

(1997) 05 GAU CK 0018

In the Gauhati High Court

Case No : Civil Rule No's. 386 and 455 of 1995

Sushil Choudhury and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

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

Citation : AIR 1998 Guw 28

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.M. Lodh, A. Lodh, M. Dutta and S. Bhowmick, for the Appellant; A. Chakravorty, General, S. Deb and P.K. Paul, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In these two writ petitions under Article 226 of the Constitution, the petitioners have complained of violation of their fundamental rights under Articles 19(1)(a) and 14 of the Constitution of India by the State Government of Tripura in the matter of issue of advertisements to their respective newspapers.

2. The petitioner in Civil Rule No. 386/95 is the Editor and Proprietor of the newspaper Dainik Ganadoot, and the petitioner in Civil Rule No. 455/95 is the Editor of the newspaper Sandyan Patrika. Both the aforesaid newspapers are Bangali Dailies published from Agartala and the petitioners claimed to have invested a huge amounts of money in modernisation of the press in which the newspapers are printed. By a notification dated 20-11-1985 of the Government of Tripura in the department of Information, Cultural Affairs and Tourism, the advertisement policy was notified. In the said policy, it was, inter alia, stated that the Director of Information, Cultural Affairs and Tourism, would issue advertisements only to the approved newspapers/ magazines. As far as newspapers are concerned, they were categorised into Categories "A", "B" and "C". A daily newspaper having a minimum of four page daily and having size not less than 45 cms. x7 standard col. width orequivalent printed space, and having

a paid circulation of more than 4000 copies was categorised as "A" category newspaper. It was further declared in the said policy that for equitable distribution of advertisement to newspapers a rotation would be maintained to ensure that the newspapers belonging to "A" category would get 40% of advertisements, newspapers of "B" category would get 32% of advertisements, and newspapers belonging to "C" category would get 28% out of the total advertisements of 100% roster cm. Subsequently, on account of increase in the number of newspapers of "A" category and decrease in the number of newspapers of "B" and "C" categories, 100 point Roster was modified by the Government, and as per the modified 100 point Roster 60% of the total quantum of advertisements were to be allotted to "A" category newspapers, 22% to "B" category, and 18% to "C" category newspapers. The two newspapers belonging to the two writ petitioners, namely, Dainik Ganadoot and Sandyan Patrika, have been categorised as "A" category newspapers. The case of the petitioners in the two writ petitions, therefore, is that since their newspapers are approved "A" category newspapers, they are entitled to their share out of 60% of the total quantum of advertisements issued by the Director of Information, Cultural Affairs and Tourism, Government of Tripura. But the petitioners have not been given advertisements to the extent of their said share during the seven months prior to filing of the present writ petitions in the year 1995. In the writ petitions, the petitioners have furnished a chart of the Government advertisements issued to various newspapers which discloses that during the period from January 1995 to March 1995, Dainik Ganadoot got advertisements to the extent of 3,374 cms. and Syandan Patrika got advertisements to the extent of 5,673 cms. while the Daily Desher Katha got advertisements to the extent of 11,686 cms. The petitioners have alleged that the State Government was thus showing undue favour to the newspaper Daily Desher Katha as it was the media organ of the Communist Party of India (Marxist) of Tripura State Committee, which is now in power in the State of Tripura. The petitioners have further alleged that they have been criticising the action of the State Government run by the aforesaid Communist Party of India (M) and exposing its weakness in the interest of public, and just to get rid of severe and fair criticism made by the petitioners, the State-respondents are trying to restrict the publication and circulation of the newspapers belonging to the petitioners and are encouraging the publication and wide circulation of the newspapers Daily Desher Katha.

