

(1988) 08 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 798 of 1988

Ramesh Chand Agrawal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Press and Registration of Books Act, 1867 — Section 5, 6, 8B

Citation : AIR 1989 MP 152

Hon'ble Judges : T.N. Singh, J;N.K. Singh, J

Bench : Division Bench

Advocate : A.K. Chitale, R.D. Jain and N.K. Modi, M.C. Jain, Dy. Advocate General, for the Appellant; N.P. Mittal and A.B. Mishra, for the Respondent

Judgement

Dr. T.N. SINGH, J.—On unusual facts and under unusual circumstances our writ jurisdiction is invoked in this matter. What ostensibly is a claim to print and publish the Dainik Bhaskar, a local Hindi daily, is a tug of war, in fact and substance, for effective exercise of control and ownership of the newspaper, fought evidently on a slippery field. Most unfortunately, it is a family feud. Father and son are pitted against each other but they are currently the Managing Director, and Director respectively, of the Company owning the newspaper.

2. As we proceed to state briefly the facts first, we make it clear that we would definitely deal, with though at the end, the legal contention concerning our jurisdiction to entertain the petition. Suffice it to say at this stage that though the controversy involves interpretation mainly of Sections 5,6, 8 and 8B of the Press and Registration of Books Act, 1987, for short, the Act, it is Section 8C of the Act that gives rise to objection concerning our jurisdiction inasmuch as appeals are provided thereunder against orders passed under Sections 6 and 8B of the Act.

3. It is evidently a case of contest between several "declarations" and the legal position is that according to Section 5, no newspaper can be printed and

published in India without "declaration"" contemplated thereunder being made, and authenticated in accordance with Section 6 in respect thereof. Several declarations, of which copies are on record before us in this matter as Annexures to the petition, are of different dates and of different particulars. Annexure P-2, however is same as Annexure R-I of respondent 3's return. Indeed, the real contest is between the declarations Annexure P-I, dt. 11-3-1987 made and subscribed by the petitioner and two declarations Annexure P-2, dated 23-3-1987 and P-6 dt. 11-4-1987, both made and subscribed by respondent 4. Even so, it would be necessary for us to consider also two other declarations, made and subscribed by the petitioner, Annexure P-23, at Jhansi on 4-5-1988, which was authenticated there; and Annexure P-33, dt. 12-5-1988, authentication of which was deferred by respondent No. 2, District Magistrate, Gwalior.

4. The three declarations (P-I, P-2 and P 6) indeed have been duly authenticated as contemplated u/s 6 of the Act. Though, vide order dated 12-4-1988 the authentication of Annexure P-2, was cancelled and respondent No. 4 took an appeal in which the case was remanded to respondent No. 2 for rehearing (See Annexure P-5). What appears clear on the face of Annexures P-2 and P-6 on reading the entry made against Col. 11 in each case is that these two declarations were "new declarations" and the reasons for subscribing to the declaration in one case is stated as "change in Editors" name" while in the other case as "changes in the names of Publisher and Printer." In Annexure P-I, petitioner is described as the Editor, Printer and Publisher of the newspaper Dainik Bhaskar while in Annexure P-2, respondent 2 V. S. Desai is described as the Printer and Publisher and in Annexure P-6, respondent 3 Dwarika Prasad Agrawal is described as the Editor. In all the three declarations M/s. Bhaskar Publications and Allied Industries Pvt. Ltd., is shown as the owner of the newspaper and the name of Printing press given in the declarations is also common, namely, National Printing Press, Jayendra Ganj, Gwalior. That respondent 3 is the Managing Director, and petitioner is Director of the said Bhaskar Publications and Allied Industries Pvt. Ltd., is an admitted fact.

