
(2003) 07 BOM CK 0130
In the Bombay High Court
Case No : Appeal From Order No. 400 of 2003

Shree Maheshwar Hydel Power Corporation Ltd.	APPELLANT
Vs	
Chitroopa Palit and Another	RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 19, 19(1), 19(2)

Citation : AIR 2004 Bom 143 : (2004) 2 BomCR 137 : (2004) 1 MhLj 382

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : G.E. Vahanvati, General and Percy Ghandy, for the Appellant; Mihir Desai and Sonali Kunekar, instructed by Haresh Mehta and Co., for the Respondent

Judgement

S. Radhakrishnan J.

1. By this appeal, the appellant Company is challenging an order dated 29th March, 2003 whereby the learned Judge of the Bombay City Civil Court has dismissed the Notice of Motion and has declined to grant any interim relief in favour of the Appellant-Company. It may be noted here that in this matter, the ad-interim relief in terms of prayer Clauses (a) and (b) of the Notice of Motion No. 4541 of 2001 was granted by the Bombay City Civil Court in favour of the Appellants on 23rd October, 2001. The said prayer Clauses (a) and (b) of the Notice of Motion No. 4541 of 2001 read as under :--

(a) That pending the hearing and final disposal of the suit defendants and the other activists of the Narmada Bachao Andolan be restrained by an order and injunction of this Hon"ble Court from making any statements, declarations, utterances, writings and publications in the media regarding the Maheshwar Project which are defamatory of the plaintiff.

(b) That pending the hearing and final disposal of the suit the Defendants and/or

other activists of the Narmada Bachao Andolan be restrained by an order and injunction of this Hon"ble Court from issuing defamatory Press Notes against the Plaintiffs or holding demonstrations with defamatory material or leading or participating in moriches and agitations against the plaintiffs.

It may be noted here that the injunction granted in terms of prayer Clauses (a) and (b) of the Notice of Motion No. 4541 of 2001 is continuing till today.

2. The brief facts are that the Appellant Company Shree Maheshwar Hydel Power Corporation Limited is implementing the Hydro Electric Project known as Maheshwar Hydro Electric Project which is being implemented pursuant to the Narmada Water Dispute Tribunal Award. The said Award relates to the various projects to be constructed in the Narmada River basin, and one of them is the Maheshwar Hydro-Electric Project.

3. It appears that initially, the Maheshwar Project was taken up by the Narmada Valley Development Authority (NVDA) for implementation. However, the Narmada Valley Development Authority could not effectively implement and construct the same and hence, it was handed over to the Madhya Pradesh Electricity Board (MPEB). The Government of Madhya Pradesh, as a part of the overall Government of India guidelines to encourage private participation in the electricity sector, chose to invite private parties. Accordingly the private tenders/bids were invited. In the said bids the S. Kumars group had also competed, and on their successful bid being made, the S. Kumars group formed into the present Appellant Company known as Shree Maheshwar Hydel Power Corporation Limited. Appellant Company was incorporated under the Companies Act, 1956 on 11th May, 1993 as a Generating Company with the sole purpose to develop, build, own and operate the 400 MW Maheshwar Hydro Electric Project located in Khargaon District, South-Western region of Madhya Pradesh.

4. Subsequent thereto, after a detailed evaluation the project was awarded to the S. Kumars Group and a Memorandum of Understanding was executed between the S. Kumars Limited and the State Government of Madhya Pradesh on 28th July, 1993. Pursuant thereto, the Appellant Company had signed the Power Project Agreement with the Madhya Pradesh Electricity Board on 11-11-1994, which was subsequently amended on 27-5-1996. Thereafter, to implement the aforesaid project, on 1-10-1996 the Appellant Company had issued a Public Notice u/s 29 of the Electricity Act, 1948 thereby inviting objections, if any, for the development of the project, however, no objections were received by the Appellant Company. On 31-12-1996 the Appellant Company obtained all clearances from the statutory as well as non-statutory bodies including the Techno-Economic Clearance from the Central Electric Authority and Environmental Clearance from Ministry of Environment and Forestry, Union of India.

5. The reason for filing the suit in the Bombay City Civil Court by the Appellant Company was primarily due to the Press-Note which was issued by the

organisation known as "Narmada Yuva Shakti" on 2nd October, 2001 on behalf of the Activists of Narmada Bachao Andolan. In pursuance of the said Press-Note the various newspapers had carried the said Press-Note widely. The appellant Company, on being aggrieved by the highly defamatory statements made in the said Press-Note had approached the Bombay City Civil Court for grant of injunction restraining the Respondents from publishing such defamatory statements. The main offending part of the said Press-Note dated 2nd October, 2001 reads as under :--

"Mangat Verma of Village Lepa said that it is clear that officers of the Indian, Public Financial Institutions and Industrialists such as S. Kumars have connived to, siphon off and loot hundreds of crores of rupees of public money -- money that is the lifetime saving of common Indian citizens. He warned the Institutions and the Project Promoters of this privatized Project -- the S. Kumars that the youth of the area would not stand for the unleashing of senseless terror by the S. Kumars and that it is the time for the S. Kumars to withdraw from the Project. He also warned the Indian Financial Institutions that the people would expose the conspiracy between these officers and the Industrialists."

6. The Appellant Company was mainly aggrieved by the five highly objectionable defamatory expressions used in the said Press-Note which expressions read as under:--

- (A) Connived
- (B) Conspiracy
- (C) Siphon off
- (D) Loot
- (E) Unleashing senseless terror.