In Civil Rule No. 386/95, the petitioner has prayed for a direction on the State-respondents to allot advertisements to the newspapers Dainik Ganadoot adequately at par with that of similarly situated newspapers of "A" category in accordance with the aforesaid advertisement policy. In Civil Rule No. 455/95, it has been further stated that a Memo, has been issued on 14-12-1993 by the Deputy Secretary to the Government of Tripura, Information, Cultural Affairs and Tourism Department, stating that as per directives of the High Court, the matter relating to issue of advertisement to "A" category newspapers has been reconsidered by the Government, and the Government has been pleased to

restore classified advertisements in favour of Daily Desher Katha under "A" category, and as the number of "A" category newspapers now rose to 10, each of the newspapers will get 6% as their share in the Government advertisements meant for such category; whereas the Daily Desher Katha would be entitled to 24% of the classified advertisement till the loss to the tune of 1,17,704 col. cms. of Government classified advertisements sustained by the Daily Desher Katha during the period from March, 1988 to March, 1993 is compensated. In the said Civil Rule No. 455/95, in addition to the prayer for implementing the advertisement policy of the State Govt. of Tripura contained in the notification dated 20-11-1985 the petitioner has also prayed for quashing the aforesaid Memo, dated 14-12-1993.

3. At the hearing of the Civil Rules, Mr. A.M. Lodh, learned Senior Counsel, assisted by Mr. A. Lodh, counsel appearing for the petitioners, stated that by notification dated 27-2-1988, the Government of Tripura, in the Department of Information, Cultural Affairs and Tourism, stipulated in paragraph 2 thereof that official organ of any political party would not be entitled to get any advertisement from the Government and in accordance with the said notification no advertisement was issued to the newspaper Daily Desher Katha which was the official organ of the CPI (M) of Tripura State Committee and the said newspapers challenged the aforesaid paragraph 2 of the notification dated 27-2-1988 in Civil Rule No. 39/88, and by judgment and order dated 15-12-1992 a Division Bench of this Court quashed the said paragraph 2 of the notification dated 27-2-1988 but did not issue any direction to the State-respondent to compensate the loss that the "said newspaper Daily Desher Katha had suffered in the meanwhile on account of non-issuance of Government advertisement to the said newspaper. Yet in the impugned Memo dated 14-12-1993, it appears that the Government has sought to compensate the loss suffered by the said newspaper Daily Desher Katha during the period from March, 1988 to March, 1993, to the tune of 1,17,704 col. cm. of Government classified advertisements by deducting 2% from out of the share of the petitioners and other "A" category newspapers and allowed 24% of the Government classified advertisements in favour of the newspapers Daily Desher Katha, Mr Lodh cited a decision of a Division Bench of this Court in the case of State of Assam and Others Vs. Omega Printers and Publishers Private Limited and Another, in which the Division Bench did not approve the view of the learned single Judge whose decision was in appeal before the Division Bench that the loss which the paper "Sentinel" had suffered by receiving less advertisement should be covered by going more advertisement in future. In the said judgment, the Division Bench further held that in case such a relief was granted to "Sentinel", the necessary corollary which would follow was that the paper would start receiving more advertisements, and that would result in increasing its circulation and decreasing the circulations of other papers. Mr. Lodh also cited a judgment of the Apex Court in the case of Indian Express Newspapers (Bom) v. Union of India, (1985) 1 SCC 641 : AIR 1986 SC 515, for the proposition that the exercise of the power by the Government which affects

the freedom of press is subject to scrutiny by Courts. He also relied on the judgment of the Division Bench of this Court in Civil rule No. 889/87 (Dainik Sambad v. State of Tripura), in which the Division Bench has observed that there has been discrimination in implementing the aforesaid policy of advertisement and has directed the State Government to see that the avowed policy of equal distribution of its advertisements is carried out by its agents and servants.