5. Evidently, the bone of contention between the parties in the instant case is that order passed on 6-6-1988 as per Annexure P-1B by respondent 2. Under S. 8-B of the Act, proceedings in respect whereof appear to have been initiated on a complaint made by the third respondent on 27-4-1988 challenging Validity of the declaration Annexure P-I. Undoubtedly, despite declaration Annexure P-2, the petitioner has continued as Printer, Publisher and Editor of the newspaper and it is not disputed that the newspaper has been regularly printed and published at Gwalior until 18-4-1988, when the Printing Press and the Building in which the newspaper was printed and published came to be attached in a proceeding u/s 145, Cr.P.C. Admittedly, the newspaper is now being printed since 20-4-1988 at Jhansi as per "declaration," Annexure P-23, though it is still published at Gwalior. The currency of the impugned order, Annexure P-18 has evidently made it impossible for the newspaper to be printed at Gwalior which, it is complained, is

acting as a serious constraint on Freedom of Press, guaranteed by the Constitution.

6. It is petitioner's case that the newspaper is losing its reputation rapidly and its circulation is dwindling as it is not possible to maintain the required standard by publishing latest news. It is submitted that all important news received late in the night are always left out as editing is done at Gwalior and news received up to 6.00 p.m. is only covered for printing to be undertaken thereafter at Jhansi at a distance of 110 Kms. It is also submitted that the printing machine at Jhansi is a smaller machine which is unable to cope with the printing of the newspaper and transportation of the printed material to Gwalior during the night or early hours of dawn, especially during the rainy season, pose enormous difficulty in the circulation of the newspaper. It is asserted that the petitioner has the fundamental right to carry on the profession of Editor, Printer and Publisher of the newspaper which, it is submitted, is infringed as a result of the constraints placed on the newspaper's circulation. What is serious, it is complained, is the economic loss resulting from loss of circulation and unnecessary cost that has to be incurred in the changed circumstances in printing and publishing the newspaper.

7. Although u/s 8C of the Act any person aggrieved by an order of a Magistrate refusing to authenticate a declaration u/s 6 or cancelling a declaration u/s 8B may, appeal against that order to the Appellate Board constituted under the Act, what appears clear from the records is that the said Board is not functioning now. Indeed, the petitioner had earlier also approached this Court on the writ side assailing validity of the impugned order on the ground that the petitioner was remedyless, but in the order passed in M.P. No. 706 of 1988 on 28-6-1988 it was observed that the petitioner having filed an appeal against the impugned order before the Board and the Board being in seisin of the matter, this Court was not competent to exercise its jurisdiction with respect to the said order. This Court allowed the petition to be withdrawn granting liberty to the petitioner to file fresh petition, if necessary. From Annexure P/22, it appears that the said appeal, No. 27-3-88, was allowed by the Appellate Board to be withdrawn on 30-6-1988 as the Board found it impossible to dispose of the appeal on or before 8-7-1988 on which date the term of the Board expired. The withdrawal was not to "prejudice or affect the right of the appellant", it was observed. In the same order is also projected pendency of two more appeals in matter concerning the same parties, who are before us in this petition. A xeroxed copy of the letter dt. 26-7-1988, addressed by the Under Secretary of the Appellate Board, to the petitioner's counsel was filed in this matter during the course of hearing of this petition on 18-8-1988, wherein it is stated that the Press Council of India has still to be reconstituted and that thereafter, steps would be taken for constitution of the Appellate Board.

8. It is not necessary to refer to the several bouts of litigation and result thereof which the parties fought in Civil and Criminal Courts as also in this court though it is still necessary to state that the third respondent and others had filed a civil

suit against petitioner and others and in that matter, prayers were made on both sides for relief in the nature of temporary injunction against each other. Annexure P/15 is the order dt. 28-3-1988 passed by the First Additional District Judge, Gwalior in that matter. In his elaborate order, learned Additional Judge, having considered in great detail rival contentions and respective cases of parties, recorded his conclusion that in so far as the plaintiff 1 (herein respondent No. 3) was concerned, he was entitled to an order protecting his status as managing Director of the Company pending disposal of the suit or until further orders and accordingly, the defendant No. 1 (herein the petitioner) was enjoined not to interfere with the management of the affairs of the Company. However, he also enjoined the plaintiffs 1 to 3 namely respondent 3 and others not to interfere in any manner themselves or through intermediaries with the publication work of Dainik Bhaskar newspaper which was being carried on by defendant No. 1 (herein the petitioner).