7. Mr. Gulam Vahanvati, the learned Advocate General appearing on behalf of the Appellant Company has fairly stated at the outset that the Appellant Company is not seeking a blanket injunction against the Respondents and that the Appellant Company is seeking an injunction with regard to the use of defamatory statements by using the expressions such as connivance, conspiracy, siphoning of funds, loot, unleashing terror and/or such similar expressions. The learned Advocate General Mr. Gulam Vahanvati has contended that the learned Judge of the Bombay City Civil Court while finally disposing of the Notice of Motion has committed a serious error of law in wrongly applying the English principles of law pertaining to Libel that once the defendant takes up the plea of justification, then such a plea of justification itself would be sufficient, and the Court need not grant any interim relief. The learned counsel Mr. Vahanvati has contended that in India a mere plea of justification alone would not be sufficient on the part of the defendants, but the defendants will have to also establish that the statements made were in the public interest and that they were made bona fide and that the said statements must be substantiated by sufficient material which must also be

tested for its veracity, and then only such a plea of justification can be accepted. To put in other words, Mr. Vahanvati has contended that as the position of law in England a mere plea of Justification taken by the defendants itself would be sufficient not to grant any injunction, but in India, in addition to such a plea, the defendants must also substantiate the same by production of sufficient material, and the Court is entitled to scrutinise the same. If the Court finds substance in the said material to test the veracity of the allegations, then such a plea of justification as a defence for defamation would be proper to be the proper position of law in India.

8. In this context, on this principle of law as evolved in India, contrary to what is prevalent in England, Mr. Vahanvati has relied upon the judgment of this Court in the case of Dr. Yashwant Trivedi v. Indian Express Newspapers dated 21st March, 1989 delivered by the learned single Judge of this Court in Notice of Motion No. 48 of 1989 in Suit No. 3907 of 1988. In paragraph No. 7 of this judgment, this Court has clearly held as under:--

"Even if the publication of articles is in public interest, it is necessary that before publication the defendants take reasonable precaution to ascertain the truth of the same. There is no charter to the newspaper to publish something without ascertaining the correctness of it and when the newspaper claims justification, then it is necessary to ascertain whether the newspaper had taken reasonable precaution and had the material from which a reasonable person could conclude that the allegations are true."

9. Thereafter, the learned counsel Mr. Gulam Vahanvati referred to the observations of the Appellate Bench when the aforesaid matter in the case Dr. Yashwant Trivedi was carried in Appeal. The Appellate Bench in paragraph NO. 3 of its judgment has held as under :--

"It is not necessary to lengthen our judgment by referring the other authorities which have taken the same view in a libel action, the position of law is not different in our country. In our view in the matter of granting or refusing temporary injunction it is not material that in India the Judge has to decide both question of law and fact, unlike in England where questions of fact may have to be left to the jury. The crux of the matter is that where in a libel action at the interlocutory stage the defendant raises a plea of justification and, as in this case, mentions evidence by which he might substantiate his case, the Court is unlikely to grant an interlocutory injunction in favour of the plaintiff to restrain further publication of the alleged libel."

10. Mr. Vahanvati, the learned counsel for the Appellant Company referred to and relied upon another order of the learned single Judge of this Court dated 3rd December, 1990 delivered in the case of Purshottam Odhnvji Solanki v. Sheela Bhatta in Notice of Motion No. of 1990 in Suit No. 3639 of 1990, wherein the Variava, J. (as he then was) has in clear terms held as under :--

"A defamatory article can be justified provided it is in public interest and if the

defendants have taken reasonable precaution of ascertaining the truth. Defendants 1 to 5 must show, on material available with them, that a reasonable person could come to the conclusion that the contents are not mala fide."

11. Mr. Vahanvati, the learned Advocate General thereafter referred to and relied upon another order of this Court dated 22nd July, 1991 delivered in the case of Mrs. Betty Kapadia v. Magna Publishing Co. Ltd., in Notice of Motion No. of 1991 in Suit No. 2152 of 1991, wherein the learned Judge has clearly held that when there is a plea of justification the said plea must be supported by some supporting material. The learned Judge has also observed that when the plea of justification was claimed, it was necessary for the Newspaper to take precaution and to have the material from which a reasonable person could conclude that the allegations were true. Mr. Vahanvati, the learned Advocate General also brought to my notice another judgment of this Court dated 21st July, 1995 delivered in the case of Indian Express Newspapers v. M/s. Magna Publishing Co. Ltd. in Notice of Motion No. of 1995 in Suit No. 2525 of 1995, wherein, this Court in paragraph No. 4 of the judgment has held as under :--

"It is well settled that the defamatory article can be justified, provided it is in public interest and the defendants have taken reasonable precaution of ascertaining the truth. The defendants must, therefore, show on material available that a reasonable person could come to the conclusion that the comments are not mala fide."

12. Therefore, Mr. Vahanvati, the learned counsel appearing on behalf of the Appellant Company has contended that in England, a mere plea of justification by the Defendants would be sufficient for the Court for not to grant any interim relief, however, in India, a mere plea of justification by itself would not be sufficient but the defendants will have to also show sufficient material and the material disclosed should establish the truthfulness or the veracity of the statements, and that a reasonable person should be able to accept such a statement as true based on such materials.

13. In this context, Mr. Vahanvati referred to and relied upon a well known textbook by "Gatley on Libel And Slander" Eight Edition (1981), wherein it is clearly mentioned that to establish a plea of justification, the defendants must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true, even though it was published as belief only. It is also mentioned therein that the defendant must prove the truth on the very imputation complained of; he may not under a plea of justification prove the truth of other facts damaging to the plaintiffs reputation, even if they are in the same sector of the Plaintiffs life, and would be no less damaging to the plaintiffs reputation than the imputation complained of.

14. Mr. Vahanvati, the learned Advocate General also referred to and relied upon the Ninth Edition (1998) of "Gatley on Libel and Slander" wherein it is mentioned that the general allegation should not be made and it should be specific and

should be substantiated with proof. Mr. Vahanvati thereafter referred to and relied upon an English judgment in *Wakley v. Cooke*, 1849 4 Ex. 511 in support of his contention that whenever a plea of justification is taken up, the same must, be substantiated with sufficient material.

