, having purchased the said press, made a declaration before the Magistrate with respect thereto on the 2nd December 1914,

u/s 4 of the Press and Registration of Books Act of 1867, in the new name of the

"'New India Printing Works'" did not bring this press under the operation of Section 3 (1) of the Press Act. But clearly the provisions of the Act are applicable to all printing presses: u/s 3 (1) the Magistrate is to take security from any person who makes a declaration before him with respect to any printing press, apart from any question whether it was set up before or after the Act, and by sub Section 2 the Local Government, may in certain circumstances require the keeper of a press in respect of which a declaration was made before the commencement of the Act of 1910 to deposit security. Section 4 of the Press and Registration of Books Act of 1867 prohibits any person to keep a printing press without making a declaration to the effect that he has a press for printing purposes at a particular address, which he is bound to disclose. It is directed against the keepers of printing presses for the time being: so with every change of hands, a fresh declaration becomes necessary. In this way, the "'New India" Printing Works became amenable to the action of the Chief Presidency Magistrate u/s 3 (1), when as required by the law a fresh declaration was made before him by the applicant. I may mention that a certified copy of a judgment of the Patna High Court, dated 5th June 1916, in Criminal Revision No. 93 of 1916, was cited before us in support of the applicant's contention, but it is sufficient to say that I have not been able to find out what exactly was decided in that case.

3. The Chief Presidency Magistrate, however, chose to dispense with the deposit of security at the time the applicant made the declaration. And it is thereupon argued that he became functus officio so far as the press was concerned and was not competent to pass his subsequent order of 22nd May 1916. By Section 3(i), all keepers of printing presses are required to deposit security at the time of making the required declaration to such an amount, not exceeding Rs. 2,000, as the Magistrate may fix. Then comes the proviso, which says: Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this Sub-section.'" It is contended by the learned Advocate-General on behalf of the Crown that the words "'to cancel or vary any order under this Sub-section'" gives the Magistrate the power to cancel his order dispensing with security, although he derived authority to pass that order from the

proviso itself. But it seems to me that the use of the words "or may" before the words "cancel or vary any order under this Sub-section" goes to

negative such a construction: it indicates that an order dispensing with the deposit of security is not included in the words Any order within this

Sub-section." It is true in one sense that a proviso is part of the Section to which it is attached. But in ordinary legal parlance a proviso is to be

distinguished from, the enactment, to which it is generally appended either for the purpose of explaining what particular matters are not within the

meaning of the enactment see *West Derby Union v. Metropolitan Life Assurance Society* (1897) A.C. 647, or for providing exceptions and

qualifications to the enactment or for other similar purposes. The proviso is something subordinate to the main clause and the general Rule is that

what is contained in the proviso is not to be imported by implication into the clause.

4. When a reference is made in the proviso to what is enacted by the Section or Sub-section to which it is appended, one would not

ordinarily read it, unless so compelled, to include anything contained in the proviso itself. Here the main purpose of the enactment is to authorise the

Magistrate to fix the amount of security and it is to enable him to cancel or vary this order from time to time that he is given the power under the

latter part of the proviso.

5. It was argued that the Legislature could not have intended that if the Magistrate once dispensed with the deposit of security, he should have no

farther power to require security if he so chose. But it must be remembered that he is to dispense with security only for special reasons which have

to be recorded by him and it is not unlikely that the Legislature thought that where such reasons existed, the particular keeper of the press who was

so exempted should not again be called upon to furnish security.

6. However that may be, I do not feel called upon to put any construction on an enactment such as this which would tend to extend its scope

beyond what is warranted by the natural meaning of the words used by the Legislature. Section 3 (1) imposes a serious disability on persons

desiring to keep printing presses. It must have the effect of hampering the carrying on of what is ordinarily not only a perfectly legitimate business,

but one which has played such an important part in the diffusion of knowledge

and progress of civilization.

7. Upon this application, however, it is not open to us to set aside the order of the Chief Presidency Magistrate. Whether Section 22 of this Act

bars all interference on our part or not, is a question which will have to be considered in connection with another application which will be dealt

with later. But in any case, there is no provision in the Press Act of 1910, under which this application is made, which enables us to deal with the

order of the Magistrate purporting to be made u/s 3 (1).

8. As for the order of forfeiture, Section 22 read with Sections 17 and 19 debars us from interfering with it except on the ground, namely, that the

extracts in question are not of the nature described in Sub-section (1) to Section 4. This is quite clear.

9. Before dealing with the application on the merits, I should mention that the applicant repeatedly complained to us that the Government before

passing the order of forfeiture did not give her sufficient intimation as to the kind of matters published in the paper which they regarded as

objectionable nor did they call upon her to show cause why the security deposited by her should not be forfeited. The Act imposes no duty upon

the Government to issue any warning or to ask for any explanation before taking action. There may be force in Mrs. Besant's plea that if she knew

what it was in the policy of "New India" or in the nature of the matters published in it to which the Government had objection, she would have been

in a position to take steps to prevent anything appearing in the paper which might reasonably be considered to be offensive. She has told us that

there" was only one letter which appeared in New India written by an Englishman on the subject of Indian Servants to which the Government took

exception but that, as a matter of fact, the editorial note had made it clear that the views of the writer found no sympathy with the editor. She says

she received no other warning of Government disapprobation. It seems quite possible, judging from Mrs. Besant's attitude before us, that if her

attention had been properly drawn in time, greater check would have been exercised over the language used in some of the letters and articles

published in New India." But that is a matter which the Government can could legitimately take into account : it can in no way influence our

judgment on the questions for decision.

10. The scope of Section 4 was considered by the Calcutta High Court in the matter of a petition of Mahomed Ali v. Emperor 18 C.W.N. 1 and

the learned Advocate General has supported the interpretation put upon it by Chief Justice Jenkins and the other learned Judges of that Court.