9. We now look at the law and also the Constitution to appreciate the statutory provisions in constitutional perspective. In the preamble, "liberty of thought and expression"¹ is secured to all citizens under the Constitution. All citizens have also been guaranteed under Article 19, as their fundamental right, freedom of speech and expression, subject to reasonable restrictions as may be imposed by any law made in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality and in relation to contempt of Court, defamation or incitement of an offence. In the Republican dawn, a six-Judge Bench of the Apex Court gave early recognition to the concept of "Freedom of Press" in *Romesh Thappar Vs. The State of Madras*, when the right to freedom of speech and expression was held to include freedom of propagation of ideas, ensured by freedom of circulation. The ban imposed by Madras Government on circulation in the State of the English Weekly, Cross-roads, published by the said petition was struck down. Right of circulation of a newspaper, as in the case of *Romesh Thappar*, was also held guaranteed under Article 19(1)(a) in *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, when an enactment regulating the price and page ratio was struck down. The restriction compelling newspapers to restrict dissemination of news and views was held direct impingement on the right guaranteed in Article 19(1)(a). In *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, , the mere fact of the newspaper being owned by a Company was held insufficient to debar the Court from giving relief to shareholders, editors and printers and the newsprint policy in question was struck down holding that freedom of press contemplated under Article 19(1)(a) was in respect to both "circulation" and "content." Recently, in *Indian Express Newspapers*" case, AIR 1986 SC 515, it was observed that in today's free world, freedom of press is the heart of social and political intercourse and it was the "primary duty of all the national Courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it."

10. Although the Act is pre-constitution enactment, we do not doubt even for a

single moment that its object and purports as also its provisions have to be construed in the constitutional perspective aforesaid. The long title of the Act says that it is meant for ""the regulation of printing presses and newspapers for the preservation of the copies of books and newspapers printed in India and for registration of such books and newspapers." Part II of the Act embracing Sections 3 to 8B carry the caption "Of Printing Presses and Newspapers" and some of those provisions are immediately relevant to the instant controversy: portions thereof are" extracted : --

"5. Rules as the publication of newspapers-- No newspaper shall be published in India, except in conformity with the rules hereinafter laid down.

(1) Without prejudice to the provisions of Section 3, every copy of every such newspapers shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

(2) The printer and the publisher of every such newspaper shall appear in person or by agent authorised in this behalf in accordance with rules made under Section. 20, before a District, Presidency or Sub-Divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published, and shall make and subscribe, in duplicate the following declaration :

"I, A.B,. declare that I am the printer (or publisher or printer and publisher) of the newspaper entitled.....and to be printed or published, or to be printed and published, as the case may be at.....

And the last blank in this form of declaration shall be filled up with a true and precise account of the" premises where the printing or publication is conducted.

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

6. Authentication of declaration-- Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made Z A copy of the declaration attested by the official seal of the Magistrate, or a copy of the order refusing to authenticate the declaration, shall be forwarded as soon as possible to the person making and subscribing the declaration and also to the Press Registrar.

8B. Cancellation of declaration-- 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) to (iv) *** *** 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 the Press Registrar."

11. We consider necessary, to give a comprehensive idea in brief of some other relevant provisions of the Act which are not extracted. Be it noted that "Rule" (2-B) of Section 5 contemplates that when the declaration under Rule 2 is not by the owner thereof, it shall be accompanied by an authority in writing in that behalf from the owner authorising the Printer and Publisher. Rules (2-D), (2-E), (3), (4), (5), (6) and (7), speak of circumstances when a "new declaration" is necessary. To wit, when title of any newspaper, or language or periodicity is changed; when there is any change of ownership or of "the place of printing or publication" though the proviso to R. (3) contemplates that for a period not exceeding thirty days, there could be no such declaration if a statement "relating to the change is furnished to the Magistrate within 24 hours and the "printer or publisher" or the "printer and publisher" remains the same. u/s 8, it is contemplated that when any person who has subscribed to any declaration in respect of the newspaper u/s 5 which is authenticated u/s 6 ceased to be the printer or publisher of the newspaper, he shall make and subscribe a declaration to that effect before the District, Presidency or Sub-Divisional Magistrate. Section 8C provides for an appeal by "any person aggrieved by an order of a Magistrate refusing to authenticate declaration u/s 6 or cancelling the declaration u/s 8B" to the Appellate Board consisting of a Chairman and another members, to be appointed by the Press Council of India. Prosecution and punishment are contemplated under Sections 14 and 15A of the Act for making false statement "in any declaration" and for not filing the declaration under Section 8, but Part IV of the Act also contemplates other "penalties" too, in other circumstances.