15. Thereafter, the learned Advocate General Mr. Vahanvati referred to and relied upon the judgment in the case of *Maisel v. Financial Times (Limited)* reported in the Times Law Reports, Friday, February 19, (1915) 31 TLR 192, wherein it was held that when a plea of justification is taken up, the Defendants must be able to establish the same.

16. It is the contention of Mr. Vahanvati that the learned Judge of the Bombay City Civil Court has proceeded on a wrong assumption that only if the defendants raise the plea of justification that would be sufficient to deny injunction in favour of the plaintiff. He strongly stressed that, in "India, the law is that, apart from raising a plea of justification, the Defendants must also establish that the same is based on material that the statement is made bona fide and in public interest. The said material on which the statement is based, must be scrutinised by the Court for coming to the conclusion that a reasonable person would be able to form an opinion that the statement is true. The defendants must also show that they had taken reasonable precaution to ascertain the truth.

17. Mr. Vahanvati, the learned Advocate General has contended that, as stated right at the outset, that the Appellant Company is not seeking a blanket injunction against the Respondents/Defendants from making any defamatory statement, however, the injunction sought against the Respondents/Defendants can be restricted as under :--

"The Respondents shall not make defamatory statements against the Appellants imputing financial irregularity or dishonesty on the part of the Appellants or Shree Maheshwar Hydel Project including but not limited to allegations viz. connivance, conspiracy, syphoning of funds, loot, unleashing terror."

18. Thus, the learned counsel for the Appellant Company has contended that the Respondents should be restrained only to the above extent and not in a wider manner as sought before the trial Court. Mr. Vahanvati has further made a suggestion that, in the event of the Respondents being of the opinion that they are in possession of authentic and factual material in relation to the Shree Maheshwar Hydel Project which they intend to publish, they will first forward the same to the Appellants who will be entitled to furnish to the Respondents their clarification within 24 hours, and for the said purpose the Respondents may nominate any one of their officers who can be contacted, and if the said persons does not respond or if notwithstanding the response, the Respondents nevertheless wish to proceed with the publication, they will do so but at their own risk. The above suggestion was made by the learned counsel for the Appellant Company with the object that before making any statement, the veracity of the same would be tested so as to prevent unnecessary defamation.

The above suggestion is made because the Respondents are bound to take reasonable precaution to ascertain the truth before publication.

19. Mr. Vahanvati, the learned counsel for the Appellant Company took me through the judgment of the learned Judge of the Bombay City Civil Court and pointed out that at various places there are several inconsistencies and that there is a wrong application of law. He further pointed out that in the said judgment various expressions have been used which have really no appropriate relevance where they have been used. Mr. Vahanvati, the learned Advocate General has further pointed out that the learned Judge of the Bombay City Civil Court has not specifically dealt with the aforesaid five highly damaging expressions used in the Press Note viz. connivance, conspiracy, syphoning of funds, loot, unleashing senseless terror etc.

20. Mr. Vahanvati, the learned Advocate General further brought to my notice the observations made by the learned Judge of the Bombay City Civil Court so as to show as to how the learned Judge has adopted an erroneous and inconsistent approach without dealing with the main damaging five expressions (as mentioned above) used in the Press-Note. He pointed out that the learned judge of the Bombay City Civil Court has adopted an erroneous principle of law with regard to the plea of justification. In that context, he brought to my notice the observation made by the learned Judge in paragraph No. 18 of her judgment, which reads as under :--

"Under the Common Law once the defendant pleads that he would justify his words in the writing, statements, publications etc. the injunction cannot be issued unless the Court is satisfied that he would not be able to do so, it being utterly malicious and completely bereft of truth. The defendants in this case have pleaded justification and fair conduct. The whole case is depending upon the plaintiff's seminal contentions that the suit project is of national importance."

21. Mr. Vahanvati, the learned Advocate General has also pointed out the observation of the learned Judge of the Bombay City Civil Court in paragraph No. 20 of her judgment. In the said paragraph No. 20 the learned Judge has stated that in view of the later developments and conduct, the statements may not stand the test of complete truthfulness. At the best the plaintiffs have shown distortion but not falsification. In the same paragraph No. 20 of the judgment, the learned counsel for the Appellant Company has brought to my notice the observation of the learned Judge whereby the learned Judge has adopted a wrong principle of law by observing that it has been held by the Courts in England as well as in India that once justification of fair comment is pleaded, an action of injunction against defamation cannot sustain.

22. It is the contention of Mr. Vahanvati that that the learned Judge ought to have granted an injunction in favour of the Appellant Company, especially in view of the observations made by the learned judge herself in paragraph No. 50 of her judgment, which observation reads as under :--

"After production of a plethora of documents, the defendants have prima facie shown justification though not of each colourable term in their publication. The facts of their publication may smack of distaste and prejudice, which it would do well for an organisation of repute to refrain from."

23. The learned counsel for the Appellant Company thereafter contended that in view of various patent inconsistencies and by adopting of wrong principle of law by the learned Judge of the Bombay City Civil Court in her judgment, the said judgment and order declining to grant any injunction in favour of the Appellant Company cannot be justified and this Court ought to interfere with the same and grant an injunction in a limited form as stated hereinabove.

