

(2014) 02 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 350 of 2012

Tahir Mohiuddin

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : AIR 2014 JK 35 : (2014) 2 JKJ 211

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : I. Sofi, Advocate for the Appellant; Z.A. Qureshi, Ms. Shugufta and S.A. Makroo, ASGI, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.—Petitioner is a senior journalist and proprietor, printer, publisher and editor of daily Chattan, Srinagar, Respondent

No. 4 is a budding journalist keen to publish a newspaper from Srinagar. The petitioner sometime in 2009 decided to publish another newspaper

in English and Urdu language under title 'Kashmir Today'. He proposed to publish it from J-39, Jawahar Nagar, Srinagar. He approached

Registrar of Newspapers for India, New Delhi-Respondent No. 2 herein, to find out whether any newspaper titled ""Kashmir Today"" was

published in the country so that he would publish the proposed newspaper under the said name in English and Urdu languages from Srinagar. The

respondent No. 2 vide letter dated 7-9-2009 informed District Magistrate, Srinagar-respondent No. 3 herein, that the title was free and available.

The District Magistrate, Srinagar, vide communication dated 27-4-2011 issued the authentication letter in favour of the petitioner. A copy of the

authentication letter was sent to respondent No. 2 for necessary action. In terms of the authentication letter, the declaration made was to lose its

force unless publication of the proposed newspaper i.e. 'Kashmir Today' was commenced within six weeks from the date of the letter. This apart,

the petitioner was required to submit all the documents mentioned in the authentication letter after the publication of first issue within the period laid

down therein and the title was to be treated free in the event of his failure to submit the documents within the said time frame.

2. Petitioner claims to have published the first issue of the newspaper 'Kashmir Today' in Urdu and English on 25th May 2011 and therefore

fulfilled the first condition laid down in the authentication letter. He further claims to have submitted all the necessary papers required for registration

of the newspapers within six weeks. The petitioner's case is that in view of fulfillment of all necessary conditions laid down in the authentication

letter dated 27-4-2011, the respondent No. 2 was under an obligation in terms of Section 19C. The Press and Publication of Books Act, to issue

Certification of Registration in favour of the petitioner. He is aggrieved that the respondent No. 2 avoided to issue the Certificate of Registration in

his favour and instead the title ""Kashmir Today"" was shown in the official website as deleted from the name of the petitioner.

3. The respondent No. 2 on inquiry is said to have informed the petitioner that the petitioner had failed to submit requisite documents within

prescribed period. The petitioner disputes the stand taken by respondent No. 2 that the documents were not submitted within the requisite period

in terms of authentication letter dated 27-4-2011. It is pleaded that the petitioner having made a serious effort to publish the newspaper under title

Kashmir Today"", there was no reason for him to avoid to submit the requisite documents within the prescribed time. The title 'Kashmir Today',

according to the petitioner has been unjustifiably withdrawn from him and allotted to respondent No. 4

4. Petitioner's case is that the title ""Kashmir Today"" having been declared free by respondent No. 2 vide communication dated 7-9-2009 and

thereafter the respondent No. 3 having issued letter of authentication in favour of the petitioner and the first issue of the newspaper published by the

petitioner, he had a right to retain the title and that the title could not be withdrawn without affording the petitioner an opportunity to put forth his

stand. Petitioner questions the withdrawal of the title and its allotment to respondent No. 4 on the ground that the action has been taken without

hearing the petitioner and therefore violates the principle of audi alteram partem.

5. Petitioner on the strength of the averments made in the petition seeks a writ of certiorari quashing the order withdrawing/deleting the title

'Kashmir Today' from the petitioner and allotting it to respondent No. 4. He further seeks a writ of mandamus commanding the respondents 1 to 3

to restore the title and issue certificate of registration in his favour.

6. The respondents 1 to 3 resist the writ petition on the ground that as the petitioner failed to submit the requisite documents to the office of

Registrar of Newspapers for India, New Delhi, in connection with registration and the publication and avoided to get the title registered within the

period of two years, the title was de-blocked and subsequently verified in favour of respondent No. 4. The respondents admit that the title

'Kashmir Today' was initially verified vide No. JKBIL00245 dated 7-9-2009-TC in favour of the petitioner. They, however, plead that as the

petitioner did not take necessary steps for registration of the title within two years, it got automatically de-blocked. The respondents explain that

the verification and registration of the title is computerized and once a person in whose favour a title is verified fails to take steps for registration, it

gets automatically de-blocked and becomes free for allotment. Admitting that the application for registration with requisite documents from the

petitioner was received on 11th Nov. 2011, the respondents maintain that the documents were not entertained as the title was already got de-

blocked on 7th September, 2011, and the petitioner accordingly informed vide communication No. 9/125/2011-R3 dated 29-12-2011. The

representation filed by the petitioner is said to have not been considered as it also was received after the title got de-blocked on 7-9-2011. The

respondents point out that the authentication letter categorically in bold letters mentioned ""TITLE VOID IF NOT REGISTERED WITHIN TWO

YEARS/NOT TRANSFERABLE BEFORE REGISTRATION"" making it sufficiently known to the petitioner that he was required to get the title

registered in his favour by Registrar of Newspapers for India, New Delhi, within two years from the date the title was verified in his favour i.e. 7-9-

2009. The respondents insist that none of the rights of the petitioner has been

violated and the petitioner does not have a right to maintain the writ petition.

