
(2001) 04 DEL CK 0139

In the Delhi High Court

Case No : Civil Writ Petition No. 2466 of 1998 and C.M. No. 369 of 1999

S. Ameenul Hasan Rizvi

APPELLANT

Vs

Press Council of India and another

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Citation : (2001) 4 AD 1046 : (2001) 91 DLT 492 : (2001) 59 DRJ 457

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ms. Surekha Raman, for R-2/Daily Statesma, for the Appellant;

Judgement

Anil Dev Singh, J.—This is a writ petition whereby the petitioner challenges the order of the Press Council of India dated 7th October, 1997. The factual matrix of the case is as follows:-

On January 2, 1997, an article appeared in "The Statesman" titled "Best of Option- Move for national Government". This article was written by one, Thakur Sen Negi. The petitioner on reading the article was of the opinion that two paragraphs of the article were inflammatory and did not serve the cause of national integration and communal harmony and peace. The petitioner also felt that the article offended the journalistic ethics, public taste and was a clear case of abuse of the freedom of press, Constituting professional misconduct. According to the petitioner the two paragraphs of the article contained misleading statements and baseless assertions. The petitioner in order to contradict the statements and assertions made in the said paragraphs of the article and to bring out the correct facts addressed a letter dated, January 7, 1997 to the respondent no.2, "The Statesman" through its Editor in Chief, for publication. The said letter, however, was not published by the respondent no.2. This led to the filing of the two complaints by the petitioner against the Editor in Chief of the "The Statesman". Both the complaints were filed before the Press Council of India on 30th January, 1997. While in one complaint, the petitioner sought a direction to the Editor in Chief of "The Statesman" to publish his letter

dated, 7th January, 1997, in the other complaint, the petitioner prayed that the Editor in Chief of "The Statesman" be summoned and be admonished for publishing the offensive paragraphs. Besides the petitioner sought deletion of the said paragraphs.

2. On 12th May, 1997, the Press Council of India informed the petitioner that the Chairman, Press Council of India, had ordered the closure of the case. The letter of the press Council of India reads as follows:-

"I am directed to refer to your letter dated 30.1.97 on the subject mentioned above and to inform you that Hon"ble Chairman, press Council of India, has ordered to close the case in view of the discretionary powers of an editor to select letters of readers for publication."

3. The petitioner not being satisfied with the aforesaid communication of the Press Council of India sent an application dated, May 28, 1992 in the nature of review petition to the Chairman, Press Council of India. In the application, the petitioner requested that the decision to close the case be reviewed and a complaint be registered against the Editor-in-Chief of "The Statesman" and he be called upon to submit his reply. On 29th August, 1997, the petitioner also requested for being provided with a personal hearing. This letter was followed by two more letters, annexures 8 and 9 to the writ petition. On 10th October, 1997, a Section Officer (C) in the Press Council of India forwarded a copy of the order passed by Chairman, Press Council of India. The operative part of the order of the Chairman, press Council of India, reads as follows:-

"On the question of non-publication of the complainant's letter commenting on the said article, the Council has repeatedly held that the editor has a discretionary right of selection of the material for publication. Moreover, in the instant case the complainant does not enjoy any direct locus to have his reply published."

4. The petitioner not being satisfied with the order of the Press Council of India has filed the instant writ petition.

5. I have heard the petitioner, who appeared in person, and the learned counsel for the Statesman. At the outset it may be mentioned that on September 18, 1998 the petitioner made a statement that he does not want to rake up the issue of non publication of his letter commenting on the article of Mr.Thakur Sen Negi published in the issue of "The Statesman" dated, January 2, 1997. On that date, he submitted that the said article should not have been published as the same does not serve the cause of communal harmony. In view of the stand taken by the petitioner, notices were directed to be issued to Mr.Thakur Sen Negi and respondent no.2. However, the petitioner on December 14, 1998 moved an application, being C.M.No.369/99 in which it is stated that "there was a communication gap and he did not mean that he does not want to rake up the issue of non publication of his letter". It is also stated that reality is that, he simply said "Yes" to the query of the court without understanding the same. In

the application it is pointed out that the petitioner is an old person and his health does not allow him to pursue the matter in person. It is also averred that due to old age he has an impaired hearing and has engaged a counsel who would be representing him in subsequent hearings.