4. In reply, Mr. A. Chakraborty, learned Advocate General, Tripura, appearing for the State-respondents, relied on the averments in the counter-affidavit filed on behalf of the State respondents in which the allegations in the writ petitions that the State respondents are trying to show undue favour to the newspaper Daily Desher Katha, and discriminatory treatment is being shown to the petitioners in the matter of allotment of advertisement, have been denied. He also relied on the averments in the counter-affidavit of the State-respondents that the advertisement policy contained in Notification dated 20-11-1985 is being implemented. He, however, argued that though no directions as such were issued by this Court in the earlier Civil Rule filed by the Daily Desher Katha to compensate the loss suffered by the said newspapers for non-issue of any advertisement to the said newspaper during the period paragraph 2 of the notification dated 27-2-1988 was in force, the fact remains that this Court in the aforesaid judgment has quashed the said paragraph 2 of the aforesaid notification dated 27-2-1988 in Civil Rule No. 39/88 by its judgment and order dated 15-12-1992. Since the newspaper Daily Desher Katha had suffered loss for non-issue of advertisement to the extent of 1,17,704 col. cms. for the period from March, 1988 to March, 1993, the only way to compensate the said newspaper for such a loss was to deduct some percentage of advertisements out of the shares of other "A" category newspapers. Prior to Memorandum dated 14-12-1993 of the State Government, 60% of the total quantum of advertisements was being distributed amongst all "A" category newspapers and the share of each of the said "A" category newspapers came to 8%. The matter was reconsidered by the Government and 2% out of the share of each of the aforesaid newspapers was deducted for compensating the loss suffered by the Daily Desher Katha during the period from March 1988 to March 1993. Consequently, by the impugned Memorandum dated 14-12-1993, 6% of the total advertisements was determined to be the share of each of 10 "A" category newspapers including the Daily Desher Katha, and the Daily Desher Katha was further allotted 18% of the Govt. classified advertisement towards the loss that it had suffered during the period from March, 1988 to March, 1993. It is for this reason that the total share of advertisement of the Daily Desher Katha presently works out at 24% (18% + 6%). Mr. Chakraborty vehemently argued that the petitioners cannot make a grievance of such allotment of additional 18% of Government classified advertisement to the newspaper Daily Desher Katha because during the period from March, 1988 to March 1993, the Daily Desher Katha did not get any Govt. advertisement at all while the petitioners enjoyed a higher share of Government classified advertisements on account of non-issue of

Government advertisement to the Daily Desher Katha. There was, therefore, nothing inequitable or discriminatory in the impugned order dated 14-12-1993. Mr. Chakraborty distinguished the facts of the present case from the facts of the case in *State of Assam v. M/s. Omega Printers and Publishers* (supra), cited by Mr. A.M. Lodh, learned counsel appearing for the petitioners, by stating that while in the aforesaid case of *Omega Printers and Publishers* (supra) the facts were that the advertisements to the "Sentinel" were not totally stopped by the Government and the case of the "Sentinel" was that it was entitled to higher share of advertisements from the State Government of Assam than what it actually got; but in the present case during the period from March, 1988 to March, 1993, advertisements were totally stopped to the newspaper Daily Desher Katha and as a result the said newspaper Daily Desher Katha suffered immense financial loss".

After the hearing, a written note of additional arguments was filed by the respondents Nos. 1 and 2 in which it has been contended that none of the petitioners has made any grievance to the effect that they have suffered any loss of circulation of newspapers because of reduction of their share of advertisement or have suffered any pecuniary loss in terms of circulation. In the said written note, it has been further submitted that it was also not the case of the petitioners that the Daily Desher Katha increased its circulation to such an extent as a result of the increased advertisement that any loss or damage had been suffered by the petitioners. According to the said written note of arguments, the only case of the petitioners is that they are not getting advertisement like Daily Desher Katha, but the petitioners have lost the sight of the fact that they had enjoyed more advertisements at the cost of the Daily Desher Katha for five years from March, 1988 to March, 1993.