That, generally speaking, the terms of the Section are extremely wide and comprehensive cannot be doubted. They vest the Local Government

with a discretion so large and unfettered that the keeping of printing presses and the publication of newspapers become an extremely hazardous

undertaking in the country. A press may be devoted to the printing of most useful and meritorious literature or other publications of an entirely

innocent and non-controversial nature, yet it will be liable to forfeiture if any matters printed in such press are considered by the Government to be

objectionable within the meaning of the Act. It may be doubted if it is possible for the keeper of any printing "press in the country to maintain such

an efficient expert supervision over matters that are printed as to detect everything that might be regarded to fall within the ""widespread net"" of

Section 4.

11. Similarly a newspaper may be consistently staunch in its loyalty to the Government, its general policy may be above all reproach, the sincerity

and bona fides of the intention of the editor may not be liable to question, but if any letters or other writings are let in, may be through carelessness,

which come within the scope of any of the clauses to Section 4, the Government may at once without any trial or even a warning forfeit the

security, and in this way ultimately put an end to the newspaper itself. That the influence of a periodical on public life of the country is on the whole

decidedly beneficial need be no bar to the Government's action. The Local Government, it may be assumed, will not indiscriminately exercise the

power which it possesses under this enactment, but the vesting of such unlimited power in the Executive Government is undoubtedly a serious

encroachment on the freedom which the Press in India enjoyed before the passing of the Act.

12. The Act, as is well known, was passed in order to counteract the manifold ingenious devices adopted by the anarchists of Bengal for carrying

out their propaganda. How far it has been instrumental in accomplishing that object is not a question with which we are concerned; nor are we

concerned with the question whether the Legislature was justified in applying such a drastic press law to the whole of India, while the evil sought to be met was mainly connected with the activities of a band of young revolutionaries in one part of the country.

13. Mrs. Annie Besant has argued having regard to the nature of the enactment that so far at least as it affects European British subjects, Section 4

of the Act is ultra vires of the powers of the Indian Legislature. The Indian Legislative Council is a subordinate Legislature exercising only a

delegated authority and Section 65 (2) of the Government of India Act, which lays down that the Governor-General in Legislative Council has not

power to make any law affecting...any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may

depend in any degree the allegiance of any person to the Crown of the United Kingdom." The contention is this: in the words of Sir William

Blackstone, "allegiance is the tie which binds the subject to the King in return for the protection which the King affords to the subject," and to use

the language of Bracton "the King is under the law, for the law makes the King." What is meant by allegiance is more fully explained by Norman,

J., in *In the matter of Ameer Khan* 6 B. L.R. 392. "It is the true, and faithful obedience of the subject to the Sovereign. Everyone born within the

dominions of the King of England, whether in England or in the Colonies or dependencies, being under the protection, therefore, according to our

common law, owes allegiance to the King:

14. By the unwritten laws are meant, generally speaking, the laws recognising the fundamental right of the subject to enjoyment of personal

freedom and property of which he could not be deprived except by a sentence of the Court of Law. They were embodied in England in the Great

Charter and the Petition of Rights which, as pointed out by Norman, J., are for the most part declarations of what the existing law was, not

enactments of any new law." That learned Judge also observes that the infraction of such laws may be carried to such an extent as to give rise to

the right of self-defence on the part of the subject, a right which, says Sir Michael Foster, the law of nature giveth and no law of society hath taken

away." Then further on: "it would be strange indeed if a great popular assembly like the Parliament of England had put into the power of a

Legislature which has not, and in the nature of things could not have, any representative-character, the power of abrogating or tampering with such

fundamental laws." Norman, J., however, refused to issue a writ, of Habeas Corpus to the jailor who had charge of the body of Ameer Khan who

had been imprisoned under Regulation III of 1818, holding that its validity had been duly recognised by the Legislature, and that even if the writ

was issued, it would be in-fructuous, as the jailor acting under the warrant of the Governor-General-in-Council was not bound to obey the writ.

15. The decision of Norman, J., was upheld in appeal by Phear and Markby, JJ. See In the matter of Ameer Khan 6 B. L.R. 459; but the learned

Advocate-General has relied upon the judgments in appeal as modifying the propositions cited from Norman, J.'s judgment. Phear, J., says (page

477): "But I think it right to say that in my judgment the words whereon may depend, etc.," do not refer to any assumed conditions precedent to be

performed by or on behalf of the Crown as necessary to found the allegiance of the subject, but to laws or principles which prescribe the nature of

the allegiance, viz., of the relations between the Crown on the one hand and the inhabitants of particular provinces, or particular classes of the

community, on the other; and obviously such, laws and principles as these are not touched by the local Acts which are impeached before us.

Markby, J., at page 482 observes: "The restriction, which is the foundation of the second objection to the validity of the Act, is certainly couched

in language to the last degree vague and obscure... I wholly repudiate the doctrine contended for, that the allegiance of a subject to his Sovereign

can by any possibility be legally affected by the mere withdrawal from the subject of any right, privilege, or immunity whatsoever. I think the notion

of reciprocity expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem*, upon which this argument depends, is one which is

wholly inadmissible in any legal consideration. It appears to me that if we are to admit such a doctrine as this we must admit it, not only with regard

to Acts of the Indian Legislature, but to Acts of the English Parliament.