6. It may be pointed out that the petitioner is an advocate and has been conducting the case quite efficiently. He has clarity of mind and is articulate. I found his responses to the questions put to him during various hearings quite appropriate. On September 18, 1998, it appeared to me that the petitioner realised that the controversy should not be raked up as the same could lead to inflaming the passions of the two communities and the petitioner responding to the national interest made the statement which finds mention in the order dated September 18, 1998. Be that as it may, I proceed to examine the contention of the petitioner that the Chairman, Press Council of India was not right in rejecting his request for a direction to the second respondent to publish his letter dated, October 17, 1997 in "The Statesman".

7. Under our Constitution though there is no separate guarantee of freedom of the press, it is implicit in the freedom of expression which is guaranteed to the citizens under Article 19(1)(a). This freedom can be claimed by an Editor or an owner of a newspaper provided he/she is a citizen of India. Freedom to publish an article or material includes the right not to publish the same. An editor of a newspaper controls the selection of the material that is to be published in a newspaper. He/She has a discretion to select or to reject the material. In *The Miami Herald Publishing Company, A Division of Knight Newspapers, Inc. V. Pat L. Tornillo, Jr.* 418 US 241 : 41 L Ed 730, it has been held that a newspaper is more than a passive receptacle or conduit for news, comment, and advertising. It has also been inter alia held therein that the choice of material to go into a newspaper constitutes the exercise of editorial control and judgment. It seems to me that liberty of press will be jeopardised if it is forced and compelled to print a particular news, comment, letter, advertising, etc. In case a newspaper is compelled to print what it does not wish to print, would violate Article 19(1)(a) of the constitution except where the restriction is covered by Article 19(2). In other words, unless the restriction passes the test of Article 19(2) of the Constitution, and action which forces an owner or editor of a newspaper to publish any news or other item which a person proposes but the owner or editor disposes, will offend Article 19(1)(a) of the Constitution.

8. Keeping in view the aforesaid principle, I fail to see how a direction can be given to the editor or owner of a newspaper to publish the same. The choice to publish or not to publish any news, article, correspondence or any other matter lies with the owner or editor of a newspaper and is normally not subject to the dictates or command of any authority.

9. In this view of the matter, I do not find any illegality in the order of the Chairman, Press Council of India, rejecting the demand of the petitioner for a direction to respondent no.2 to publish his letter in "The Statesman". The

Chairman, Press Council of India, found the article "Best Option - Move for National Government" not to be offensive or inflammatory against the Indian Muslims. The observations do not suffer from any legal infirmity. This Court while sitting in writ jurisdiction is not to examine the matter as an Appellate Authority. The appeal from the order of the Press Council lies to the Supreme Court of India. In the limited jurisdiction which this court has of judicial review it can be exercised only where the decision making authority has acted illegally, irrationally and illogically and where it has committed procedural impropriety (see *Tata Cellular Vs. Union of India*,). The decision of the Press Council of India does not fall in any of the above categories.

10. The petitioner submitted that according to the Press Council (procedure for Inquiry) Regulations, 1979, the matter should have been inquired into by the Inquiry Committee constituted by the Press Council u/s 8(1) of the Act. This point was not taken by the petitioner in the writ petition. The submission of the petitioner is an after thought. He had to lay the foundation in the writ petition for the point which he took for the first time in the arguments. Having not pleaded the same in the writ Petition, he cannot be allowed to urge the same at the writ petition, he cannot be allowed to urge the same at the stage of final arguments. It needs to be pointed out that the petitioner has not even asked for amendment of the writ petition. The submission of the petitioner, Therefore, is rejected.

11. The petitioner also submitted that in one of the complaints, the petitioner had claimed that the two paragraphs deserve to be deleted and he had also requested for summoning the respondent no.2 and admonishing him. The grievance of the petitioner proceeds on the basis of misreading of the order of the Press Council of India. As already pointed out, the Chairman, Press Council of India found that the article did not contain any statement against the Indian Muslims. This being so, the question of admonishing the respondent no.2 does not arise. Besides when the article has already been published, how the deletion of certain paragraphs thereof is possible.

12. In view of the aforesaid discussion, the writ petition fails and is hereby dismissed.