5. Mr. S. Deb, learned counsel appearing for the pro forma respondent No. 3, Daily Desher Katha, while adopting the arguments of the learned Advocate General, Tripura, submitted that during the period from March, 1988 till March, 1993, the respondent No. 3 suffered immense financial loss on account of paragraph 2 of the notification dated 27-2-1988 which was finally quashed by a Division Bench of this Court in its judgment dated 15-12-1992 in Civil Rule No. 39/88 filed by the respondent No. 3. The only way to compensate the said loss was through issue of more Government classified advertisements to the respondent No. 3 Newspaper. He also sought to distinguish the facts of the present case from the facts of the aforesaid case of *Omega Printers and Publishers* (supra) and contended that the judgment of the Division Bench in the said case ought not to be followed in the present case. He further contended that since the writ petitioners have enjoyed higher share of Government classified advertisements during the aforesaid period of five years from March, 1988 till March, 1993, at the cost of the respondent No. 3, the petitioners cannot be allowed to contend before this Court that the action of the State Government in compensating the loss suffered by the respondent No. 3 during the aforesaid five years is inequitable. Mr. Deb further pointed out that in Civil Rule No. 386/95, no

prayer has been made by the petitioner challenging the Memorandum dated 14-12-1993.

6. It is not disputed that by judgment and order dated 15-12-1992 of this Court in Civil Rule No. 39/88 filed by Daily Desher Katha, paragraph 2 of the notification dated 27-2-1988 was only quashed by the Court, and no direction as such was given by the Court to the State-respondents to compensate the loss suffered by the Daily Desher Katha during any period on account of non-issue of advertisements to the said newspaper for the period when the aforesaid paragraph 2 of the notification dated 27-2-1988 was in force. Hence, the decision of the State Government contained in the impugned Memo, dated 14-12-1993 to compensate the Daily Desher Katha the loss of 1,17,704 col. cms. of advertisement during the period from March, 1988 to March, 1993, is purely an administrative decision of the State Government. While the petitioner in Civil Rule No. 455/95 challenged the said administrative decision as being violative of Articles and 19(1)(a) of the Constitution, the respondents have sought to sustain the said administrative decision of the State Government on the ground that it is fair and equitable as during the period from March 1988 to March 1993, the petitioners in both the Civil Rules were allotted their share of advertisements at the cost of the respondent No. 3 Daily Desher Katha and loss suffered by the respondent No. 3 during the aforesaid period had to be compensated by deducting 2% out of the share of advertisement of the two petitioners and other "A" category newspapers and allowing an additional 18% to Daily Desher Katha until the aforesaid entire loss of advertisement to the extent of 1,17,704 col. cms. during the aforesaid period is made good. The contention of the respondents, therefore, is based on the premise that in matters of advertisement also the State Government has to take into consideration the losses and gains suffered by the press such as the two petitioners and the respondent No. 3.

7. I am afraid, this premise of the State-respondents is totally misconceived. In the case of *Time Inc. v. Hill*, 385 US 374, the U.S. Supreme Court made the following observations which have been quoted in the case of *Indian Express Newspapers v. Union of India* (supra) :

"The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people".

Mathew, J. in his judgment in the case of *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, quoted by the Supreme Court in the case of *Indian Express Newspapers* (supra), held:

"The affirmative obligation of the Government to permit the import of newsprint by expending foreign exchange in that behalf is not only because press has fundamental right to express itself, but also because the community has a right to be supplied with information and the Government a duty to educate the people within the limits of its resources. The Government may, under Clause 3 of the Imports (Control) Order, 1955, totally prohibit the import of newsprint and

thus disable any person from carrying on a business in newsprint, if it is in the general interest of the public not to expend any foreign exchange on that score. If the affirmative obligation to expend foreign exchange and permit the import of newsprint stems from the need of the community for information and the fundamental duty of Government to educate the people as also to satisfy the individual need for self-expression, it is not for the proprietor of a newspaper alone to say that he will reduce the circulation of the newspaper and increase its page level, as the community has an interest in maintaining or increasing circulation of the newspapers. It is said that a proprietor of a newspaper has the freedom to cater to the needs of intellectual highbrows who may choose to browse in rich pastures and for that he would require more pages for a newspaper and that it would be a denial of his fundamental right if he were told that he cannot curtail the circulation and increase the pages. A claim to enlarge the volume of speech by diminishing the circulation raises the problem of reconciling the citizens' right to unfettered exercise of speech in volume with the community's right to undiminished circulation. Both rights fall within the ambit of the concept of freedom of speech as explained above."