24. On the other hand, Mr. Mihir Desai, the learned counsel appearing for the Respondents-Defendants has strongly sought to justify the judgment and order passed by the learned Judge of the Bombay City Civil Court declining to grant any injunction in favour of the Appellate Company. Mr. Desai has mainly sought to justify the said Press-Note on three counts, viz., the Appellants have not implemented the policy of relief and rehabilitation properly, the cost of power would ruin the Madhya Pradesh State Electricity Board and thirdly there are various financial violations on the part of the Appellant Company. He sought to contend that the allegations made in the statement made in the Press-Note were directed against S. Kumars and the said allegations have nothing to do with the Appellant Company and as such, the Appellant Company could not have moved the Bombay City Civil Court for an injunction, especially in view of the fact that the Appellant Company is not really aggrieved and at the most the S. Kumars can be said to have been aggrieved by the said statement made in the Press-Note. Mr. Desai thereafter contended that the Appellant Company has not paid to the Narmada Valley Development Authority for whatever work done.

25. It is the contention of Mr. Desai, the learned counsel for the Respondents that even in India, a mere plea of Justification taken by the Defendants would be sufficient to deny the Plaintiff Company any interim injunction and submits that the proposition of the learned counsel for the Appellant Company that such a plea of Justification should also be accompanied by sufficient material and the Court is entitled to scrutinise the said material to test its veracity, is not proper. In the alternative, Mr. Desai, the learned counsel for the Respondents has submitted that, if this Court were to hold that in case of a plea of justification the same must be supported by the sufficient material and the Court must be entitled to scrutinise the same. Mr. Desai contended that the defendants have made those statements based on sufficient material.

26. With regard to the allegations of "Syphoning of funds" made in the said Press-Note, the learned counsel Mr. Desai for the Respondents referred to the affidavit of Respondent No. 1 filed before the trial Court, especially paragraph Nos. 59 onwards of that affidavit. He also referred to the Report of Comptroller & Auditor General of India for the year ending 31st March, 1998 wherein it is mentioned "CE. Power, NVDA stated that the expenditure (Rs. 10.47 crore) incurred by

NVDA on the project was to be recovered along with interest from the private agency. However, no amount has been received so far from the private agency (August, 1998)."

27. Mr. Desai thereafter pointed out that the Appellant Company has failed to implement the policy of relief and rehabilitation and in that context, he referred to the letter of Ministry of Environment and Forest, Government of India, dated January 7, 1994, wherein it is mentioned that "the rehabilitation and resettlement of the project affected people should be completed by 1997-98 as proposed by extending the compensation package to the major sons, landless labourers and encroachers". He also referred to and relied upon the agreement for resettlement and rehabilitation entered upon between the Appellant Company and the Madhya Pradesh Electricity Board dated 24th February, 1996 which contemplates that "every displaced family from whom more than 25% of its land holding is acquired in revenue villages or forest villages shall be entitled to and be allotted land to the extent of land acquired from it."

28. Thereafter, Mr. Desai, the learned counsel for the Respondents referred to and relied the Report on Displacement and Resettlement Aspects dated July, 1998 prepared by a group of social Scientists from Tata Institute of Social Sciences and pointed out to the passage therein which reads "The Maheshwar project must find cultivate lands comparable in quality to that of the lands being submerged. Further, lands must be found in large quantity to enable resettlement of people as a cohesive social unit, preferably village and hamlets as a whole. Any move that would compromise rehabilitation as a community would be a regression as a social policy. Rehabilitation of people as a community is the agreed principle at this point in time."

29. It is the contention of Mr. Desai, the learned counsel for the respondents that the appellant company has not come to this Court with clean hands and their conduct itself disentitles for any relief. In that context, Mr. Desai referred to and relied upon the permission granted by the Ministry of Environment and Forest, Government of India, dated 1st May, 2001, wherein it is mentioned that "as per the survey done in 1993, 6227 households in 61 villages were getting affected out of which, 2364 would need relocation due to submergence. The availability of land in various villages was concurred by Collector, Khargaon, in 1993 prior to environmental clearance." The learned counsel Mr. Desai thereafter referred to paragraph No. 3(iv)"of the said permission wherein it is mentioned "Rehabilitation and Resettlement of Project affected people should be in conformity with the Rehabilitation Policy for the oustees of Narmada Projects evolved by Narmada Valley Development Department, Government of Madhya Pradesh. As submitted vide letter dated 14th November, 2000 referred to in para 2(ii) above, R & R works should be completed by December, 2003 or six months prior to commencement of submergence, whichever is earlier." Mr. Desai also pointed out paragraphs No. 3(vi) of the said permission, which reads that "House to house survey of all affected villages should be undertaken to ascertain number

of families and persons to be displaced and area coming under submergence so that the rehabilitation and resettlement programme could be accordingly modified."

30. Mr. Desai, the learned counsel for the respondents very strongly questioned the wisdom of having the aforesaid Maheshwar Hydel Power Project and also seriously questioned the necessity of investing more than 1000 crores of rupees on such a project, which according to him, may not at all take off. According to Mr. Desai, the learned counsel for the respondents, the State of Madhya Pradesh needs about 27000 million units of electricity whereas this Maheshwar project would only supply 823 million units of electricity. In this context, he referred to and relied upon M. R. Shivaraman Committee Report wherein it is mentioned that the projected price of power may not allow even Government of Madhya Pradesh to function properly and the State Government may even go bankrupt. It is the contention of Mr. Desai, the learned counsel for the respondents that the very project would ruin the Madhya Pradesh State Electricity Board and the Madhya Pradesh Government, Mr. Desai pointed out to various financial irregularities of the Appellant Company and in that context he sought to contend that the Respondents were fully justified in using the expression "loot" of public money. He referred to the Speech made by the Hon"ble Finance Minister of Union of India made before the Parliament which has been published in the Newspaper, wherein the Hon"ble Finance Minister has described persisting defaults as "loot" of public money. Mr. Desai, the learned counsel for the respondents also pointed out that even the Appellant Company has large financial liability and it is not repaying the loan in time, Mr. Desai referred to Exhibit 12 contained in Volume III regarding "RBI pulls up IFCI for poor supervision, Rediff. com August 8, 2001" showing as to how there is poor supervision of IFCI. Mr. Desai sought to justify the use of expression "Syphon off in the Press-Note by referring to a circular issued by the Reserve Bank of India dated 30th May, 2002 which pertains to wilful defaulters and action against them. He referred to paragraph No. 4.2 of the said circular of the Reserve Bank of India, wherein it is mentioned that siphoning of funds should be construed to occur if any funds borrowed from banks/FIs are utilised for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. Mr. Desai, the learned counsel for the respondents referred to and relied upon the Re-Appraisal note on the project of Shree Maheshwar Hydel Power Corporation Ltd. issued by the IFCL Limited wherein it is reported that as per the statutory Auditors certificate dated 9th April, 1999 the Appellant Company has incurred expenditure of Rs. 3184 mn and it is further mentioned therein that the Appellant Company has reported that it has further incurred an expenditure of Rs. 392 mn till 31st October, 1999. It is further reported therein that out of the said expenditure, certain advances of Rs. 1064 mn has been given to some parties, which the Appellant Company is in the process of recovering. To put it in other words, it is the contention of Mr. Desai, the learned counsel for the Respondents that the Appellants have failed to recover the amounts/advances given to various parties.