16. As to this last observation I may point out with great respect that there is. a fundamental difference between the Legislative powers of the

Imperial Parliament which, according to the theory of the English constitution, can enact any laws it chooses and the authority of the Indian

Legislature which is purely derivative and subordinate. Any enactment of the latter in excess of its delegated powers or in violation of the limitations

imposed by the Imperial Parliament is null and void. This doctrine was recently expressed in very clear terms by the Judicial Committee in the

famous *Moment* case *Secretary of State v. Moment* 18 Ind. Cas. 22, the judgment in which was delivered by Lord Haldane. In that case it was

held that Section 41(b) of the Act of 1891, by which it was sought to debar a Civil Court from entertaining a claim against the Government to any

right over land, was ultra vires of the powers of the Indian Legislature as contravening the provisions of Section 65 of the Government of India Act

of 1858 (corresponding to Section 32 of the Government of India Act of 1915). Lord Haldane observed (page 401 Page of 40 C.---Ed.): ""It

appears, judging from the language employed, to have been inserted for the purpose of making it clear that the subject was to have the right of so

suing and was to retain that right in the future, or at least until the British Parliament should take it away. It may well be that the Indian Government

can legislate validly about the formalities of procedure so long as they preserve the substantial right of the subject to sue the Government in the Civil

Courts like any other defendant, and do not violate the fundamental principle that the Secretary of State, even as representing the Crown, is to be

in no position different from that of the old East India Company. But the question before their Lordships is not one of procedure but whether the

Government of India can by legislation take away the right of the subject to proceed against it in a Civil Court in a case involving a right over land.

Their Lordships have come to the clear conclusion that the language of Section 65 of the Act of 1858 renders such legislation ultra vires.

17. The whole question, therefore, here is, what is the meaning of the words in Section 65 (2) of the Government of India Act, which has been

cited above. Is it as understood by Norman, J., or as suggested by Phear and Markby, JJ.? The question is one of great importance and not free

from difficulty and I do not wish to express any-positive opinion on it. It is neither necessary to do so to decide the question involved in this

application, nor am I satisfied that it has been fully discussed. But as at present advised, it seems to me that the construction put upon the

enactment by Norman, J., is what is really required by the plain meaning of the words used. And I find no difficulty in conceiving that the Imperial

Parliament, with all its great traditions in upholding the cause of liberty, should have been unwilling to grant to the Indian Legislature, constituted as

it is, any legislative powers which would enable the Government of India to encroach upon those fundamental rights of the people the violation of

which, especially by a foreign Government, is so calculated to lead to a disturbance of that peace in the realm which it is the highest concern of the

Crown always to assure. That the provision of Section 43 of 3 and 4 William IV, Chapter 85, is not to be regarded as of no practical value and

importance or as something quite obsolete is made clear by its repetition in identical language in Section 65 of the Government of India Act of

1915.

18. The next question in this connection is whether the enactment in Section 4 of the Press Act is such as can be said to be in violation of Section

65 (2). It is argued by the applicant that the forfeiture of security by the Government under the provisions of Section 4 without trial in the ordinary

Courts of Law is repugnant to a subject's right to hold and enjoy property, unless it is forfeited to the Crown after due trial for any offence or

charge proved in due course of law. The Government acting u/s 4 need not hear the person whose property it seizes, need not take any evidence

nor is it bound to follow any kind of procedure which would ensure that the forfeiture was made after proper deliberation with due regard to the

rights of the parties concerned and in the true interests of the State. The right of appeal to the High Court under the provisions of Sections 17 and

19 does not make any substantial difference, as the onus is cast upon the owner of the confiscated property to prove that the order of forfeiture

was wrong and that right must, in the circumstances, be treated as more or, less illusory.

19. The contention of the Advocate-General in answer to this reasoning is that there are numerous instances in which personal freedom of the

subject is interfered with because of the exigencies of good government. For instance, persons suspected of crimes are daily arrested by the Police

before they are placed on trial and the laws of every country place restrictions" on the user of certain forms of property in the interests of public

welfare. This enactment he says stands practically on the same footing.

20. But it is unnecessary to determine any of these questions for the very simple

reason that this Court is constituted and this application has been made under the special provisions of the Press Act itself and Section 22 of that Act prevents all interference on our part except on one ground mentioned in Sections 17 and 19. When this was pointed out to Mrs. Besant, she further contended that Section 22 itself was ultra vires. Even if that contention were valid, whatever other remedy she may have she has none on this application.

21. Now I shall examine the provisions of Section 4 in some detail. It is contended that the phrase which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise"" means that if any of the words used may, by any possible construction, however ingenious and far-fetched, be supposed to have an objectionable tendency of the nature described therein, that is enough to bring a newspaper within the purview of the Section. This indeed is said to be the interpretation which found favour with Chief Justice Jenkins. He says that the provisions of Section 4 are very comprehensive, and its language is as wide as human ingenuity could make it. Indeed, it appears to me to embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility on the other.

22. ""It is difficult to see to what lengths; the operation of this Section might not plausibly be extended by an ingenious mind. They would certainly extend to writings that may even command approval.

23. ""An attack on that degraded Section of the public which lives on the misery and shame of others would come within this widespread net: the praise of a class might not be free from risk. Much that is regarded as standard literature might undoubtedly be caught.

24. Anything which fell from that distinguished Judge has my greatest respect. But though undoubtedly the language of the enactment is, as I have said, extremely, nay dangerously wide, I venture to doubt if the cases which are mentioned above could reasonably be said to come within the scope of the Section. In the first place, the words whether by inference, suggestion, allusion, metaphor, implication or otherwise"" are merely by way of explanation, and do not in any way enlarge the meaning of the words which are likely or may have a tendency directly or indirectly."" By

tendency," J take it, is meant the natural effect of the words used on the readers of the newspaper in question. I do not think that we ought to have any regard in this connection to the effect which they may possibly produce on the minds of abnormally constituted persons, or persons whose acquaintance with the language is inadequate, or on those who might content themselves with reading certain passages or expressions apart from the context.

