
(2015) 08 TP CK 0009
In the Tripura High Court
Case No : Writ Petition (C) No. 203 of 2014

Subal Kumar Dey

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 19(1)
Penal Code, 1860 (IPC) — Section 143, 30, 366

Citation : (2015) 08 TP CK 0009

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : A.K. Bhowmik and R. Datta, for the Appellant; B.C. Das, Advocate General and S. Chakraborty, Addl. GA, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J—By filing this writ petition, the petitioner prayed for quashing the provision contained in Clause 13(a) of the Tripura Advertisement Guidelines, 2009 (Annexure-7 to the writ petition) and also prayed for directing the respondents to comply the judgment and order dated 19.11.2010 passed by the then Gauhati High Court in W.P.(C) No. 399 of 2009 (Annexure-14 to the writ petition), which has been upheld by the Supreme Court and further prayed for directing the respondents to allot classified and display advertisements equally amongst "A" category daily newspapers including the newspaper of the petitioner, namely, "Syandan Patrika" and further to issue additional advertisements to the said newspaper of the petitioner so as to cover the deficiency in allotment of the said advertisements to the newspaper of the petitioner during the period from 2nd May, 2012 till now in comparison to other "A" category newspapers and to treat classified advertisement and display advertisement at par for the purpose of distribution amongst the newspapers.

2. Heard learned senior counsel, Mr. A.K. Bhowmik, assisted by Mr. R. Dutta for the petitioner and learned Advocate General, assisted by learned Additional

Government Advocate, Mr. S. Chakraborty for the respondents.

3. The petitioner, inter alia, contended that he is the owner, printer, publisher and editor of the daily newspaper, namely, "Syandan Patrika" printed and published from Agartala in Bengali language. It is contended that from the very inception the petitioner's newspaper played an important role in formation of public opinion against corruption and misrule and also fighting for the public cause and because of such role the State Government is/was unfavourable to the said newspaper on various occasions. It is further contended by the petitioner that in the year 1985 an advertisement policy was made by the respondents in supersession of all previous advertisement policies and the daily newspapers were categorized into "A" category, "B" category and "C" category according to circulation, size and pages and by a Notification dated 23.04.1988, the petitioner's newspaper "Syandan Patrika" was categorized as "B" category. By Notification dated 23.10.1998 a new advertisement policy was invoked and the petitioner and other newspapers could not accept certain conditions of the said advertisement policy and, therefore, the petitioner filed W.P.(C) No. 507 of 1999 and other two daily newspapers, i.e., "Dainik Sambad" filed W.P.(C) No. 52 of 1999 and "Tripura Darpan" filed W.P.(C) No. 46 of 1999 and all those writ petitions were disposed of by a common order dated 16.07.2008 since it was submitted by the learned State counsel that the categorization of newspaper has already been considered and by a letter dated 20.03.2001, issued by respondent No. 2 (Annexure-5 to the writ petition), the petitioner's newspaper was categorized as "A I" w.e.f. 25.11.2000 subject to submission of certain information.

4. Thereafter the State-respondents by Notification dated 20.01.2009 issued the Tripura Advertisement Guidelines, 2009 revising the earlier Advertisement Policy and given effect from 01.01.2009. A copy of that Advertisement Policy of 2009, which is in question, is annexed as Annexure-7 to the writ petition. Certain amendments were made to that Advertisement Guidelines, 2009 subsequently and the petitioner was asked to submit some information about categorisation by a letter dated 01.10.2009 (Annexure-9 to the writ petition) and the petitioner submitted all those information by writing letter dated 19.10.2009 (Annexure-10 to the writ petition). But thereafter the petitioner found that the respondents were not issuing advertisement as before and so the petitioner wrote a letter dated 16.11.2009 (Annexure-11 to the writ petition) to know the reasons for not issuing the advertisement to the petitioner's newspaper and in response thereof, respondent No. 2 by letter dated 16.11.2009 informed the petitioner that the petitioner's newspaper has been categorized as "B" category and further asked the petitioner to furnish certain information.