31. Mr. Desai, the learned counsel for the Respondents has further contended that the Appellant Company has committed various wilful defaults in repaying the amounts borrowed from the financial Institutions, and in that context, he referred to and relied upon the public notice published by the Madhya Pradesh State Industrial Development Corporation Limited to the Economic Times on 13th September, 2001, which mentions that M/s. Induj Eneritech Limited Mumbai, and M/s. Modak Rubber & Textile Industry Pvt. Ltd. Mumbai the Companies of S. Kumar Group are wilful defaulter in repayment of overdue principal and interest more than Rs. 11.08 crore towards financial assistance given by us to them on promise of prompt and timely repayment. Mr. Desai thereafter referred to and relied upon the balance sheet of the Appellant Company and has pointed out that said balance sheet indicates profit and even then the Appellant Company has not paid their dues to the Financial Institutions. He referred to the attachment notice issued for recovery of certain dues against the Appellant Company. Mr. Desai has contended that the Appellant Company has borrowed public money and is not repaying the same and that the Appellant Company has committed wilful defaults, and as such, the respondents were Justified in using the expressions as "loot of public money" and "syphoning of funds" etc.

32. In support of his contentions, Mr. Desai, the learned counsel for the respondents has referred to and relied upon the judgment of Madhya Pradesh High Court in the case of Shajuddin v. Nagar Palika Parishad, AIR 1985 M P252, wherein it is held that granting of an injunction is within the discretion of the Court, and if the plaintiff has acted in an unfair and inequitable manner then he would not be entitled to an injunction. In the matter referred to above, the Appellants had taken advantage of the public money and had not rehabilitated various villagers under the scheme and hence it was held that the Appellants had acted in an unfair and inequitable manner and as such they ought not to be given an injunction.

33. Mr. Desai, the learned counsel for the respondents thereafter referred to and relied upon the judgment of the Hon"ble Supreme Court in the case of M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, and strongly relied upon the observations of the Supreme Court in paragraph No. 47 (of SCC) : (para 50 of AIR) of the said judgment, which read as under :--

"In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he

was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest, these considerations will arise not only in respect of the person who seeks an order of injunction under Order 39, Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings."

34. Mr. Desai, the learned counsel for the respondents thereafter contended that the respondents press-note is fully protected under Article 19(1)(a) of the Constitution of India, in the sense, the Respondents have fundamental right of freedom of speech and expression and therefore the publication of the said Press-Note cannot be faulted with as the same is protected under the Constitution of India. In that context. Mr. Desai, the learned counsel for the Respondents referred to and relied upon a well known judgment of the Hon"ble Supreme Court in the case of S. Rangarajan Vs. P. Jagjevan Ram and Others, , wherein in paragraph No. 35 the Hon"ble Supreme Court has observed as under :--

"In democracy it is not necessary that everyone should sing the same song. Freedom of expression is the rule and it is generally taken for granted. Everyone has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means."

35. The other relevant paragraphs of the aforesaid judgment of the Hon"ble Supreme Court in the case of S. Rangarajan, which are referred to and relied upon by Mr. Desai, are the paragraph Nos. 41 and 45, which read as under :--

"41. When men differ in opinion, both sides ought equally to have the advantage of being heard by the public, (Benjamin Franklin). If one is allowed to say that policy of the Government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponents not because they are correct or valid but because there is freedom in this country for expressing even differing views on any issue."

"45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests, But we cannot simply balance the two interests as if they are of equal weight. Out commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression, the expression of thought should be intrinsically dangerous to the public interest."

36. Mr. Desai, the learned counsel for the respondents thereafter referred to and

relied upon another judgment of the Hon''ble Supreme Court in the case of R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, , wherein in paragraph No. 26 the Hon''ble Supreme Court has summarised the broad principles, paragraph 26(3) (of SCC) (Para 28(3) of AIR) of the said judgment reads as under :--

"There is yet another exception to the rule in (1) above -- indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of Court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule."

37. Mr. Desai, the learned counsel for the respondents thereafter referred to and relied upon the Judgment of the Hon''ble Supreme Court in the case of Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others, , wherein the Hon''ble Supreme Court has held that "Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform." In this judgment, the Hon''ble Supreme Court was dealing with the issue of grant of an injunction against the newspapers, and in that context the Hon''ble Supreme Court analysed whether there was present and imminent danger for the continuance of the injunction. In the said judgment, the Hon''ble Supreme Court has observed that. "It is not necessary to reiterate that the continuance of this injunction would amount to interference with the freedom of press in the form of preventive injunction and It must, therefore, be based on reasonable grounds for the sole purpose of keeping the administration of justice unimpaired." The Hon''ble Supreme Court has held that the apprehended danger must be real and imminent.