25. I do not think that our decision upon the tendency of publications in a newspaper should be affected by a consideration of the interpretation which men of ingenious minds may put upon them. All that we are to take into account is the effect, which the words are, by their nature, likely to produce on a normal average reader understanding them in their plain, natural meaning.

26. But the onus is laid (see Sections 17 and 19) upon the person whose security has been forfeited to prove that the publications elected by the Government at their own discretion may not have the tendency described in the various clauses. That is not only reversing the ordinary procedure in trials, but the difficulty of proving such a negative as this must in many cases be insurmountable.

27. Then apart from explanation 2, we have, put, in applying Section 4 (1), to consider the intentions of the Editor or the writer, if it is not shown that the words in their plain, ordinary meaning, may not tend to produce the objectionable effects mentioned in clauses (a) to (f).

28. The "extracts under consideration are said to come within clause (a), (c), (d) or (e). Briefly speaking, clause (a) relates to words having a tendency to incite to acts of violence; clause (d) to words tending to put any person to fear and thereby induce him to do an act which he is not legally bound to do; and (e) relates to words which encourage persons to interfere with the maintenance of law and order.

29. That portion of clause (c) with reference to which the extracts require careful examination is this: to bring into hatred or contempt His Majesty or the Government established by law in British India...or any class or Section of His Majesty's subjects in British India or to excite disaffection towards His Majesty or the said Government....." It will be seen that this lumps together the offences defined by Sections 124A and 153A of the

Indian Penal Code, with this difference that we are not concerned here with any question of intention of the Editor or writer of the articles, leaving

aside for a moment the effect of explanation 2 which will be considered presently.

30. The words of Section 121 A, which has been the subject of interpretation in a number of cases, have been substantially reproduced in clause

(c). "Hatred" and "contempt" which are ordinary English words, I take it, mean something more than mere disapproval or dislike. The word

"disaffection" has been explained in the Section itself as including disloyalty and all feelings of enmity and I do not think any practical purpose would

be served by attempting to suggest any further explanation.

31. But a question has been raised as to the meaning of the phrase the Government established by law in British India." It is contended by the

applicant that what is meant by that phrase is the supremacy of the British Crown and the British connection as opposed to independence. This

cannot be a definition of Government" as used in the Section; it would only indicate the essential elements in the political relation between India and

Great Britain. Government denotes an established authority entitled and able to administer the public affairs of the country. On the other hand,

Government is not identical with any particular individuals who may be administering the Government. Mr. Justice Strachey of the Bombay High

Court defined it as British Rule and its representatives as such, the existing political system as distinguished from any particular set of

administrators." See Queen-Empress v. Bal Gangadhar Tilak 11 Ind. Dec. 656. Justice Batty in Emperor v. Bhaskar Balvant Bhopatkar 8 Bom.

L.R. 421, explained the conception of Government in somewhat greater detail. "What is contemplated under the Section is the collective body of

men---the Government, defined under the Indian Penal Code.....It means the person or persons collectively, in succession, who are authorised to

administer the Government for the time being, One particular set of persons may be open to objection, and to assail them and to attack them and

excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals and not representatives of

that abstract conception which is called Government...The individual is transitory and may be separately criticised but that which is essentially and

inseparably connected with the idea of the Government established by law

cannot be attacked without coming within this Section." The same idea underlay Sir Comer Petheram's explanation of the phrase in the "Bangobasi" case *Queen-Empress v. Jogendra Chunder Bose* 19 C. K 35, where he says that British India is part of the British Empire and is governed like other parts of the Empire by persons to whom the power is delegated for that purpose. There is a great difference between dealing with Government in that sense and dealing with any particular administration." In the above sense Government" includes not only the Government of India but also the local Governments.

32. I think the last passage from Justice Batty's judgment cited above requires some explanation. I do not think he meant that the law prohibits criticisms of the Government as constituted in a particular form, provided such criticisms do not bring it into hatred or contempt or excite disaffection against it. In fact all criticisms of the measures of a Government must in some degree involve reflections on the Government itself. But Section 4 allows less scope to criticisms directed against the Government itself than to criticisms of measures of the Government.

33. Explanation 2, which is transcribed almost word by word from Section 124A, says that comments expressing disapproval of the measures of the Government with a view to obtain their alteration by lawful means or of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c)." The draftsman who borrowed these words from Section 124 A apparently overlooked the fact that the essence of an offence u/s 124 A being the guilty intention, explanation 2 necessarily imported the question of intention, while clause (c) to Section 4 to which the explanation was attached is not concerned with the intention of the writer of the words charged. However that may be, we must read explanation 2 as we find it. So reading, it means that comments on the measures and actions of the Government are exempted from the operation of Section 4, provided the person making the comment does not excite or attempt to excite thereby hatred or contempt against the Government. But the protection afforded by this explanation is extended only to comments on government's measures and actions, and not to attacks on the Government itself which have to be judged by light of the Section 4 alone without

reference to the explanation II.

34. It is evident from some of the extracts, the subject of the charge, from the statements of the applicant herself and certain copies of "New India

tendered in evidence u/s 8 that it is the declared policy of this paper to advocate and agitate for Home Rule in India. The method adopted is to

draw attention to those measures and actions of the Government that are in the opinion of the editor injurious to the interests of the people and

thereby to enforce the teaching that Home Rule is the only efficient remedy for most of the political evils in the country. The learned Advocate-

General very rightly told us under instructions from the Government that they did not object to advocacy of any Home Rule propaganda; what they

objected to was the nature of the matters published in the paper, connected though they might be with a scheme for Home Rule.

