
(2010) 08 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 804 of 2010

Sanjay Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

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

Citation : AIR 2011 J&K 20 : (2010) 4 JKJ 635

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—Writ petitioner has questioned the order dated 15.6.2010 passed by District Magistrate, Jammu-respondent No.

4, whereby the Authentic Declaration in terms of the provisions of the Press and Registration of Books Act, 1867 (for short, PRB Act) came to be

made in favour of respondent No. 5. Petitioner has also questioned the Title Verification Letter forwarded by respondent No. 2- Registrar of

Newspapers for India (for short, RNI) to respondent No. 4, in pursuance of which the impugned authentic declaration came to be made, on the

grounds taken in the memo of writ petition.

2. Precisely the case of the writ petitioner is that his consent as a co-owner was required before filing the declaration petition and approval/Title

Verification Letter made by RNI-respondent No. 2 is contrary to record, particularly to its earlier communication dated 18th June 2004.

3. Notice came to be issued and the impugned declaration and approval/verification containing annexure 'A' and 'B' came to be stayed.

4. Respondent No. 5 filed reply in the main petition and also moved CMP No. 1089/2010 for vacation of the interim direction granted on

23.7.2010. Other respondents have yet to file reply in the main petition. Writ petitioner filed objections/rejoinder to CMP No. 1089/2010.

Learned Counsel for the parties addressed arguments on 25.8.2010.

5. It appears that respondent No. 5 made an application dated 26.5.2010 before respondent No. 4 for availability of title, 'Dainik Bhaskar' in

Jammu & Kashmir, who in turn vide communication dated 2.6.2010 forwarded the application to respondent No. 2-RNI. Respondent No. 2

granted approval vide communication dated 9.6.2010 (annexure 'B'). Pursuant to the said approval, respondent No. 4 issued the authentic

declaration in terms of the provisions of PRB Act.

6. Writ petitioner has filed an application on 30.6.2010 (annexure 'G'), where it is alleged that the application made by respondent No. 5 for title

verification was illegal because his consent being a co-owner has not been sought. He made a representation dated 21.7.2010 to respondent No.

4 (annexure 'J'), wherein it is averred that the matter is subjudice before the Delhi High Court in WP(C) No. 4497/2010 and the Hon'ble Delhi

High Court has issued the order of stay and, accordingly, has prayed not to permit publication of 'Dainik Bhaskar' in Jammu. Writ petitioner has

also made an application/objection before respondent No. 4 dated 21.7.2010 (annexure 'K').

7. It appears that District Magistrate-respondent No. 4 has yet to decide the objections/representation containing annexure 'G', 'J' & 'K' and, in

the meantime, petitioner filed the writ petition in hand and obtained the stay order, as mentioned hereinabove.

8. Respondent No. 5 has resisted the petition on various grounds taken in the memo of reply/counter. It is averred that Hon'ble Delhi High Court

has already disposed of the writ petition vide judgment and order dated 28.7.2010 and order of stay is not in place. The writ petitioner has

efficacious alternate remedy available, which he has already availed of in terms of annexure 'G', 'J' and 'K', but because of interim direction granted

by this Court, the District Magistrate-respondent No. 4 is not in a position to determine the issue.

9. PRB Act is itself a complete Code and contains mechanism for resolving the disputes. Section 5 of the PRB Act provides that a printer and

publisher who intends to print or publish newspaper has to appear before the

concerned District Magistrate and has to subscribe declaration.

Section 6 of the PRB Act provides how Magistrate has to authenticate declaration subscribed before it. In terms of Section 6 of the PRB Act, the

approval is to be sought from respondent No. 2-RNI and after approval is received authentication declaration can be made. Section 8(B) of the

Act provides that if any person is aggrieved of the order passed by the District Magistrate, he can file a motion for its cancellation and the order

passed by the Magistrate in terms of Section 8(B) PRB Act can be questioned by the medium of appeal in terms of Section 8(C) of PRB Act.

10. Admittedly, the writ petitioner has raised objections before respondent No. 4 and are yet to be decided in terms of the mandate of Section

8(B) of PRB Act. Thus, prima facie it appears that petitioner has efficacious remedy available. It also appears that the interim direction granted has

come in the way of District Magistrate-respondent No. 4 in considering and disposing the application/representation containing annexure 'G', 'J'

and 'K'.

11. Learned Counsel for writ petitioner argued that the alternate remedy cannot be a ground to dismiss the writ petition and vacate the interim

direction. In support of his arguments he has relied upon cases in State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another, ;

Public Services Tribunal Bar Association Vs. State of U.P. and Another, ; Jamshed N. Guzdar Vs. State of Maharashtra and Others, ; ABL

International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and M/s. Anuptech Equipments Private Ltd.

Vs. M/s. Ganpati Co-op. Housing Society Ltd. and others, .

12. Learned Counsel for respondent No. 5 has relied upon a judgment passed by the Delhi High Court in Sanjay Agarwal v. Registrar of

Newspapers for India WP(C) No. 4497/2010 decided on 28.7.2010, in which the parties and the point involved are almost the same.

13. The Apex Court in Kunga Nima Lepcha and Others Vs. State of Sikkim and Others, and Hindustan Petroleum Corporation Ltd. v. Super

Highway Services (2010) 3 SCC 321 has held that when alternate remedy is available that should be exhausted at the first instance.

14. It is apt to reproduce para 35 of of the judgment delivered in Hindustan Petroleum Corporation (supra) herein:

35. Although Clause 68 of the dealership agreement refers to arbitration, it is unfortunate that the said question was not raised before the High

Court. It is now too late in the day for the petitioner Corporation to contend that in view of Clause 68 of the dealership agreement, Respondent 1

was not entitled to seek its remedy before the writ court. In any event, by filing appeal against the order of the learned Single Judge, the petitioner

herein also submitted to the jurisdiction of the writ court, without objecting to the same.

15. The Delhi High Court in para-9 of the judgment (supra) has held that that the petitioner therein if aggrieved can seek such appropriate remedies

as are available to him in terms of the PRB Act.

16. Keeping in view the ratio of recent Apex Court judgments (supra) reported in Kunga Nima Lepcha and Others Vs. State of Sikkim and

Others, and (2010) 3 SCC 321 read with the judgment of Delhi High Court (supra), the petitioner has to exhaust appropriate remedy at the first

instance, which, as discussed hereinabove, has already availed.

17. The Apex Court in State Pollution Control Board, Orissa v. Jagannath Store Crusher and Ors. Civil Appeal No. 4958/2010, decided on

6.7.2010, held that when efficacious remedy is available, then appropriate orders should be passed facilitating availing of such remedy. It is apt to

reproduce last para of the judgment herein:

At the rehearing, the appellant herein shall be free to raise the objection to the maintainability of the writ petition on the ground that the respondents

herein did not avail the statutory remedy of appeal u/s 31 of the Air Act. If the High Court accepts the objection that an effective alternative

remedy is available to the writ petitioners, then it should pass appropriate order facilitating availing of such remedy.

18. Having glance of the above discussion, it is provided that respondent No. 4 to decide the application/objections (annexure 'G', 'J' and 'K') and

make a decision within four weeks. Interim direction dated 23.07.2010 is vacated.

19. Accordingly, CMP Nos. 1089/2010 and 1139/2010 are disposed of.