38. Mr. Desai, the learned Counsel for the respondents has contended that the Press-Note issued by the respondents was fully justified, in the sense, the same

was based on sufficient material as indicated hereinabove and that the respondents have also taken a plea of justification, and in view thereof. Mr. Desai, the learned Counsel for the respondents states that the respondents ought not to be restrained from publishing similar Press-Notes. He also sought to Justify the user of the aforesaid five terms used in the Press-Note viz. connivance, conspiracy, syphoning of, loot of public money and unleashing senseless terror, under the protection of freedom of speech and expression as guaranteed under Article 19 of the Constitution of India and also in the larger public interest. Mr. Desai, the learned Counsel for the respondents has therefore contended that this Court ought not to interfere with the judgment and order passed by the learned Judge of the Bombay City Civil Court declining to grant an interim relief in favour of the appellant-Company for the reasons stated hereinabove.

39. Mr. Vahanvati, the learned Advocate General appearing on behalf of the appellant-Company, in rejoinder submitted that the respondents invoking Article 19(1)(a) of the Constitution of India against the appellant-Company cannot be justified, inasmuch as the freedom guaranteed under Article 19 of the Constitution of India is basically the freedom guaranteed to the citizens of India against the State action, in the sense, it is a kind of fetter on the States power not to interfere with those freedoms guaranteed to the citizens except the reasonable restrictions on certain grounds as mentioned in Article 19(2) of the Constitution of India.

40. Mr. Vahanvati, thereafter referred to and relied upon the judgment of the Hon"ble Supreme Court in the case of P.D. Shamdasani Vs. Central Bank of India Ltd., , wherein the Hon"ble Supreme Court has clearly held as under :--

"The language and structure of Article 19 and its setting in Part III of the Constitution clearly show that the article was intended to protect those freedoms against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. Violation of rights of property by individuals is not within the purview of the article."

41. In the aforesaid judgment in the case of P. D. Shamdasani, referred to and relied upon by Mr. Vahanvati, the Hon"ble Supreme Court was dealing with the case wherein the petitioner who Was holding shared in the respondent-Bank had complained of against the Bank for violating his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution of India. In that context, the Hon"ble Supreme Court has clearly held that the freedom guaranteed under Article 19 of the Constitution of India is basically against the State action and State"s interference. Mr. Vahanvati, the learned Counsel for the appellant-Company has therefore strongly contended that all the material referred to and relied upon by Mr. Desai, the learned Counsel for the respondents do not at all justify the allegations contained in the Press-Note viz. connivance, conspiracy, syphoning of funds, loot of public money and unleashing senseless terror etc. According to Mr. Vahanvati, the material which was sought to be relied upon by the learned

Counsel Mr. Desai are all general statements and details, which at the most could establish that the appellants have failed to repay certain loans in time and the said material could not justify the use of expressions such as "loot of public money" "syphoning of funds", "conspiracy", "connivance" and "unleashing senseless terror".

42. Mr. Vahanvati, the learned Counsel for the appellant-Company has pointed out that till date, the rates of the lands have not been finalised by the State of Madhya Pradesh and as soon as the rates of the land are fixed, the rehabilitation would take place. He also emphasised that, as of today, there is no immediate danger of submersion, in the sense, the project has to be substantially completed and then only the question of submersion would arise, and as such, the relief and rehabilitation would certainly take place thereafter, Mr. Vahanvati, the learned Counsel for the appellant-Company has further contended that it is not that the appellant-Company has wilfully defaulted or swindled the public or caused undue injury to the villagers whose lands are being acquired for the said project. Mr. Vahanvati therefore contended that at the appropriate time, as and when the costs of the land are fixed by the Government the villagers will be properly resettled and rehabilitated and the same will be done within the time stipulated.

43. In that context, Mr. Vahanvati, the learned Counsel for the appellant-Company has referred to and relied upon the recent Electricity Act, 2003. In fact, one of the Statement of Objects and Reasons mentioned is that there is a policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions. Mr. Vahanvati, the learned Counsel for the appellant-Company has submitted that the whole concept of awarding the hydro-electric project to private agency is in consonance with the said policy. He also emphasised that under the new Act, the generation of power is being delicensed and captive generation is being freely permitted. Hydro Projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.

44. Mr. Vahanvati, the learned Counsel for the appellant-Company has also pointed out that the average costs of power would come to Rs. 3.46 per unit. He contended that the judgment of Hon'ble Supreme Court referred to and relied upon by Mr. Desai, the learned Counsel for the respondents in the case of M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, and the judgment of Madhya Pradesh High Court in the case of Shajuddin and Others Vs. Nagar Palika Parishad and Another, , do not apply in this case, inasmuch as there is no question of plaintiff-Company's conduct being blameworthy so as to prevent the plaintiff-Company from seeking an injunction. In the facts and circumstances of the aforesaid case before the Hon'ble Supreme Court, the Hon'ble Supreme Court has observed that in case of an interlocutory or

temporary injunction which is purely equitable, the Court, on being approached, can look to the conduct of the party invoking the jurisdiction of the Court and may refuse to interfere unless his conduct was free from blame. Same was the position before the Madhya Pradesh High Court.

45. In support of his contentions, Mr. Vahanvati, the learned Counsel for the appellant-Company has referred to and relied upon the judgment of this Court in the case of Shirish Finance and Investment P. Ltd. v. M. Sreenivasulu Reddy, 2002 (109) Comp Cas 913. In this case, this Court has laid stress on the maxims ; "he who comes into equity must come with clean hands" and "he who has committed inequity shall not have equity". Mr. Vahanvati, the learned Counsel for appellant-Company has pointed out that in the Judgment referred to above, this Court has clearly held that the above maxims do not, however, mean that the equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense.