Thus freedom of speech and press are not so much for the benefit of the press as for the benefit of the general community and the obligation of the Government to ensure circulation of the newspaper does not arise from any duty of the Government to ensure that any particular press does not gain or lose, but because the community has a right to be supplied with information and the Government owes a duty to educate the people within the limits of its resources. Therefore, the test that has to be applied in determining whether the decision of the Government in the impugned Memorandum dated 14-12-1993 is violative of the fundamental rights under Articles 19(1)(a) and 14 of the Constitution is not as to whether it equitably takes care of the losses and gains suffered by different newspapers depending on Government advertisements, but as to whether the community in general will suffer by the decision taken in the impugned Memorandum to allot advertisements to the extent of 24% to the newspaper Daily Desher Katha and at the same time to allot only 6% to other "A" category newspapers including the two newspapers of the petitioners till the entire loss of advertisements to the extent of 1,17,704 col. cms. suffered by the Daily Desher Katha during the period from March 1988 to March 1993 is made good.

8. As a result of the aforesaid decision of the State Government contained in Memo, dated 14-12-1993, admittedly the extent of advertisements issued to the petitioners have considerably reduced while the extent of advertisements issued to Daily Desher Katha, respondent No. 3 have considerably increased. Although, the petitioners have furnished some figures in the writ petitions showing the aforesaid differences between the extent of advertisements issued to the two petitioners and that issued to respondent No. 3, the said figures have been disputed by the State respondents in their counter-affidavit, and in Annexure XIII to the counter-affidavit, the following statement showing the total cm. of classified advertisement to "A" category" newspapers during the period Sept.

1993 to January 1995 duly checked and verified by the Deputy Director, Directorate of 1CAT, Govt. of Tripura, has been furnished.

S. No. Name of the paper Total cm. issued Sept/93 to June/ 95

A. CATEGORY

1. Daily Desher Katha 66,290 cm
2. Dainik Sambad 23,224 cm
3. Tripura Darpan 20,988 cm
4. Syandan 20,891 cm
5. Ganadoot 22,195 cm
6. Ganasambad 20,510 cm
7. Manush 21,221 cm
8. Jagaran 20,821 cm
9. Vivek 20,509 cm
10. Swastidoot 18,745 cm
11. Bhabhi Bharat 17,742 cm

The aforesaid statement shows that during the period from Sept. 1993 to January, 1995, Daily Desher Katha received advertisements to the extent of 66,290 cm. where as the advertisements received by other newspapers including the two petitioners ranged between 17-742 cm and 23,224 cm. The quantum of advertisements thus issued to the Daily Desher Katha was almost three times the extent of advertisements issued to each of other newspapers of "A" category. This is the direct consequence of the decision of the State Government in the impugned Memorandum dated 14-12-1993 for allotting 24% of the total advertisements to Daily Desher Katha as against 6% no other "A" category newspapers until the loss suffered by Daily Desher Katha during the period from March, 1988 till March, 1993 is taken care of.

9. The question is whether such increase in advertisements to the extent of three times to Daily Desher Katha would have the effect of increase in its circulation compared to circulation of the other "A" Category newspapers. The respondents have contended in their written note of additional arguments that no such case has been made out by the petitioners in the writ petitions that as a result of the impugned Memorandum or as a result of the aforesaid issue of increased quantum of advertisements to Daily Desher Katha, circulation of Daily Desher Katha has increased or circulation of the newspapers belonging to the petitioners has decreased.