35. And in fact it is difficult to see how any such movement can be regarded as illegal per se. It lies entirely with the Sovereign, that is in the

compendious phrase of Dr. Dicey, the King in Parliament, to establish any Government he chooses for India or any other part of the British

Empire. There can be nothing wrong, therefore, in a subject of the Crown urging the desirability of a change in the machinery of Government in

India. Changes in the constitution of Government do take place from time to time with the consent or sanction of the Sovereign and the most

recent, in the case of India, were the reforms introduced by Lord Morley. In certain stages of society, reforms in the constitution of the

Government are a biological and political necessity. To say that such questions are not open to public discussion, supposing that the law is not

violated by the manner and the methods adopted in such discussion, would be opposed to all sound maxims of constitutional law. The principle

which bears on the subject has been expressed in the following terms, which have met with the approval of some of the most distinguished text-

writers: An intention is not seditious if the object is to show that the King has been misled or mistaken in his measures or to point out errors and

defects in the Government or constitution with a view to their reformation or to excite the subjects to attempt by lawful means the alteration of any

matter in Church or State or to point out with a view to their removal matters which are producing or have a tendency to produce feelings of hatred

or ill-will between classes of the subjects"" (see Stephen's Commentaries, Volume IV"", page 150, 16th Edition; Dicey's Law of Constitution, page

240, 8th Editor : 9 Halsbury's Laws of England, page 460, paragraph 902)

36. The applicant has complained to us that the Madras Government never made any pronouncement on the subject of Home Rule and she

thought that they objected to the movement suggesting thereby that if she had known their real attitude, the tone of some of the articles might have

been modified. But then she was not justified in supposing that the Government would act contrary to the law, and any such supposition could not

be a valid excuse if it led her to publish matters obnoxious to the law.

37. After the best consideration I have been able to give to these articles, which I shall now proceed to deal with in detail, I fully accept the

assurance of the applicant that her newspaper ""New India"" has been persistently preaching against acts of violence. Nor have I found anything in

these articles which can reasonably be taken to suggest that India should sever her connection with the British Crown or the British Empire. In fact,

it is expressly stated in some of these extracts, for instance Extract No. 3, that what New India has been struggling for, to use its own language, is

Home Rule"", by which is meant Self-Government within and as a part of the British Empire. The applicant indignantly repudiated charges of

disloyalty to His Majesty, and I find nothing in the language of these articles which would lead me to doubt in any degree the sincerity of her

protestation. Nor has the learned Advocate-General suggested otherwise. The real question, however, is whether the words of any of these

extracts are likely to have a tendency to bring into hatred or contempt the Government or to excite disaffection towards the Government or to

bring into hatred or contempt any class of His Majesty's subjects in British India, or do they or any of them come within the scope of explanation 2

to Section 4. I will say at once that none of the articles cited in the charge can fairly be said to have any tendency of the description mentioned in

clauses (a), (d) and (e).

38. I will take serial Nos. 4 (a) to 4 (f) together. These are letters of correspondents and paragraphs dealing with the practice which obtains on

certain railways of reserving compartments for the use of Europeans and Eurasians alone and of excluding from them Indian passengers holding

tickets issued to them in due course. They are written on the assumption that the legality of such practice was open to challenge. It is possible that

the decision of the Sindh Court referred to was misunderstood, but there can be no doubt that the writers bona fide believed that it had declared

against the validity of the practice. It is stated that it was a matter of frequent occurrence that, while the compartments reserved for Europeans and

Eurasians were empty, Indian passengers were not allowed to use them, even though the other compartments were overcrowded and many Indian

passengers holding tickets were unable to find seats. The action of the Railway authorities is condemned not only as illegal but objectionable as

tending to emphasise racial distinctions. The suggestion is made in several of the extracts that the passengers should test the legality of this practice.

It is urged that the editorial note to Serial No. 4 (d) why did you get out, It is this submission to illegality that causes half the troubles from which

Indians suffer"" amounts to a Suggestion to use violence: but I have no doubt that the note is not reasonably capable of being so understood, if read

in the light of the letter to which it is attached and in connection with the other writings on the same subject. It has also to be borne in mind that

some of these extracts had already appeared in other newspapers.

39. Extract No. 5 which is headed ""The price of Liberty"" is an article quoted from the Herald"" of London. It is an apology put forward by one

John Scurr for the action of persons known as conscientious objectors to conscription. It extols the virtues of those who, for the sake of the cause

which they believe in, cheerfully and boldly suffer all kinds of inflictions. Mrs. Besant has told us that as a matter of fact she has been doing

everything possible in her power to support the British cause in this War through the medium of New India and that is not denied on the other side.

There is no question of conscription in this country and the objection of the Advocate-General to this extract is that it may have a tendency to incite

the readers of the ""New India"" to acts of violence against the Government. But I can find no such suggestion in the extract. Mrs. Besant herself

explained to us that the reason why she inserted it in the Home Rule Section (that is to say, that part of the paper which is especially devoted to the

question of Home Rule for India) was simply to supply an object-lesson to the people of this country in self-sacrifice. I am unable to say that it

suggests in any way that people should take the law into their own hands.

40. Extract No. 7: ""The latest political crime in Calcutta and its moral, by Bipin Chandra Pal."" This, it is contended, comes under clauses (a), (e)

and (e). I have read the article with considerable care and I cannot find in it any palliation of the anarchical crimes committed by the young

anarchists or revolutionaries of Bengal, as suggested on behalf of the Crown. What the writer tries to prove is that repression alone is not an

adequate remedy for the present situation in that province. He expresses the opinion that if the Government would publicly accept Swaraj or Home

Rule as the ideal objective of the immediate historical evolution of the Indians"" and if they would start some of those necessary reforms in the

administration"" which would give a practical assurance to the future national autonomy inside the coming federation of the whole British Empire"" ,

the problem might be more easily solved. Mr. Pal asks the Government not to regard these misguided young students as mere ordinary criminals

but rather as political offenders. He does not, however, suggest that their offences should not be punished according to law. In one place he says

that, these men are possessed of a kind of courage which should not be overlooked, but in the same sentence he condemns "the suicidal folly and

criminal inhumanity of their actions." I do not think that any reader of ""New India,"" who is not predisposed to read in meanings in the article which

are not there, would carry away the impression that it attempts in any way to excuse the conduct of the political assassins in Bengal. Nor is there a

single word in the whole of that article which can be said to have a tendency to bring the Government into hatred or contempt or to excite

disaffection against it.