46. The Division Bench of this Court, in the above-referred judgment has also observed that the Court is not concerned with the plaintiffs general conduct. Equity does not demand that its suitors shall have led blameless lives. In this context, it may be relevant to note the following observations of the Hon'ble Supreme Court in the case of The Public Passenger Service Limited Vs. M.A. Khader and Others, .

"Counsel then relied upon the well-known maxim of equity that he who comes into equity must come with clean hands, and contended that the Courts below should have dismissed the applications as the respondents did not come with clean hands. The contention must be rejected for several reasons. The respondents are not seeking equitable relief against forfeiture. They are asserting their legal right to the shares on the ground that the forfeiture is invalid, and they continue to be the legal owners of the shares. Secondly, the maxim does not mean that every improper conduct of the applicant disentitles him to equitable relief. The maxim may be invoked where the conduct complained of is unfair and unjust in relation to the subject-matter of the litigation and the equity sued for."

Mr. Vahanvati therefore contended that as far as the present case is concerned, there is no question of the plaintiff-company coming to the Court with unclean hands or that their conduct is such hence not entitled to equity.

47. Mr. Vahanvati, the learned Counsel for the applicant-Company thereafter referred to and relied upon the letter of the Hon'ble Chief Minister of State of Madhya Pradesh dated 5th March, 1998 addressed to the Chairman of the State Bank of India, wherein it is mentioned that the State Government shall expeditiously grant lease rights to the project for Government land required for the project and will issue necessary permission to create charge/mortgage in

favour of the banks and financial institutions funding the project. In the said letter he has assured that the State Government will provide all possible and necessary assistance to ensure that the project work continues uninterrupted and the project implementation schedule is maintained to generate the much needed electrical power for the State.

48. Under the aforesaid facts and circumstances, Mr. Vahanvati, the learned Counsel for the appellant-Company has contended that this Court ought to protect the interests of the appellant-Company by granting a limited injunction as sought by the appellant-company as mentioned hereinabove. He pointed out that the appellant-Company has also provided for safety measures, in the sense that the respondents could always cross-check with the appellant-Company with regard to the authenticity and then proceed with the publication. Mr. Vahanvati has made it clear that the appellant-Company is not seeking a blanket ban on publication with regard to the aforesaid project, however, according to Mr. Vahanvati, the appellant-Company is only seeking a limited protection so as to prevent any further defamation which would totally destroy the credibility of the appellants, in turn would jeopardise the Maheshwar Project which would be totally against public interest.

49. After having heard the learned Counsel for both the parties at length and after perusal of the impugned judgment and order and also the various judgments cited by both the parties, it is clear that in any event, the principles of law in England and in India with regard to grant of interlocutory reliefs in a "civil action for Libel are different. In England, the principle of law is that in case of an action for defamation, once the defendants raise the plea of justification at the interim stage, the plaintiff will not be entitled to an interlocutory injunction. To put in other words, in England, a mere plea of justification by the defendant would be sufficient to deny the plaintiff any interim relief. As far as India is concerned, as has been clearly held by this Court in the judgments referred to hereinabove, specially the judgment of this Court in the case of Dr. Yashwant Trivedi v. Indian Express Newspapers (Bombay) Private Ltd. dated 21st March, 1989 and the judgment of appellate Bench dated 29th June, 1989 with regard to the same matter in appeal, the judgment of this Court in Purshottam Odhnvji Solanki v. Sheela Bhatta dated 3rd December, 1990, judgment of this Court in the case of Mrs. Betty Kapadia v. Magna Publishing Co. Ltd. dated 22nd July, 1991, and the judgment in the case of Indian Express Newspapers (Bombay) Ltd. v. M/s. Magna Publishing Co. Ltd., dated 21st July, 1995, it is clear that in India, a mere plea of justification would not be sufficient for denial of interim relief. The defendants, apart from taking a plea of justification will have to show that the statements were made bona fide and were in public interest, and that the defendants had taken reasonable precaution to ascertain the truth, and that the statements were based on sufficient material which could be tested for its veracity. Therefore, in India, the Court is very much entitled to scrutinise the material tendered by the defendants so as to test its veracity and to find out whether the said statements were made bona fide and that whether they were in

public interest. Therefore, in India, even at the interlocutory stage, the Court is very much entitled to look into the material produced by the defendants for the plea of justification, so as to test its veracity with regard to the allegations, alleged to be defamatory.

50. In the instant case, as has been pointed out by the learned Counsel for the Appellant Company, the Defendants have used five highly defamatory expressions in their Press-Note viz. connivance, conspiracy, loot of public money, syphoning off funds and unleashing senseless terror etc. The above expressions would totally damage the credibility and reputation of the Appellant Company and in fact would jeopardise the entire Maheshwar Hydro-Electric Project and would in fact prevent the financial institutions from further advancing any loan or even granting any facility to the Appellant Company, whereby if the said project does not take off, the same will be very much against public interests, affecting the people of Madhya Pradesh, who are in the dire need of power. Because of such defamatory statements of the Defendants, not only the Appellant Company but also the very project which has been conceived for the benefit of the people of the Madhya Pradesh would get completely affected. The material sought to be relied upon by Mr. Desai (the learned Counsel for the Respondents) would, at the most, indicate that the Appellant Company has committed certain defaults in repayment of loans in time and/or there is delay on the part of the Appellant Company in recovering certain amounts given to other parties, but that cannot justify the use of defamatory statements.