5. Having felt aggrieved, the petitioner filed W.P.(C) No. 399 of 2009 before the Agartala Bench of the Gauhati High Court and a Single Bench of the High Court by judgment and order dated 20.03.2010 allowed the writ petition and directed the respondents to categorize the newspaper of the petitioner "Syandan Patrika"

as category "A" as per 2009 Guidelines. The respondents thereafter preferred review petition No. 07 of 2010 and by judgment dated 19.11.2010 the review petition was dismissed. The respondents thereafter preferred SLP(Civil) Nos. 3633-3634/2011, wherein the order dated 20.03.2010 in W.P.(C) No. 399 of 2009 and order dated 19.11.2010 in Review Petition No. 07 of 2010 were challenged and the Supreme Court disposed the special leave petition with the following orders:--

"Delay condoned.

Heard Mr. Ranjit Kumar, learned senior advocate appearing for the petitioners (State of Tripura & Ors.), and Mr. Sanjay Parikh, learned advocate appearing for respondent No. 1 (Subal Kumar Dey). Also perused the Enquiry report submitted on behalf of the petitioners titled as "Enquiry Report on various complaints against Syandan Patrika".

On the basis of the Enquiry Report, we think that the respondent's newspaper should qualify as Category "A" newspaper for the purpose of State's advertisements effective from today.

We accordingly make the direction and modify the impugned order of the High Court to this effect.

The special leave petitions are disposed of."

6. Thereafter the respondents by issuing letter dated 19.05.2012 (Annexure-17 to the writ petition) upgraded the petitioner's newspaper "Syandan Patrika" from "B" category to "A" category provisionally. It is an admitted position that the petitioner's newspaper is now an "A" category newspaper.

7. It is the grievance of the petitioner that three daily newspapers, namely, "Daily Desher Katha", "Dainik Sambad" and the petitioner's newspaper "Syandan Patrika" are categorized as "A" category newspapers. The petitioner contended that the respondents distribute classified advertisements more or less equally, but so far as display advertisements are concerned, there is huge difference in the manner of allotment among the "A" category newspapers. The petitioner through RTI obtained information as to the allotment of advertisement in "A" category newspapers by a letter dated 27.04.2013 and the SPIO of the Office of respondent No. 2 by writing letter dated 30.04.2013 (Annexure-18 to the writ petition) furnished following information about display and classified advertisement to the three "A" category newspapers, which reads as follows:--

"Statement showing the advertisement issued to the following Newspapers during the period from 06th May 2012 to 31st March 2013.

8. The petitioner felt aggrieved for depriving him from display advertisement and wrote letter dated 30.05.2013 (Annexure-19 to the writ petition) and demanded equal distribution of display advertisement to his newspaper also and in response to that letter, respondent No. 2 by writing letter dated 19.07.2013 informed the

petitioner that in view of Clause 13(a) of the Advertisement Guidelines, 2009, it was not possible to issue more display advertisement to the petitioner's newspaper and further contended that during transmission of display advertisement various Government departments indicate their preference either in writing or through oral mode to display in "Daily Desher Katha" or "Dainik Sambad" and, therefore, the display advertisements were more in those two newspapers in comparison to his newspaper "Syandan Patrika".

9. The petitioner also annexed a copy of the judgment passed by the Division Bench of the Gauhati High Court reported in Dainik Sambad and Another Vs. State of Tripura and Others, AIR 1989 Guw 30 (Annexure-21 to the writ petition) and contended that discriminatory allotment of Government advertisement to different newspapers in the same category by the State Government impairs the freedom of press and violates Articles 14 and 19 of the Constitution.

10. By annexing a copy of judgment dated 21.12.2012 passed by this Court in W.P.(C) No. 545 of 2001 (Annexure-22 to the writ petition), the petitioner further contended that the case of the petitioner is covered by that judgment, but even after that judgment, similar treatment has not been given to the newspaper of the petitioner.

