
(2008) 11 P&H CK 0149
In the Punjab And Haryana At Chandigarh

Piara Singh Bhaniara

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 PLR 766 : (2009) 1 RCR(Civil) 564

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Questioning the validity of Notification No. 1/142/4PBI/2281 dated 27.9.2001, present writ petition has been filed under Article 226 of the Constitution of India for its quashment.

2. The petitioner claims to be a spiritual person having established a Dera at Village Dhamana, Tehsil Anandpur Sahib, Distt. Ropar, Punjab. He wrote and published a book under the title Bhav Sagar Samunder Amrit Vani Granth. The publication, sale and possession of this book was banned vide the impugned Notification referred to here-in-above and even its translation in any language or its reprint prohibited and forfeited to Government in the territory of Punjab State. State Government, invoking power under Sub-section (1) of Section 95 of the Code of Criminal Procedure issued the aforesaid Notification thereby imposing ban and forfeiture of the publication on the ground that the book hurts religious feelings of certain classes of society and is defamatory to Sikh religion and that the material promotes enmity between different groups of society on ground of religion and thus constitutes offences under Sections 501, 153-A and 295-A of the IPC. It may be useful to reproduce the impugned Notification dated 27.9.2001 as follows:

Government of Punjab Department of Home Affairs & Justice (Press-I Branch)
NOTIFICATION

The 27th September, 2001 No. 1/142/4PBI/2281 whereas it appears to the

Governor of Punjab that the Punjabi Book Bhav Sagar Samunder Amar Rani Granth written by Baba Piara Singh Bhaniarawale, Village Bhaniara, Tehsil Anandpur Sahib, District Ropar contains objectionable material which will promote enmity between the religions, and outrage the religious feelings of certain classes of society, and is defamatory to Sikh religion.

2. And, whereas, after carefully going through the aforesaid issue of the book Bhav Sagar Samunder Amar Bani Granth placed before him, the Governor of Punjab is of the opinion that the matter in the aforesaid issue of the book hurts the religious feelings of certain classes of society, and is defamatory to Sikh Religion. This material also promotes enmity between different groups of society on grounds of religion, thereby constituting an offence u/s 501, 153-A and 295-A of the Indian Penal Code, 1860.

3. Now, therefore, in exercise of powers conferred on him by Sub-section (1) of Section 95 of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the Governor of Punjab is pleased to order to ban the publication, sale and possession of the aforesaid book, its translation in any language and its reprints to be forfeited to Government in the territory of Punjab State.

Bikramjit Singh Principal Secretary to Govt. Punjab Department of Home Affairs & Justice.

The legality of the Notification has been called in question primarily on two grounds that (1) it has been issued without seeking any explanation or affording any opportunity of hearing to the petitioner and is thus violative of principle of natural justice and (2) it does not disclose any ground on which the State Government has formulated its opinion.

3. Mr. Sahu, learned Counsel appearing on behalf of the State of Punjab has objected to the maintainability of the writ petition on the ground that the petitioner has a statutory alternative remedy u/s 96 of the Cr.P.C. It is further contended that the application has to be heard by a Special Bench of the Hon''ble High Court comprising of three Hon''ble Judges. Section 96 of the Cr.P.C. which provides the statutory remedy to an aggrieved person, reads as under:

96. Application to High Court to set aside declaration of forfeiture.

(1) Any person having any newspaper, books or other document, in respect of which a declaration of forfeiture has been made u/s 95, may within two months from the date of publication in the official Gazette of such declaration, apply to the High court to set aside such declaration on the ground that the issue of the newspaper, or the books or the other, document, in respect of which the declaration was made, did not contain any such matter as is referred to in Sub-section (1) of Section 95.

(2) Every such application shall, where the High Court consists of three or, more Judges be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges,

such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in Sub-section (I) of Section 95, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

4. From a bare perusal of the aforesaid Section, it appears that the remedy u/s 96 of the Cr.P.C. is available where an interested person against whom a declaration of forfeiture has been made u/s 95 of the Cr.P.C, claims that the publication of the book did not contain any such material as is referred to in Sub-section (1) of Section 95. This remedy is available only on the solitary ground, specified in Sub-section (1) of Section 96. However, in the present case, the impugned notification has not been questioned on the ground specified in the Section, but on the grounds of nonobservance of principle of natural justice and contravention of the provisions of Section 95 Cr.P.C. Ex-facie on the grounds sought to be pressed, remedy u/s 96 Cr.P.C. may not be available. Apart from above, this writ petition was admitted to hearing by a Division Bench of this Court vide order dated 22.9.2003 and is pending since then. The petitioner has also claimed violation of his Fundamental Rights guaranteed under Article 19(IXa) of the Constitution of India which guarantees freedom of speech and expression. It is settled principle of law that alternative remedy is no bar to the proceedings under Article 226 of the Constitution of India where the protection and enforcement of Fundamental Rights is claimed or where there has been violation of principle of natural justice or where the order or proceedings are without jurisdiction or the vires of an Act is challenged. There is catena of judgments of the Hon''ble Supreme Court on this point.

5. However, reference can be made to the judgments rendered in the cases of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. 1998 (4) R.S.J .392, Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , and A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, .