10. In the Division Bench Judgment of this Court in the case of State of Assam

and Others Vs. Omega Printers and Publishers Private Limited and Another, the Court held that one of the consequences of the Government regulating the issue of advertisements to the newspapers is that their circulation decreases or increases. To quota the relevant passage from the said judgment at pages 55-56; of AIR -

"..... The other important fall out on such a paper would be that the circulation of the paper would automatically go down. There will be large number of newspaper readers who will subscribe newspapers which contain advertisements of the Government for varied reasons. There may be advertisements for recruitment to certain jobs. There may be "certain important information which may be circulated by the Government. Newspaper readers may prefer such a paper which contains more information on these points. The automatic result of such a power of regulation would be a serious impact on the viability of a particular newspaper affecting the fundamental right available under Articles 14 and 19 of the Constitution."

It is for this reason that the Division Bench in the aforesaid case did not approve the view that loss suffered by a newspaper by receiving less advertisements during the previous period could be covered by giving more advertisement in future. Thus the argument of the respondents that no case has been made out by the petitioners that the circulation of Daily Desher Katha has increased and the circulation of the newspapers of the petitioners has decreased as a direct consequence of the increased quantum of the advertisements issued to the Daily Desher Katha pursuant to the impugned Memorandum, has no force at all. .

11. The next question is as to whether the increase in circulation of Daily Desher Katha as a direct consequence of increase in the quantum of advertisements issued by the Government to the said newspaper affects the freedom of speech expression and freedom of press. Increased circulation of Daily Desher Katha will result in more and more people reading the said news paper Daily Desher Katha and the said news paper will, as a result of its increased circulation, influence the community to a much greater extent than the other newspapers and this increased influence of the newspaper on the minds of the people compared to other newspapers strikes at the very foundation of freedom of press and democracy. Freedom of press and healthy democracy require that divergent views are expressed through the newspapers and people reading the newspapers form their opinion on the basis of such divergent views. In the language of the Second Press Commission quoted in paragraph 39 of the judgment of the Supreme Court in the case of Indian Express Newspapers v. Union of India (supra).

"Freedom of special presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. It rests on the assumption that the widest possible dissemination of information from as many diverse and antagonistic sources as possible is essential to the welfare of the public. It is the function of the Press to disseminate

news from as many different sources and with as many different facts and colours as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply. In such a situation, the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic position is not conducive to the formation of healthy public opinion. If the newspaper industry is concentrated in a few hands, the chance of an idea antagonistic to the idea of the owners getting access to the market becomes very remote. But our constitutional law has been indifferent to the reality and implication of non-Governmental restraint on exercise of freedom of speech by citizens. The indifference becomes critical when comparatively a few persons are in a position to determine not only the content of information but also its very availability. The assumption in a democratic set up is that the freedom of the press will produce a sufficiently diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfill the individual interest by enabling virtually every one with a distinctive opinion to find some place, to express it."

In my considered opinion, if the State respondents continue to allot 24% of the total quantum of advertisements to the Daily Desher Katha as compared to only 6% of the total quantum of advertisements to other "A" category newspapers, the views expressed in the said Daily Desher Katha will have increasing sway on the minds of the more and more people and the general community and will affect the formation of a healthy public opinion necessary for a good democracy. Thus, the impugned Memorandum dated 14-12-1993 of the State Government is violative of freedom of speech guaranteed under Article 19(1)(a) as well as the equality clause in Article 14 of the Constitution. The impugned Memorandum dated 14-12-1993 of the Government of Tripura, Information, Cultural Affairs and Tourism Department is accordingly quashed.

12. Since the reason for allotment of lesser quantum of advertisements to the newspapers of the petitioners and other "A" category newspapers was the said impugned Memorandum dated 14-12-1993 and the said Memorandum has been quashed, the State respondents will now have to follow its policy of advertisement contained in the Notification dated 20-11-1985 and comply with the directions of this Court in the case of *Dainik Sambad v. State of Tripura* (Civil Rule No. 889/87), and will allot to the petitioners as well as other "A" category newspapers their equitable share of Government classified advertisements in accordance with the said Advertisement Policy dated 20-11-1985 of the State Government.

13. With the "aforesaid observations and directions, these two writ petitions are allowed. However, considering the entire facts and circumstances, of the case, I leave the parties to bear their own costs.