11. By filing additional affidavit the petitioner further brought on record the circulation certificate issued by Audit Bureau of Circulations(for short "ABC") of three "A" category daily newspapers, wherefrom it is revealed that "Dainik Sambad" has a circulation of 67630, "Syandan Patrika" has a circulation of 48048 and "Daily Desher Katha" has a circulation of 41390. It is contended that though the newspaper of the petitioner has wide circulation in comparison to other two newspapers, the display advertisement has not been distributed to the petitioner's newspaper and the petitioner's newspaper has been discriminated and treated in-equally and, therefore, the petitioner prayed for the relief as stated hereinbefore.

12. The respondents by filing counter affidavit contended that "Syandan Patrika" is categorized as category "A", but considering the wide circulation it is not up to the leading newspaper, i.e., "Daily Desher Katha" and "Dainik Sambad". "Daily Desher Katha" and "Dainik Sambad" have their circulations throughout the interior locations of the State and it is baseless that the State Government has been unfavourable to the petitioner's newspaper in comparison to other newspapers. It is further contended by the respondents that as regards display advertisement it is issued according to the wide coverage of the content of the advertisement and interest of the targeted readers of the newspapers. The State Government in the ICAT department only selects the newspapers for issuing any display advertisement according to the request of the concerned department. It is further contended by the respondents that as per the provisions laid down in Tripura Advertisement Guidelines, 2009, in Clause 13(a), no newspaper should claim display advertisement as a matter of right. It will be issued keeping in view the widest possible coverage of the content of the advertisement and interest of

targeted readership of the newspaper. It further contended that during transmission of display advertisement by various Govt. Departments most of the concerned departments indicate their preference either in writing or orally to display in "Daily Desher Katha" or "Dainik Sambad". So, in such situation there may be some disparities regarding the allotment of display items in spite of best possible efforts for equal distribution of facilities. The respondents annexed a few copies of such letters issued by the different Government departments requesting to publish display advertisement to particular newspaper and those are marked as Annexure-R/1 series. The respondents, therefore, prayed for dismissal of the writ petition.

13. It is an admitted position that the petitioner's newspaper "Syandan Patrika" is categorized as an "A" category daily newspaper. It is also an admitted position that other two "A" category daily newspapers are "Dainik Sambad" and "Daily Desher Katha". Annexure-18 to the writ petition, i.e., the letter of SPIO of the Office of respondent No. 2 dated 30.04.2013, which is already reproduced hereinbefore, shows that so far as display advertisement is concerned during the period from 06.05.2012 to 31.03.2013, "Daily Desher Katha" got 30847 cm of display advertisement, "Dainik Sambad" got 26965 cm of display advertisement and "Syandan Patrika" got 5878 cm of display advertisement. It is, therefore, clear that so far as the display advertisement is concerned it was not distributed equally to all the three "A" category newspapers.

14. To justify their stand, the respondents in para-25 of the counter affidavit stated thus:--

"25. That, in reply to the averments made in Paragraph 17 of the Writ petition, it is stated that, as per provisions laid down in Tripura Advertisement Guidelines, 2009 in clause 13(a), no Newspaper should claim display advertisement as a matter of right. It will be issued keeping in view the widest possible coverage of the content of the Advertisement and interest of targeted readership of the News paper. It may be mentioned that during transmission of display advertisement by various Govt. Departments most of the concerned Departments indicate their preference either in writing or orally to display in "DAILY DESHER KATHER" or "DAINIK SAMBAD". So, in such situation there may be some disparities regarding the allotment of display items in spite of best possible efforts for equal distribution of facilities."

15. It is, therefore, evident that the respondents in the ICAT department in exercise of the provision contained in Clause 13(a) of the Advertisement Guidelines, 2009 distributed the display advertisement mostly to "Dainik Sambad" and "Daily Desher Katha" and it is the stand of the respondents that various Government departments made request for such publication of the advertisement to those newspapers and, therefore, there is some disparity. The disparity as indicated is not negligible, but it is huge disparity and that is the root of this case that whether such disparity was justified and whether Clause 13(a) of the Tripura Advertisement Guidelines, 2009 violates equality clause or not.