12. We have no doubt that Section 5 is the core and crucial provision concerning publication of newspapers and that provision is mandatory. Reading the aforesaid provisions and also appreciating the object and purpose of the Act. we are of the view that the regulatory measures envisaged under the Act, despite amendments made in 1951, 1955, 1960, 1965 and 1968, have left undented the liberal values underlying the concept of Freedom of Press, known to the alien rules, when the Act was put on the Statute Book. It is not meant to curtail or regulate the publication and circulation of a newspaper in any manner except that in the matter of collecting relevant information in relation thereto it has created some obligations, to be discharged by concerned persons. If such particulars as the place of printing and publication of a newspaper or the names of its owner, editor, printer and publisher are collected, warrant for such an action has to be read in Clause (2) of Article 19 of the Constitution itself. The purpose is to ensure that newspapers do not have an open license to flout the law of the land by participating in seditious activities or such acts as may give rise to civil or criminal wrongs under the law of the land. In 1960, provision was made for the first time for "Registration of Newspapers" in the new Part V-A inserted then in the Act and issue of certificate of registration on receipt of copy of authenticated

declaration u/s 6 from the Magistrate was contemplated, but new Section 19F still invested only limited powers in the Press Registrar or the Registrar of Newspapers. Nowhere in the Act, there is any provision to be read authorising any statutory authority, whether the Magistrate or the Press Registrar etc., to adjudicate and decide any controversy arising on rival claims being made by persons claiming to be the owner, editor, printer and/or publisher, as the case may be. The Act presupposes existence of respective rights in persons claiming to be the owner, editor, printer and publisher. Indeed, it is only when any prosecution is launched under the Act (viz.. u/s 14 or 15) that judicial determination of status of such person can be made. Otherwise, the declaration which a Magistrate authenticates, u/s 6 or 8, as per Section 7 is regarded as "prima facie evidence" of any status claimed under the declaration. As to the civil rights or status of such persons and matters concerning determination of their status or right, the Act is silent.

13. It is difficult to read the Act as a "self- Contained code", as understood in legal parlance. Indeed, the usual and important provision of a self-contained code as to exclusion of civil Court's jurisdiction with respect to such matters is not to be read in the Act. This is so because the legislature did not intend to invest unlimited power and jurisdiction in the Magistrate authorised to authenticate a declaration though in making the "inquiry" contemplated u/s 8B, he is expected to act quasi-judicially. It was intended to avoid unnecessary and threshold bottlenecks. For newspapers to be printed and published, to provide a constant source and continuous stream of news and views, unreasonable restrictions on the freedom of action of those immediately responsible or instrumental in the matter of circulation of the newspaper was deliberately avoided. If we do not subscribe to the view canvassed that in authenticating a declaration u/s 6, the Magistrate exercises a purely ministerial function, that is because he acts in an administrative capacity and the power exercised by him is administrative power investing discretion in him to refuse authentication. He is required to act u/s 6 reasonably and not arbitrarily so that authentication is not refused or delayed on flimsy grounds creating problems for newspapers to be printed, published and circulated. There is no discretion invoked in the discharge of pure and simple ministerial function, the subject acts mechanically and is not answerable for his acts to anybody except his master. An order rendered u/s 6 by a Magistrate, on the other hand, is appealable and he has an obligation to justify his decision affecting civil rights of parties. Any arbitrary decision u/s 6 would at once attract Articles 14 and 16 of the Constitution, illegality apart.