41. Extract No. 3 is ""Latest sin of the Arms Act."" It notices a dacoity of a very serious nature which was committed in the house of a rich merchant

in a village in this Presidency. Large sums of money and jewels were carried away and the victim, it is said, bitterly complained of the helplessness

of the unarmed villagers to offer any resistance to the armed bandits. The moral is pointed that such helplessness is the result of the Arms Act and

the writer pleads for its repeal or modification. It is difficult to see how this paragraph can be said to go beyond the limits of fair comment on a

measure of the Government which has formed the subject of frequent discussion

in newspapers and on public platforms.

42. Extract No. 1. "'Bureaucracy in Excelis'", is a letter written by one Krishnama Chariar denouncing the action of the Magistrate requiring security from the applicant. It accuses the Madras Government of blind hostility against "'New India,'" dwells on the unwisdom of relying too much upon the sympathy of the Bureaucracy towards any of her (i. e., India's) truly higher aspirations"' and says when "'New India"' mercilessly exposes any and every vagary of the Englishman in this land that it can come across, the Anglo-Indian blood boils with all the uncontrollable rage of the most selfish vested interest.'" This is undoubtedly a violent piece of writing and goes beyond the limits of fair comment.

43. Extract No. 2 is also a letter from a correspondent. It not only describes the enforcement of the Press Act against New India"' as "'inhuman action and barbarous atrocity,'" but it leaves the readers under the impression that the much-hated and ever-mischievous bureaucracy" is identical with the Government. It alleges that the Government have a spite against the Editor of "'New India"', for "'she is the head of an institution which works against the missionaries and the missionaries are the parasites of the Government.'" It is impossible to say that a publication of this character may not have a tendency to excite hatred against the Government.

44. Extract No. 6 is an editorial article, where it is stated "'Repressive measures such as the Press Act, the Seditious Meetings Act, the Official Secrets Act and the Defence of India Act in the hands of people with vested interests of their own naturally assume a shape and a form all too ghastly for the children of the soil, and day and night exert a baneful influence over them, engendering at once fear and hatred.'" Supposing these measures are all of a repressive character and are objectionable, still to describe them in language quoted is certainly not fair comment, and naturally tends to create a feeling of dislike and hatred against the Government.

45. Extract No 8, Ave Caesar"', is written by Mrs. Besant herself criticising the order passed by the Government of Bombay under the Defence of India Act prohibiting her from entering that province. She told us that she wrote in that strain because she was indignant that the Defence of India Act, which is directed against the enemies of England and of His Majesty the King-Emperor, should have been used against her.'" I am not inclined

to attach much importance to this paragraph, it is an outburst of an enraged woman who felt that she had been very unjustly dealt with.

46. In similar strain is Extract No. 9. It contrasts the attitude of Anglo-Indians towards constitutional struggles in India with that of Englishmen in

England. In, Extract No. 10 there is a suggestion that sometimes action under the Defence of India Act is resorted to by the Government from a

feeling of personal enmity. Extract No. II deals with"" the case of one Shyam Sunder Chakravathy, Assistant Editor of the Bengalee, who was

arrested in Calcutta and in connection with whose arrest the safe of Babu Surendra Nath Bannerji, the editor of that paper, was searched by the

Police. Without stating whether the arrest was under the ordinary law or under the Defence of India Act or what"" was the nature of the evidence

upon which action was taken by the Police, it is asserted ""the arrest is legal doubtless, but is truly unlawful"". When injustice is perpetrated, when

crimes are committed legally, when innocence is no protection and harmless men are treated as criminals, then we live in a condition of anarchy, no

matter what legal sanction may cover the wrongdoer. Civilization does not protect us. We should be better off in a state of savagery, for then we

should be on our guard, we should carry arms and protect ourselves. We are helpless. We pay taxes to be wronged"", words like these exceed the

limits of all fair comment and are likely to excite hatred against the Government.

47. Extract No. 12 is a plea for Home Rule. It is taken from a contribution in the Commonweal."" The Advocate-General has especially drawn our

attention to the passage where the writer speaks of this age as an age for heroes who dare to enter the arena of righteous warfare loved by the true

Kshatriyas of old, to whom according to the Gita nothing is more welcome"", and to the allusion to Paine, the American writer's saying "that we are

living in times that try men's souls."" I think the allusion to the true Kshatriyas of old is by way of exhortation not to wage actual warfare against the

Government but to fight the constitutional battle for Home Rule. There are also allusions to certain social customs in the East and in the West which

are certainly not in good taste and are calculated to arouse class hatred between Englishmen and Indians. There are words which might also be

liable to be understood as suggesting that Government has encouraged dissensions among people of different religions and castes in the country.

48. Extract No. 13 contains the suggestion that the reason why Bal Gangadhar Tilak of Bombay who had instituted an action in the English Courts

against Sir Valentine Chirol was refused a passport by the Bombay Government was that he might not go to England to prosecute his case. I find

nothing to warrant such a supposition which, if well-founded, would be greatly to the discredit of the Government of Bombay.