16. Learned senior counsel, Mr. Bhowmik, at the outset has submitted that the case of the petitioner is well covered by judgment dated 21.12.2012 in W.P.(C) No. 545 of 2001 (Annexure-22 to the writ petition), but even after that judgment the respondents did not apply the ratio of that judgment and the petitioner has been discriminated.

17. Learned Advocate General has submitted that the writ petition of the petitioner is not covered by the ratio of that judgment and, therefore, the present writ petition cannot be disposed of in terms of the judgment of that writ petition. After going through Annexure-22, i.e., judgment in W.P.(C) No. 545 of 2001, it appears that in that writ petition Clause 13(a) of the Advertisement Guidelines, 2009 was not challenged, but the issue of both display and classified advertisement was dealt with by the learned Single Judge of this Court in that writ petition. In para-14 of the judgment, the Court held thus:--

"14. The object of categorisation of the newspapers is apparent from the said advertisement policy. Both the classified and display advertisements are included in the scheme of the categorisation. The said State action discriminating the petitioner's newspaper so far the display advertisement is concerned offends the equality clause in Article 14 of the Constitution of India. Moreover, it also affects the freedom of Press in as much as a large section of the readers of the said newspaper would be deprived of the information that would be disseminated through the display advertisements. However, the policy is silent about the mode of the equitable allotment of advertisement in the intra-category newspapers. In view of the various judicial pronouncements and provisions of Article 14 read with Article 19(1) of the Constitution it cannot be read that the equitable allotment of advertisements is confined to the classified advertisement alone. Equivalence has to be based either on equitable allotment of each of the categories of the advertisement or by way of the total advertisement value of the allotted advertisements from both the categories."

In para 20 of the judgment the Court concluded the judgment with the following observation:--

"20. Having situated thus, the respondents are directed to re-calculate the total value of the advertisements (both classified and display) as distributed to the newspapers borne in the category "A" as per the Government policy during the period from May, 1997 to 24.11.2000 and if it is found that the petitioner's newspaper has got less advertisement value in comparison to the newspaper which got the highest advertisement value (the classified and the display, all taking together), the respondents shall have to release the advertisement to the extent of the value, equivalent to the difference that would be calculated, in a phased manner, but such release shall be completed with 1 1/2 (one and half) years in addition to what the petitioner's newspaper is entitled to as per the new advertisement policy or the new categorisation of the newspapers. In the alternative, the respondents may also reimburse the value to the extent of the difference of the advertisement value as stated within a period of 1 1/2 (one and

half) years or by 30.06.2014, whichever is earlier."

18. It is, therefore, evident that in that case the Court dealt with both display and classified advertisement is concerned, but so far as the relief sought by the petitioner in the present writ petition cannot be said to have answered in that writ petition since in the present writ petition the Constitutional validity of Clause 13(a) has been challenged, which has to be answered in this writ petition.

19. Clause 13(a) of the Tripura Advertisement Guidelines, 2009 reads as follows:--

"13) Display Advertisement:

a) No newspaper should claim display advertisement as a matter of right. It will be issued by the State Govt. keeping in view the widest possible coverage of the content of the advertisement and interest of targeted readership of the newspaper. State Govt. in the ICAT Department only shall select newspapers for issuing any display advertisement according to need."

20. The petitioner in para-21 of the writ petition contended -

"21. That the State Respondents made provisions in clause 13(a) of the Tripura Advertisement Guidelines, 2009 whereby the equitable distribution of display advertisement could be frustrated and as a matter of fact the State Respondents have taken the plea of the said clause to justify deprivation of the petitioner from equitable share of display advertisement. The power conferred on the authorities by virtue of clause 13(a) of the said guideline is not only arbitrary and violative of Article 14, 19, 300-A of the Constitution of India but also violative of judicial pronouncements right from the decision in Civil Rule 889/87. The said clause 13(a) of the Tripura Advertisement Guidelines, 2009 is, therefore, liable to be quashed".