14. Decisions cited at the Bar have not made any dent on the view taken by us on the purport, scheme or scope of the several provisions or of the object of the Act. In *Biman Chandra Pachani Vs. State of Assam*, , the Full Bench expressed the view that at the earliest stage the Act was promulgated with the sole object of "informing the ruling race about the various writings and thoughts revealed in those writings in the various literature of the country." The provision for collecting information u/s 3 of the Act, it was held in *In Re: G. Alavandar*, , was

consistent with the fundamental right guaranteed under Article 19(1)(a). The distinction between Sections 4 and 6 was considered in *Mrs. Taramati Pranal Shah Vs. Additional District Magistrate, Kutch District*, and it was in that connection, observed that under the Act the District Magistrate with whom declaration made u/s 4 was lodged had no power to decide the question of ownership, title or possession of the Press. Same view was expressed in *Ajay Kumar Das Vs. Pramatha Kumar Das*, holding that the question of ownership of the press can only be decided by the Civil Court. Respondents' counsel have cited *Gulzar Mohd.*, AIR 1918 Lahore 219 and *Madanlal Vs. Sub-Divisional Magistrate (City) and Another*, , but neither decision throw helpful light, on the object of the Act. However, in *Madanlal (supra)*, it was held that even if the Magistrate was satisfied in regard to the existence of any matter mentioned in Clauses, (i) to (iv) the Act did not cast any obligation on him to cancel the declaration impugned u/s 8B. We are in respectful agreement with that view which accords fully with the constitutional imperative as also with the scheme and object of the Act. Right to continue publication under Sections 5 and 6 is not so fragile; Article 19(1)(a) protects it.

15. In the instant case, let it be recalled that on 28-3-1988, learned Additional District Judge had passed an injunction order and in that order, he made a clear and categorical judicial finding, though of tentative nature, on the basis of materials available to him, that the petitioner was editor, printer and publisher of the newspaper in question and, therefore, the injunction order was passed protecting his right and status in that regard. When proceedings u/s 8B were initiated against the petitioner on 4-5-1988 as per Annexure P/13 he made an application for reasonable opportunity to be given to him to produce evidence in support of his case, but that was rejected by the order Annexure P/14 passed on 25-5-1988 taking the view that there was no provision for any evidence to be received u/s 8B as power to record evidence was contemplated under Oaths Act only, and provisions thereof could not be invoked in the facts and circumstances of the case. When the petitioner took objection to the maintainability of the proceedings, in view of the injunction order, that matter was heard and decided by the District Magistrate (respondent 2) on 4-6-1988 by his order passed as per Annexure P/16. In that order, he took the view that the injunction did not bind him as it did not expressly prohibit the proceedings being continued. On the same date, the petitioner also orally prayed for stay of the proceedings so that steps may be taken by him for transfer of the case from his file, but that was also rejected by the same order passed on 4-6-1988. The petitioner moved this court at the Main Seat on 6-6-1988 and obtained on the same day, an order in Misc. Petition No. 1880 of 1988, by which the proceedings pending before respondent No. 2 were stayed. However, in the return, it is submitted by the said respondent that he had already passed the impugned order Annexure P/18 at 10.45 a.m., on 6-6-1988, and that the stay order passed by this court at the Main Seat did not, therefore, affect his jurisdiction.

16. Because there exists a provision for appeal u/s 8C and the Appellate Board

contemplated thereunder has, by order passed on 30-6-1988 as per Annexure P/22, has allowed the petitioner to file a fresh appeal in lieu of the one withdrawn by him, we do not consider it necessary to adjudge the legality of the impugned order. It shall be open to the petitioner to pursue the statutory remedy available to him u/s 8C against that order. That would indeed take care of the main contention of the respondents that our decision in regard to that order, whether final or tentative, may violate the general rule that writ jurisdiction has not to be exercised when there is a statutory remedy of the nature of an appeal. Indeed, Madanlal and Gulzar Mohd., both *supra*, were pressed in service to support the further contention that the impugned order is not liable to interference under Articles 226/227 of the Constitution. both contentions, happily, stand debated by the course we have followed in this matter avoiding to render any decision on the merits of the impugned order.