51. The main challenge of the Respondents appears to be that the very Maheshwar Hydro-Electric power project ought to be scrapped and in that light the respondents, have been making all kinds of statements and imputations. The whole tenor of the respondents appears to be that the respondents are not agreeable to have such a power project at all in the State of Madhya Pradesh. If that be so, the respondents cannot be justified in making wild allegations as pointed out hereinabove. If the respondents were to only legitimately criticise the Appellant Company, they could have very well done the same, however, using of such offensive terminology as indicated hereinabove, would seriously jeopardise the creditability and reputation of the Appellant Company, which would not be proper. The scrutiny of the material which has been relied upon by the learned Counsel for the respondents do not at all justify using of such expressions regarding the conduct of the Appellant Company. The contention of Mr. Desai, the learned Counsel for the respondents that the Hon"ble Financial Minister in the House of Parliament, has used the expression "; loot of public money" with regard to defaulters, and hence, the respondents are also entitled to use the same expression, cannot be accepted at all. It may be noted here that the statement made by the Hon"ble Finance Minister was within the four walls of the Parliament and hence, the same was privileged. The respondents, however, do not have any such privilege to make such a type of statements by using such expressions.

52. Even the tenor of use of such expressions in the said Press Note quoted hereinabove, which has been complained of do not indicate that the same has been made bona fide and in the larger public interest. If the respondents were keen about making the statement in large public interest, there were means and ways by which the same could have been communicated, but not by using of such highly damaging expressions. The respondents also have not taken the reasonable precaution of ascertaining the truth before publication.

53. As far as arguments of the learned Counsel for the respondents regarding protection under Article 19(1)(a) of the Constitution of India with regard to the freedom of speech and expression, the very scheme of Article 19 contemplates that every citizen shall have six freedoms as contemplated therein (formerly used to be seven freedoms). In fact, Article 19(2) of the Constitution of India makes it clear that the citizens right of freedom of speech and expression will not affect the operation of any existing law or prevent the State from making any law, so far as such law imposes a reasonable restriction on the exercise of the right conferred therein, on grounds mentioned therein and one of them is defamation.

54. Article 19 is basically an article which guarantees various freedoms to the Indian citizens and those freedoms cannot be infringed upon by the State or such authority, except as contemplated under Clause (2) of Article 19. That is to say, it is a kind of fetter on the States power to limit those freedoms. The State cannot limit those freedoms except to the limited extent as contemplated under Article 19(2). The above Article has nothing to do with regard to the two private parties, in the sense, the respondents cannot claim such an unfettered right of freedom of speech and expression against the Appellant Company. In this context, as has rightly been pointed out by Mr. Vahanvati, the Hon'ble Supreme Court in the case of P.D. Shamdasani Vs. Central Bank of India Ltd., has clearly held that the scope of freedom under Article 19 of the Constitution of India, is basically the protection against the States action, whereby the right should not be curtailed. Even if the State were to curtail that right, they can do so only on those limited grounds as specified in Article 19(2) of the Constitution of India. In any event even under Article 19(1)(a) citizen does not have a right to make a defamation statement.

55. As pointed out hereinabove, the learned Judge of the Bombay City Civil Court has ignored the settled principle of law in India, mis-applied the principle of law in the sense, merely on the basis of a plea of justification taken by the Defendants, the Plaintiffs ought to be denied the interim injunction. The position of law as per the above principle is prevalent in England. However, in India, the settled principle of law is that a mere plea of justification by itself would not be adequate, but it should be supported by sufficient material subject to scrutiny by the Court for its veracity, and that the statement made should be bona fide and should be made in the larger public interest and that the Defendants had taken reasonable precaution of ascertaining the truth.

56. In fact, the learned Judge of the Bombay City Civil Court, while declining the interim relief has observed that the Defendants have prima facie shown justification though not of each colourable term in their publication. The learned Judge has also observed that the facts of their publication may smack of distaste and prejudice, which it would do well for an organisation of repute to refrain from. That is to say the learned Judge has held that the Defendants have made a statement which cannot be fully justified and they ought to have refrained from making such a statement. If that be so, the learned Judge of the Bombay City Civil Court ought to have granted injunction in favour of the Appellant Company, and by not granting the said injunction, after the above conclusions, the learned Judge of the Bombay City Civil Court has acted rather arbitrarily and capriciously.

57. I am fully conscious that this Court's appellate jurisdiction to interfere with the exercise of discretion in an interlocutory matter is limited only to the extent the trial Court has exercised the discretion arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regarding grant or refusal" of interlocutory injunctions, as has been held by the Hon"ble Supreme Court in *Wander Ltd. and Another Vs. Antox India P. Ltd.*, . As pointed out in detail hereinabove, as to how the learned Judge of the Bombay City Civil Court has applied the wrong principle of law as applicable in England and declined the interim relief. In India, the settled principle of law in granting interim injunction in a matter of libel is clearly different, hence the learned Judge ought to have granted the interim injunction. Over and above, the learned Judge after clearly coming to the conclusion that the respondents ought to have refrained from publishing the statements and also that the statements were not fully justifiable. If that be so, interim injunction ought to have been granted by the learned Judge. By not granting the interim injunction, the learned Judge has acted arbitrarily and capriciously. It is also clear that the respondents have not taken the precaution to ascertain the truth before publication.

58. Under the aforesaid facts and circumstances, the Appeal from Order is allowed, and the impugned Judgment and order passed by the learned Judge of the Bombay City Civil Court dated 29th March, 2003 is set aside and the Appellant Company is entitled to the following order of injunction.

"The respondents shall not make defamatory statements against the Appellants imputing financial irregularity or dishonesty on the part of the Appellants or the Shree Maheshwar Hydel Project including but not limited to allegations viz. connivance, conspiracy, syphoning of funds, loot, unleashing terror."

59. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary or the Associate.

60. Issuance of certified copy is expedited.