21. The respondents in their counter affidavit in para 29 dealt with para-21 of the writ petition with the following statements -

"29. That, in reply to the averments made in Paragraph 21 of the Writ petition, it is stated that, advertisements are distributed as per the Tripura Advertisement Guidelines, 2009."

22. Though the petitioner made specific allegation that Clause 13(a) of the Tripura Advertisement Guidelines, 2009 is arbitrary and violative of Articles 14, 19 and 300-A of the Constitution, the respondents simply stated that the display advertisements are issued as per the Advertisement Guidelines, 2009.

23. Learned senior counsel, Mr. Bhowmik, has argued that Clause 13(a) is clearly violative of the equality clause since it contains vague and arbitrary power to discriminate similarly situated newspapers. Learned Advocate General has argued that the petitioner's newspaper and other two newspapers are no doubt in same category, but that does not mean that there cannot be further group within apparently homogeneous groups. The State-respondents in exercise of

their executive power have the authority to make further category of "A" category newspaper in view of the widest possible coverage of the advertisements to the targeted people of readership. Such further classification while issuing display advertisement, therefore, does not offend Articles 14 and 19 of the Constitution. It is a settled proposition that Article 14 prohibits class legislation, but does not prohibit reasonable classification for the purpose of legislation. Differential treatment does not per se constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation.

24. The Division Bench of the Gauhati High Court in the case of *Dainik Sambad and Another Vs. State of Tripura and Others*, AIR 1989 Guw 30 (Annexure-22 to the writ petition) has held that discriminatory allotment of Government advertisements to different newspapers of the same category by the State Government will impair the freedom of press and will be violative of Articles 14 and 19(1)(a) of the Constitution. We may gainfully refer here the relevant observation of the Court, which reads as follows:--

"The strongest of anti-discrimination legislation is to be found in Article 14 of the Constitution of India read with Article 15 and 16 enabling judicial review of allegation of discrimination and to provide legal remedies to the victims of unlawful discrimination. In order to establish discrimination of a prohibited ground the complainant has to establish that others less well or no better qualified than himself received more favourable treatment and alleged discriminatory refusal of State encouragement, economic or otherwise may amount to hostile discrimination. The use of an ostensible unfettered discretionary power may result in discrimination. Even licencing powers, it has been held, cannot be used to discriminate against political or religious opponents as was held in *Roncarelly v. Duplessis* (1952) I DLR 680. The Court shall strike down an order if it is found to have been based on discrimination prompted by an ill-will, dislike of one's political views, favouritism or improper motives. If a discretionary power is exercised in disregard of relevant considerations or on considerations that cannot be lawfully taken into account and it results in discrimination it may be struck down.

Discriminatory allotment of Government advertisements to different newspapers of the same category by the State Government will impair the freedom of press and will therefore be violative of Article 14 and 19(1)(a) of the Constitution of India.

The newspaper industry enjoys two of the fundamental rights namely, freedom of speech and expression guaranteed under Article 19(1)(a) and freedom to engage in any business. Any measure adopted by the Government to transgress into the field of freedom of expression and to stifle that freedom would be unconstitutional."

The Court has further held:--

"Discriminatory allotment of Government advertisements to different newspapers of the same category by the State Government will impair the freedom of press and will therefore be violative of Articles 14 and 19(1)(a) of the Constitution of India. That being the position the contention that this court in such a case is not to exercise jurisdiction as the matter has been pending before the Press Council is not tenable.

Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of the people in the administration. It is on account of this special interest which society has in the freedom of speech and expression that the approach of the Government should be cautious while adopting fiscal or other measures concerning newspaper industry. The same principle shall apply against any sort of State interference of discriminatory action reducing circulation of newspaper. Exercise of taxing power by the State has been held to be subject to scrutiny by Courts. The exercise of any other power increasing the burden on the newspaper is similarly subject to scrutiny of the Courts. Such power should not be used on the newspaper establishment so as to make the establishment subservient to the Government or that the newspaper will have to run after the Government. Merely because the Government has the power, the freedom of press would not be totally lost and the court is always there to hold the balance and to strike down unconstitutional invasion of that freedom".

25. A bare reading of Clause 13(a) of Tripura Advertisement Guidelines, 2009 makes it clear that the display advertisement will be issued by the State Government in the ICAT Department keeping in view the widest possible coverage of the contents of the advertisement and interest of the targeted readership of the newspaper. Definitely the executive power extends to make policy or scheme but while making the policy or scheme if any provision is made, concentrating thereby arbitrary power to any particular person or authority without having any particular parameter, criteria or yardstick, to pick and choose from the similarly situated newspapers, such provision would definitely offend the fundamental equality clause of the Constitution. All State actions must be fair and transparent. When a policy has been formulated by the State Government, it is expected that the policy should contain clear guideline, parameter or criteria for distribution of display advertisements also based on particular yardsticks so that no one is vested with arbitrary authority to pick and choose. It is clear from Clause 13(a) of the Advertisement Guidelines, 2009 that there is no specification or yardstick or parameter fixed to adjudge the widest possible coverage of the content of the advertisement and the interest of targeted readership. Therefore, the clause is violative of the Articles 14 and 19 of the Constitution.

26. Learned Advocate General, in support of his contention submitted that further group within the apparent homogenous group does not offend Article 14 of the Constitution, referred the case of Budhan Choudhry and Others Vs. The State of Bihar, AIR 1955 SC 191 : AIR 1954 SC 191 : (1955) CriLJ 374 : (1955)

1 SCR 1045 . He has referred to the observation of the Apex Court in para-5 of the Judgment, which reads as follows:--

"5. The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely,- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, AIR 1951 SC 41 : (1951) 21 CompCas 33 : (1950) 1 SCR 869 :-- The State of Bombay and Another Vs. F.N. Balsara, AIR 1951 SC 318 : (1951) 2 SCR 682 ; - The State of West Bengal Vs. Anwar Ali Sarkar, AIR 1952 SC 75 : (1952) CriLJ 510 : (1952) 1 SCR 284 ; - Kathi Raning Rawat Vs. The State of Saurashtra, AIR 1952 SC 123 : (1952) CriLJ 805 : (1952) 1 SCR 435 : Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, AIR 1952 SC 235 : (1952) CriLJ 1167 : (1952) 1 SCR 710 and- Syed Qasim Razvi Vs. The State of Hyderabad and Others, AIR 1953 SC 156 : (1953) CriLJ 862 : (1953) 4 SCR 589 and - Habeeb Mohamed Vs. The State of Hyderabad, AIR 1953 SC 287 : (1953) CriLJ 1158 : (1953) 4 SCR 661 . It is, therefore not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the Article in question.

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore, to be tested in the light of the principles so laid down in the decisions of this Court."

The fact of that case is clearly distinguishable to that of the fact of the present case. In that case a criminal offence punishable under Sections 366 and 143 of IPC was tried by Section 30 Magistrate, whereas it ought to be tried by the Sessions Court and on that issue the point raised before the Patna High Court, the two Judges Bench took different views and when it was referred to the Chief Justice, the Chief Justice endorsed the view that the impugned Section did not bring about any discrimination or inequity between persons similarly circumstanced and consequently did not offend the equal protection clause of the Constitution. The fact of the present case is quite different. Here all the three "A" category newspapers were supposed to get the Government advertisement equally and/or similarly, but admittedly the petitioner's newspaper did not get in the same standard as that of two other newspapers.