17. However, we are still of the view that the administrative action of the second respondent manifested in different stages of the proceedings u/s 8B is definitely violative of petitioner's fundamental right guaranteed under Article 19(1)(a). Whether or not the order is illegal, his several actions which resulted in the petitioner being denied his right of printing and publishing at Gwalior the newspaper in question cannot be anything but arbitrary and unconstitutional. In rendering the order on 4-6-1988, ignoring the judicial writ of Additional District Judge, the said respondent has definitely gone astray. In refusing petitioner reasonable opportunity to support his case in the proceedings u/s 8B, he has definitely acted arbitrarily. In acting with unseemly haste and disposing of finally the matter on 6-6-1988 without even having regard to other relevant materials available to him which he was required to consider in rendering the impugned order he has abused the power and jurisdiction vested in him u/s 8B. There is no whisper to be read in the impugned order of the Appellate Board's orders passed on 28-3-1988 and 21-4-1988. Indeed he was required first to hear parties and dispose of first the case remanded to him on 28-3-1988. for reconsideration of the declaration Annexure P/2. He also overlooked that the Appellate Board, by order rendered on 21-4-1988, stayed the effect and operation of declaration Annexure P/6 authenticated by him. Accordingly, respondents 3 and 4 being disabled thereby from printing and publishing the newspaper, he ought to have considered whether it was at all necessary for him to proceed in hot haste with the disposal of the proceedings u/s 8B and to disable also the petitioner by the impugned order from publishing the newspaper. As held by this Court in Madanlal, (AIR1965MadhPral28) (*supra*) u/s 8B there was no statutory obligation on him to dispose of finally the proceedings thereunder by a peremptory and affirmative order allowing the application of third respondent and cancelling petitioner's declaration Annexure P/1. It was his bounden duty to anticipate the consequences of his action to ensure that freedom of press was not affected by blocking or impairing printing and publication of the newspaper.

18. In this connection, it may be worthwhile to observe that the second respondent exceeded his jurisdiction in going so far as to hold in the impugned

order, as illegal, petitioner's declaration Annexure P/23 authenticated at Jhansi, as he had no jurisdiction evidently to do so. No extra territorial jurisdiction can be, or is, conferred u/s 8B. For any newspaper printed and published in contravention of any declaration made at a particular place before a Magistrate where it was authenticated by that Magistrate complaint, can be entertained only by such a Magistrate and decision can be rendered only by him u/s 8B to cancel the same. Respondent 2, District Magistrate at Gwalior, in the State of Madhya Pradesh had evidently no jurisdiction to interfere with, or usurp the powers and jurisdiction of the Magistrate at Jhansi, in the State of Uttar Pradesh. If the petitioner had really ceased to be the printer and publisher of the newspaper under the declaration Annexure P/I made at Gwalior despite there being no declaration being made before him in that regard u/s 8 prosecution could be launched by him against the petitioner u/s 16A but that was not done. Indeed, without doing so, he arbitrarily deferred or refused to authenticate the declaration Annexure P/33 made by the petitioner for changing place of printing the newspaper from Jhansi to Gwalior; acting in violation of Articles 14 and 19(1) (a) of the Constitution.

19. We find it very difficult, in the various facts and circumstances of the case narrated above, to resist the conclusion that the second respondent acted in gross violation of Article 19(1)(a) in not passing any order u/s 6 in respect to petitioner's declaration P/33 made on 12-5-1988 and proceeding to dispose of the proceedings initiated by the third respondent u/s 8B, ignoring even the judicial writ of the learned A.D.J., Gwalior, upholding petitioner's right to act as the editor, printer and publisher of the newspaper. We, are of the firm opinion that the second; respondent acted arbitrarily in ignoring the! judicial mandate of learned Additional District Judge's injunction order which had definitely impaired his jurisdiction to deal with and continue the proceedings u/s 8B even if the injunction, in terms, prohibits him from continuing the proceedings. We have no doubt at all that the learned A.D.J., had full and complete jurisdiction to decide the civil rights and status of the petitioner as editor, printer and publisher of the newspaper and his decision was binding on the second respondent. As we have earlier observed, the Act not being a self-contained code and there being no provision of the act ousting the jurisdiction of the civil Court to deal with the questions decided by the learned A.D.J., that decision was binding on him. This view, we take on reading Sections 4 and 9, C.P.C. as also Articles 50, 51A(a), 227 and 235 of the Constitution.