6. Even one of the grounds raised in the writ petition is violation of the mandatory requirement of Section 95 of the Cr.P.C. which, inter alia, requires recording of grounds. A similar question arose before Hon''ble Supreme Court in the case of Narayan Dass Indurakhya Vs. State of Madhya Pradesh, , wherein Hon''ble Supreme Court made following observations:

5. ...What the State Government did in this case in the opening paragraph of the order was merely to quote a portion of the words of Section 2 namely, that the books questioned the territorial integrity and frontiers of India in a manner which is likely to be prejudicial to the interest of the safety or security of India. The order gives no indication of the facts or the statements or the representations contained in the book which according to the State Government offended Section 2. In the order itself there is no reference to any map or any text in the book which would come within the mischief of the said Section....

6. There is a considerable body of statutory provisions which enable the State to curtail the liberty or the subject in the interest of the security of the State or forfeit books and documents when in the opinion of the Government, they promote class hatred, religious intolerance, disaffection against the State etc. In all such cases, instances of some whereof are given below the State Government has to give the grounds of its opinion. Clearly the grounds must be distinguished from the opinion. Grounds of the opinion must mean the conclusion of facts on which the opinion is based. There can be no conclusion of fact which has no reference to or is not ex facie based on any fact.

In view of the legal position enunciated in the aforesaid judgment, I am of the considered opinion that present writ petition under Article 226 of the Constitution of India is maintainable.

7. Coming to the grounds of challenge in the writ petition, it is relevant to examine the provisions of Section 95 where under the impugned Notification has been issued. Section 95 Cr.P.C. reads as under:

95. Power to declare certain publications forfeited and to issue search warrants for the same.

(1) Where:

(a) Any newspaper, or book, or

(b) Any document,

Whenever printed appears to the State Government to contain any, matter the publication of which is punishable u/s 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the news paper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may, seize the same whenever found in India and any, Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises there any copy of such issue or any Such book or other document may be reasonable, suspected to be.

(2) In this section and in Section 96,:

(a) "Newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867):

(b) "Document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any court otherwise than in accordance with the provisions of Section 96.

The aforesaid Section is indicative of the fact that the provisions have been incorporated to deal with an emergent situation where publication of book or document is intended to or tends to create hatred between different Sections of society on the ground of religion etc. and amount to offences specified in this Section. It is a preventive measure. It must be enforced immediately and thus, observance of principle of natural justice, particularly in the form of prior notice or pre-order hearing is not contemplated. Rather the wording of the said Section suggests exclusion of principles of natural justice. The action envisaged being imminent, I do not endorse the view of the learned Counsel for the petitioner that the impugned Notification suffers on account of nonobservance of principle of natural justice.

8. As far as the second ground of non-observance of the mandatory requirement of stating the grounds for formulating the opinion of the State in the order is concerned, there seems to be substance in the plea. The authority, while passing the impugned Notification, has simply referred to the provisions of Section 95 of the Cr.P.C. Even no reference is made to the objectionable material which constitutes offences under Sections 501, 153-A and 295-A of the Indian Penal Code, 1860. The requirement of the said Section is explicit. The Government has to state the grounds of its opinion meaning thereby the basis for formulating the opinion. Mere quoting the Section does not mean that the grounds are stated. The order must disclose the application of mind on the facts and material constituting the offences envisaged u/s 95 of the Cr.P.C. and the opinion of the competent authority that this material comes within the mischief of the Section. The impugned Notification is shorn of any such ground based upon objectionable material or even the opinion based upon such material. The mandatory requirement of Section 95 Cr.P.C. has not been complied with. Freedom of speech and expression which includes the writing and publishing of any book or document is a Fundamental Right guaranteed under Article 19(1)(a) of the Constitution of India. Clause (2) of Article 19 of the Constitution of India empowers the State to impose reasonable restrictions on the exercise of the right conferred under Clause (1)(a) of Article 19 in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to Contempt of Court, defamation or incitement of an offence by making a law. The State has enacted Section 95 in exercise of the power under Clause (2) of Article 19 of the Constitution of India. Once a law is enacted and Fundamental Rights are sought to be curtailed by virtue of such law adherence to the procedure and manner or method for

imposing restrictions on Fundamental Rights is imperative. Thus, stating of grounds and formulation of opinion on such grounds in the order u/s 95 Cr.P.C. is must and inescapable. The impugned Notification does not contain any such ground and is thus invalid and void. Similar view has been expressed in the case of Narayan Dass Indurkha (supra). Further in the case The State of Uttar Pradesh Vs. Lalai Singh Yadav, , the Hon''ble Supreme Court, while considering the validity of Notification issued u/s 99A of the Code of Criminal Procedure (5 of 1898) containing similar provisions, made following observations:

...Where there is a statutory duty to speak, silence is lethal sin for a good reason disclosed by the scheme of the fasciculus of sections. For scheme 99C enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court examines the grounds of Government given in the order and affirms or upsets it. The Court cannot make a roving enquiry beyond the grounds set forth in the order and if the grounds are altogether left out what is the Court to examine? And, by this omission, careless or calculated, the valuable right of appeal to the Court is defeated....

For the above reasons, I quash the impugned Notification dated 26.9.2001 (Annexure P-1). However, keeping in view the sensitivity of the issue, and the fact that the petitioner has not denied the existence and publication of objectionable material in the book, the respondent-State is permitted to pass a fresh order, after recording grounds and formulating its opinion as contemplated by Section 95 of the Cr.P.C. Let the necessary orders be passed within two weeks from the date of receipt of a certified copy of this order. How-ever, till fresh orders are passed, the order of forfeiture and ban shall remain in operation.

A copy of this order be communicated to the Chief Secretary, State of Punjab and Advocate General, Punjab.