49. The last article, Extract No. 14, contains a statement that the "Education of Indian boys is in the grip of foreigners who impose upon them a

crushing curriculum; that some of the professors and teachers often treat them with the greatest rudeness and address them in the most insulting

terms and that they have no regard to their miserable poverty nor try to improve their indecent and insanitary surroundings." It is written by way of

protest against a suggestion that the actions of educational authorities should not be criticised in the public press. The language used is very strong

and it is not right to cast any blame on the English professors and teachers for the "indecent and insanitary surroundings of the students." But I do

not think that the passage read in the light of the context can be said to have a tendency to bring the Government into hatred or to excite feelings of

class hatred, within the meaning of clause (c).

50. The difficulties of a foreign Government, constituted as it is in this country, are necessarily very great. It is not to be expected that it should be

in complete touch with the genuine sentiments, feelings and aspirations of the people; the information that it can command must at best be

secondhand and is often likely to proceed from interested sources. With the best of intentions, it is liable to make many mistakes, sometimes

serious blunders. These and other inherent difficulties of the Government as at present constituted may or may not justify the demand for Home

Rule, and it may be that Self-Government is necessary for the full growth of the people. But the law does not permit a publicist, discussing the

Government's actions and failures, to impute base and dishonourable motives.

51. Mrs. Annie Besant has assumed full responsibility for everything that appeared in her paper. I am prepared to acquit her of any wilful attempt

to disseminate disaffection or hatred against the Government of the country or to create feelings of hatred against any class of His Majesty's

subjects. But I have been unable to hold that some of the extracts from the

publications in the New India"" cited before us may not have such a tendency.

52. The application must be dismissed.

Ayling, J.

53. This is the petition presented u/s 17 of the Press Act (1 of 1910) by Mrs. Annie Besant, Editor of the newspaper, ""New India,"" and keeper

and printer of the ""New India Printing Works."" In it she applies to this Court to set aside an order of forfeiture passed by the Madras Government

on 25th August 1916 in respect of a sum of Rs. 2,000 deposited by her as security u/s 3 of the Act for the said Press, and of all copies of the

New India"" newspaper. It may be mentioned that the forfeiture of the copies of the newspaper appears not to have been enforced by actual

seizure and that the publication of the paper has been continued on deposit of further security u/s 5 of the Act.

54. The order of forfeiture was passed u/s 4 of the Act, which empowers the Local Government to take such action when it appears to the Local

Government that the Press has been used for printing or publishing any newspaper containing any words..."which are likely or may have a

tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise, (a) to incite...to any act of violence...

(c) to bring into hatred or contempt.....the Government established by law in British India...or any class or Section of His Majesty's subjects in

British India or to excite disaffection...towards the said Government..."or (e) to encourage or incite any person to interfere with the administration

of the law or the maintenance of law or order.

55. There are two explanations to the Section, one of which is of considerable importance and will be dealt with in due course.

56. Section 17 of the Act allows any person interested in the property thus forfeited to apply to the High Court to set aside such order (of

forfeiture), on the ground that the newspaper...in respect of which the order was made did not contain any words...of the nature described in

Section 4 (1).

57. Section 18 provides for the constitution of a Special Bench of the High Court composed of three Judges to hear and determine such

application.

58. Section 19 empowers the Special Bench so constituted to set aside the order of forfeiture, if it appears that the words contained in the

newspaper in respect of which the order was made were not of the nature described in Section 4 (1); and further provides that where there is no

majority of the Special Bench which concurs in setting aside the order of forfeiture, the order shall stand.

59. It will thus be seen that we are a Special Tribunal constituted under a special enactment for a single specific purpose---namely, to determine

whether certain words contained in the newspaper (and specified in the order of forfeiture), are or are not of the nature described in Section 4

(1).""This was the conclusion arrived at by a Full Bench of the Calcutta High Court similarly constituted in Mahomed Ali v. Emperor 20 Ind. Cas.

977 with which I respectfully agree.

60. Much of the argument before us has been devoted to the question of whether and to what extent we should concur in the conclusions to which

those learned Judges have arrived, or the further question of the proper construction of Section 4 (1). The Advocate General has contended that

we should adopt them in their entirety; while the petitioner argues that the language of the Section defining the nature of the words which would

justify forfeiture has been misunderstood and given far too wide an effect.

61. I do not propose to follow this argument in detail. As at present advised, I am by no means satisfied that the interpretation of the learned

Judges is not too wide, I can find nothing in the Act which seems to me to throw on the applicant the onus of proving that the words, which are

made the ground of forfeiture, do not fall within the scope of the Section. I certainly do not think this is to be deduced (as has been suggested)

from the words of Section 19, which empowers the Bench to set aside the forfeiture if it appears that they do not. Whether the words are likely or

may have a tendency to produce certain results must be determined primarily by inference from their own nature. The words themselves, form the

main evidence in the case: and I do not think the Act throws any onus on, either side. I am not satisfied that the words of Section 4 (""are likely or

may have a tendency"")) ""embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility

on the other", or that the wording of the Section is so all-embracing that even a person acting in the highest interests of humanity and civilisation" is

confronted with an almost hopeless task in showing that the words he has used do not fall within it. Whether an attack on that degraded Section of

public which lives on the misery and shame of others would come within this widespread net" is a question, the decision of which we may, in my

opinion, well, postpone until we are asked to decide it. At present we are only concerned with the question of whether the words of the articles s

before us do or do not come within the mischief of the Section; and if, as I think, they do without placing any startlingly wide construction on the

Section, it is unnecessary for us in this case to decide to what lengths the Section might be ingeniously stretched. That the wording of the Section is

very wide is, however, undeniable; and in some respects it clearly goes beyond the provisions of the Penal Code. The governing words are likely

or may have a tendency" undoubtedly leave the question of intention quite immaterial: and confine our attention to the natural effect of the words

without reference to what the writer meant, or wished to be understood.