27. Since there is no yardstick fixed in the particular clause of the Guidelines as to the manner in which the determination should be made by the State Government in the ICAT department while distributing such display advertisement, in my considered opinion, Clause 13(a) offends Articles 14 and 19 of the Constitution. It would not be legitimate for the State to subject the press to policy which took away or abridged the freedom of expression or which would curtail the circulation and thereby narrow the scope of dissemination of information or fetter its freedom to choose its names of exercising the right or would undermine its independence by driving it to seek Government aid. The freedom of expression of the press cannot be abridged on the ground of conferring benefits upon the public or any section thereof. *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, AIR 1973 SC 106 : (1972) 2 SCC 788 : (1973) 2 SCR 757 .

28. Learned Advocate General in course of his argument also referred the case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, AIR 1974 SC 1 : (1974) LabIC 1 : (1974) 1 LLJ 121 : (1974) 1 SCC 19 : (1974) 1 SCR 771 . But after going through that judgment I find no relevance of that judgment to apply the ratio in this case.

29. The respondents contended that various Government departments indicate their preference either in writing or orally to display the advertisement in the newspapers, namely, "Daily Desher Katha" or "Dainik Sambad" and, therefore, despite best possible effort equal distribution was not possible. There is nothing in Clause 13(a) that display advertisement shall be distributed pursuant to the preference of the particular department making the advertisement. Rather Clause 13(b) prescribes that all possible advertisement need to be sent to ICAT department through departmental authorities only and thereby it is made clear that the display advertisement should be distributed at the choice of the State Government in the ICAT department not at the choice of the head of the particular department. So, this plea of the respondents gains no strength at all to justify discriminatory distribution of display advertisement.

30. The petitioner in para-3 of his additional affidavit stated:--

"3. That I say that there are 3 "A" category Newspapers of Tripura and those are Dainik Sambad, Syandan Patrika and Daily Desher Katha. As per Audit Bureau of Circulations shortly called ABC circulation of Dainik sambad is 67,630, that of Syandan patrika is 48,048 and that of Daily Desher Katha is 41,390. It would appear from the information furnished by the State Respondents that in spite of having lowest circulation Daily Desher Katha being the official Organ of ruling party has been favoured with highest quantum of display advertisement. A copy of the Audit Bureau of Circulations issued for the period from July to December, 2014 of the aforesaid 3 Newspaper are annexed hereto and marked Annexure-23,24 and 25 respectively."

31. Annexure-23 contains the certificate of Audit Bureau of Circulations in

respect of "Dainik Sambad", Annexure-24 contains the certificate of Audit Bureau of circulations in respect of "Syandan Patrika" and Annexure-25 contains the certificate of Audit Bureau of circulations in respect of "Daily Desher Katha".

32. The respondents did not challenge the above contention of the petitioner. So far as the circulation is concerned, as per the certificate issued by the Audit Bureau of Circulations, "Dainik Sambad" has got highest circulation and "Syandan Patrika" has got second highest circulation and then the circulation of "Daily Desher Katha". Learned Advocate General in course of his argument contended that "Daily Desher Katha" has got wide circulation in rural areas, whereas "Syandan Patrika" has got wide circulation in the town areas and it has got less circulation in the rural areas, whereas the circulation of "Dainik Sambad" is also similar to that of "Syandan Patrika", i.e., highest circulation in the town areas and less circulation in rural areas. So, on that point also the petitioner's newspaper cannot be discriminated since the readers whether they are of town areas or rural areas cannot be deprived of going through the advertisement made by the State Government in respect of particular department.

33. In view of the discussion made above, Clause 13(a) of the Tripura Advertisement Guidelines, 2009, since violative of Articles 14 and 19 of the Constitution and having found to be undesirable and introduced discrimination, is liable to be severed and omitted from the Tripura Advertisement Guidelines, 2009 and accordingly, Clause 13(a) is read down and it is set aside. The respondents are directed to distribute classified advertisement and display advertisement equally to the newspaper of the petitioner in the same term so far it is distributed to the other two daily newspapers, namely, "Dainik Sambad" and "Daily Desher katha".

34. The writ petition is accordingly disposed of. Parties to bear their own costs.