20. When a Civil Court is invested expressly u/s 9, CPC with "jurisdiction to try all suits of a civil nature except suits of which their cognisance is either expressly or impliedly barred", there can be little doubt that the decision rendered on any question agitated in such a suit by the civil Court shall have binding effect. In our view, suit would be a suit of a civil nature when the object of the suit is enforcement of civil rights or obligations of parties not involving political questions or matters of State policy. A suit to enforce any right to obligation whether recognised in common law (saved by Article 372 of the Constitution) or created

under any statute or contract, not enforceable in a Court of criminal jurisdiction or any other court or tribunal of special or domestic jurisdiction, would be cognizable and triable by a civil court. Indeed, civil courts are authorised generally u/s 9 in full measure to deal with all kinds of legal rights of parties though moral rights and obligations cannot be enforced in a Civil Suit. This appears to us to be purports of Section 4, CPC by which saving is made carefully for a particular class of cases dealt with under any special or local law" under which any "special jurisdiction" is created for dealing with that matter in accordance with any special form of procedure" prescribed therein. There must not only be any "special or local law but the "special jurisdiction" envisaged thereunder must expressly invest the tribunal contemplated therein to deal with matters specified in accordance with the "special form of procedure" prescribed thereunder. In other words, the "special or local law" should be one which may be regarded as a "self-contained Code."

21. To seek support for the view we have taken, we do not have to hunt authorities as the law stated by us appears to be" well-established In *Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy*, , Madras Hindu Religious and Charitable Endowments Act was not considered to be such a special law in rejecting the contention that the civil suit for rendition of accounts of the management of temple by the ex-trustees was barred. It was held that the particular provision, namely, Section 3 of the said Act, applied to matters for which provisions had been made in the Act and, therefore, "suits under the general law" were not barred. It was further held that the party seeking to oust jurisdiction of ordinary civil court, must establish its right to do so. The Constitution Bench in *Addanki Tiruvengkata Thata Desika Charyulu* (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, , construed the provision of the relevant special law in that case to hold that the combined effect of several provisions of the Act impliedly ousted the jurisdiction of civil courts, but it was further held that civil Courts would still have jurisdiction to examine the provisions of the Act in suits instituted to determine if the provisions of the Act had been complied with or the statutory tribunal had not acted in conformity with the fundamental principles of judicial procedure. Indeed, the presumption of ouster of civil Court's jurisdiction in that case was based on the provision in the enactment setting up a hierarchy of judicial tribunals for determination of several questions arising under the enactment. In *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, it was held that a civil court was not competent to decide the questions of religious rites and ceremonies simpliciter because such suits did not deal with the legal rights of parties though any suit for an office was suit of civil nature and it did not cease to be one even if the said right depended entirely upon a decision of a question as to the religious rites or ceremonies. In the case of *Raj Kumar Sanahal Singh*, AIR 1985 Gauhati 71, one of us (Dr. T. N. Singh, J.) had taken the view that the plaintiff, as head of the clan could rightfully maintain action-in civil court for protection of his status though the status conferred on

him the right to restrain custody of an idol and to manage its property. In that view of the matter, his claim for temporary injunction was upheld. A Constitution Bench, in *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, , made it clear that jurisdiction of a civil court is excluded in matters expressly covered by the provisions of the special law and that even then the jurisdiction is not excluded when the order is a nullity. It was observed," the jurisdiction of the civil Court to deal with the civil cases would be excluded by legislature by special Act which deal with special matter, but the statutory provision must expressly provide for such exclusion and must necessarily and inevitably lead to that inference.

22. We have analysed the provisions of the Act. We have no doubt that the Magistrate authorised to authenticate under Sections 6 and 8 and cancel u/s 8B, any declaration, is neither a special, nor a domestic tribunal authorised to deal with rights of parties or status or office of any person as an owner, editor, printer, or publisher of any newspaper. The decision of learned A.D.J. being an "order" within the meaning of Section 2(14), CPC, was an enforceable order; it was not only binding on parties but being an order of the nature of declaration of right of the petitioner to hold the office of editor, printer and publisher of the newspaper, could not be ignored by the second respondent. Any "order" or "decree" is enforceable even in terms of Sections 51 et. seq. and 134, C.P.C., and the enforceability of the order invested it with constitutional supremacy in terms of Articles 50, 227 and 235 of the Constitution. When a judicial order is passed, it is binding on the executive and indeed, the purport of Articles 50, 227, 235 is to prevent usurpation of judicial power by the Executive. That apart, we would not think if the second respondent, in virtue of his office, ceased to be a citizen and he would be excused on that ground of paying respect to Article 51/A(a) of the Constitution by which it is made the fundamental duty of all citizens to abide by the Constitution and respect its ideals and institution. Judiciary is indeed an important institution or organ of the State, ordained under the Constitution. Independence of Judiciary is a highly valued constitutional ideal as it upholds the Rules of Law, one of the Basic Structures of the Constitution.