62. To this, however, there would seem to be a very important exception in explanation II of the Section which runs: Comments expressing

disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful

means, or of the administrative or other action of the Government or of any such Native Prince or Chief or of the administration of justice in British

India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c)." The learned Advocate-

General has argued that even here the element of intention is absent, and that attempting to incite" is equivalent to tending to excite." The wording

of the explanation, which is apparently taken from Section 124A, Indian Penal Code, is not altogether happy. Comments may excite hatred, etc.,

but it is difficult to see how comments (i.e., the words used) can attempt to excite. The word attempt" seems to presuppose a sentient being and

one animated by a particular intention. I am not disposed to accept the Advocate-General's argument in this respect; and shall consider the

extracts placed before us from the point of view that in the case of comments on the measures of Government an intention to excite hatred,

contempt or disaffection is necessary to bring them within the scope of clause (c) of Section 4 (1). The intention is, of course, deducible from the words of the extracts themselves.

63. Much argument has also been devoted to the meaning to be attached to the words ""Government"" or Government established by law in British India"" as used in the Act: and to the words contempt or hatred."" The term disaffection"" is defined in Section 4(1), explanation I, which says ""In clause (c) the expression "disaffection" includes disloyalty and all feelings of enmity.

64. As regards the first point, petitioner asks us to interpret the words Government established bylaw in British India"" as indicating nothing more than the supremacy of the Crown and the British connection. That is to say, as long as the writer or publisher of an article proclaims his loyalty to the King-Emperor, and his desire that India should still remain a part of the British Empire, he may attack to his heart's content the Government of India or the Government of Madras and hold them up to hatred and contempt, without coming within the scope of the Section; and the same interpretation would presumably apply to Section 124A, Indian Penal Code, the wording of which is practically identical. To give effect to such an interpretation would go far to render the task of governing India impossible; and I have no hesitation whatever in deciding that it is not the one intended by the authors of this Act, or one which we should adopt. If anything of the kind were intended, the words used would have been chosen to indicate, not the Government, but the form of Government in so far as it embodies the British connection. We must assume that the term Government"", in explanation II to Sub-section (1), is used in the same sense as in clause (c) of the Sub-section and if petitioner's interpretation is correct, to speak of the measures of the Government"" is absolutely meaningless.

65. The true interpretation is to be found in Section 3 of the General Clauses Act (X of 1897) which governs the Press Act as regards definitions of terms. It is sufficient to quote the following Sub-sections.

66. (21) ""Government"" or ""the Government"" shall include the Local Government as well as the Government of India.

67. (22) Government of India"" shall mean the Governor-General-in-Council or, daring the absence of the Governor-General-in-Council from his

Council, the President in Council or the Governor-General alone as regards the powers which may be lawfully-exercised by them or him

respectively.

68. (29) "Local Government" shall mean the person authorised by law to administer Executive Government in the part of British India in which the

Act or Regulation containing the expression operates, and shall include a Chief Commissioner.

69. These definitions (which it may be remarked are substantially identical with those given in Sections 16 and 17, Indian Penal Code) govern the

Press Act, "unless there is something repugnant in the subject or context" (vide Section 3, General Clauses Act). I can find nothing repugnant in the

Section or Act. The addition of the words established bylaw in British India" seems to be intended to emphasise the fact that it is the Government

existing at the time that is sought to be protected from attacks of the kind forbidden and to exclude the very plea now raised by petitioner.

70. As regards the words "hatred" and "contempt" we are asked by petitioner to hold that only such hatred and contempt are contemplated in

clause (c) as would lead to the commission of the crimes referred to in the other clauses of the Sub-section, e. g., murder, violence, resistance to

the law, intimidation of public servants and others.

71. I cannot find a shadow of justification for such an argument. Hatred and contempt are perfectly intelligible words, but it is impossible to say

what degree of hatred and contempt would be sufficient to lead different people to commit different crimes, and there is no ground for giving them

such a limited meaning. No case has been quoted to us in which any Court has applied such a limitation even in construing the old Section 124A,

Indian Penal Code, before the amendment of 1998. The word therein used was "disaffection" and I need only refer to the exhaustive discussion of

the matter by Strachey, J., in Queen-Empress v. Bal Gangadhar Tilak 11 Ind. Dec. 656. "Disaffection" (which word is also found in the Section

we are construing, in addition to hatred "and contempt") was held to mean hatred, enmity, dislike, hostility, contempt and every form of ill-will to

wards the Government. The amount or intensity of the "disaffection" was held to be absolutely immaterial except as regards the question of

punishment The learned Judge says: "I am aware that some distinguished

persons have held that there can be no offence against the Section unless the accused either counsels" or suggests rebellion or forcible resistance to the Government. In my opinion, that view is" absolutely opposed to the express words of the Section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or" attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt.

72. The learned Judge's charge to the Jury in that case contains an exhaustive discussion of the law of sedition: and I select it for quotation and rely on it with the more, confidence because it was substantially approved by their Lordships of the Privy Council in dismissing an appeal specially allowed against the conviction in that case and based very largely on the ground that there had been misdirection on this very point of the meaning of the term ""disaffection.

73. It is not suggested that the subsequent alteration of the law was in the direction of relaxation or less stringency. Section 124A, Indian Penal Code, was practically re-cast so as to make it clear that Strachey, J.'s interpretation of the law was correct (vide Mayne" Criminal Law of India, 4th Edition, page 298). Nor is it suggested that a more lenient construction should be put on the Section with which we are concerned than would be applied if petitioner were on her trial for" a criminal offence.

74. The learned Judge's remarks are also of the greatest value in dealing with explanation II to Section 4 (1). The explanation to the old Sect