23. The view we have taken in this matter excuses us from looking into other authorities cited at the Bar on both sides. Indeed, we have made it clear that we are not examining the legality of the impugned order and we have also made it clear that it would be open still to the petitioner to challenge that u/s 8C of the Act. We are only concerned to ensure that on account of the petitioner being arbitrarily denied his right to print and publish the newspaper *Dainik Bhaskar* at Gwalior, whether his fundamental rights are infringed or the Freedom of Press is affected. We are impressed by the fact that in virtue of the order passed by the learned A.D.J., he had the requisite legal entitlement and, therefore, his legal as also fundamental right could not be arbitrarily tinkered with by any State action, as done in this case by second respondent. He was bound not to allow the second respondent, who had initiated the proceedings, to continue with the challenge to the status as editor, printer and publisher of the newspaper, decided

against him and in favour of the petitioner by the learned A.D. J. By continuing the proceedings, respondent No. 2 purported to frustrate the judicial writ and in doing so, he definitely acted arbitrarily and contra constitutionally. We are of the view that so long as the Appellate Board is not constituted and matter pending before that Board is not adjudged and disposed of by that Board, we will be discharging our constitutional duty in granting interim relief in the matter, protecting the Freedom of Press. Circumstances positively indicate that priming of the newspaper in question at Jhansi and publishing the same at Gwalior is impinging upon Freedom of Press as the newspaper's "content" in term of newsitems, is depleted. There are reasons to suppose that on that, account and also on account of financial constrained, arising from printing the newspaper at one place and publishing at another place in another State, the circulation of the newspaper is affected. There is likelihood indeed of the newspaper's publication ceasing if the present State of affairs obtaining since 20-4-1988, are allowed to continue and judicial aid is not rendered to bail it out of the difficulties arising from arbitrary State action of the second respondent.

24. For all the foregoing reasons, we are of the view that even though the "new declaration", P/33, made by the petitioner has not yet been authenticated by the second respondent, to enable him to print and publish the newspaper at Gwalior pending adjudications of his grievance in that regard by the Appellate Board, he is entitled to appropriate direction against the second respondent. Indeed, the mandatory provision of Section 5(3) being complied with, the petitioner is entitled to print and publish the newspaper at Gwalior until such time as his appeal in relation to declaration P/33 is not decided. To do so, it is necessary also to suspend temporarily the force and effect of the impugned order, Annexure P/18. We do not have any other constitutional option in this matter. To ensure that Freedom of Press is maintained and upheld by all national courts is the supreme direction under-written in Indian Express Newspaper's case, (AIR 1986 SC 515) (supra). To carry out that direction, it is our constitutional duty to ensure that the newspaper Dainik Bhaskar is not compelled to cease publication and circulation on account of an arbitrary State action. That cannot be done in any other manner except by the proposed direction. Because, respondents 3 and 4 do not at present possess the requisite statutory entitlement in that regard on their declarations Annexures P/2 and P/6 being rendered ineffective by Appellate Board's orders with which we cannot interfere in this matter. On the other hand, in terms of A.D.J.'s injunction order and declaration Annexure P/33, the petitioner possesses such entitlement.

25. Accordingly, we. allow the petition in part and make a direction to the second respondent by a mandamus that on the basis of declaration Annexure P/33 the petitioner shall be allowed to print and publish the newspaper Dainik Bhaskar at Gwalior with immediate effect and the second respondent shall not give effect to the impugned order, Annexure P/18 till the appellate Board renders decision in relation to either of the declarations. There shall be no order as to costs in this matter.