7. The respondent No. 4 in his reply reiterates the stand taken by respondents 1 to 3 in opposition to the writ petition. He claims to have

approached the respondents with an application to verify the title ""Kashmir Today"" in his favour and the respondent No. 2 vide his letter No.

PS/Adm./SGR/11/Pub/416 dated 28-11-2011 sought necessary information from respondent No. 2. The respondent No. 2 vide communication

dated 11-1-2012 verified the title 'Kashmir Today' in favour of respondent No. 4 clearing decks for grant of declaration/authentication by

respondent No. 3 in his favour. It is pleaded that respondent No. 32 vide letter dated 5-1-2012 issued authentication letter in the requisite format

in favour of the respondent No. 4 informing him that the title would be valid for two years and would get de-blocked unless the respondent takes

steps for its registration in his favour. The respondent claims to have published 10 issues of the newspaper and stopped/discontinued its publication

only after the court on 4-4-2012 granted a stay order against the publication. The petitioner is alleged to have withheld vital information regarding

grant of letter and authentication in favour of respondent No. 4 as also his having published 10 issues of the newspaper under title ""Kashmir

Today"".

8. I have gone through the pleadings and have heard learned counsel for the parties.

9. The main plank of the petitioner's case is that the title 'Kashmir Today' having been verified in his favour and letter of authentication granted to

him, he had a right to retain the title and cancellation of the title could not be resorted to except after affording him an opportunity of being heard.

Learned counsel for the petitioner insists that even a pure administrative act entailing civil consequences is to conform and abide by the rules of

natural justice. Dilating on his argument, learned counsel for the petitioner states that the cancellation of title in favour of the petitioner visited him

with civil consequences and the respondent Nos. 2 and 3 were therefore under an obligation to afford the petitioner is reasonable and adequate

opportunity to put forth his stand.

10. Before adverting to the argument advanced by learned counsel for the

petitioner, it would be appropriate to notice a few important aspects of the matter. A bare look on the verification letter JKBIL00245 dated 7-9-2009-TC would reveal that the Registrar of Newspapers while informing respondent No. 3 that the title ""Kashmir Today"" was available and authorizing him to authenticate the declaration of the publisher/printer made it clear that ""the declaration made in respect of a publication shall be void if the newspaper does not commence publication within six weeks from the date of authentication in the case of a newspaper to be published once a week or oftener."" It further required the owner or publisher of the title to submit all documents required for its registration after publication of the first issue within six weeks, which should reach the office of respondent No. 2 within 30 days after the prescribed period i.e. 6 weeks. It was made clear that in the event the documents were not so submitted and received the title will be free for verification to the other applicant. The verification letter at its foot contained following warning in bold and capital letters: ""TITLE VOID IF NOT REGISTERED WITHIN TWO YEARS/NOT TRANSFERABLE BEFORE REGISTRATION"". A copy of the verification letter as is evident from the letter itself was sent to the petitioner. The petitioner, therefore, was made well aware that in case of his failure to submit the documents within six weeks of the publication of the first issue ensuring that the documents are received within 30 days after the prescribed period i.e. 6 weeks, the verification letter would be stripped of its force and the title de-blocked to be allotted to any other person. The petitioner was also made aware that his failure to get the titles registered in his name would make it void.

11. The petitioner's case is that he delivered all the documents as required in terms of para. 6 of the verification letter at the office of respondent No. 2. The petitioner, however, has failed to place on record any receipt issued by the office of respondent No. 2 acknowledging the receipt of the documents from the petitioner. The petitioner after he did not hear from the respondents when the documents as claimed by him were submitted by him, was expected to have raised the issue and sought clarification from respondent No. 2 or in any other manner pursued the matter. He, however, did not make any effort towards registration of his title till February 2012 when he claims to have made a representation to

respondent No. 2 and thereafter filed a writ petition on hand on 27-3-2012. Petitioner appears to have woken up only after a fresh verification

report was issued in favour of respondent No. 4 on 24-1-2012 and thereafter authentication letter issued by respondent No. 3.

12. There is nothing on the record to lend support to petitioner's case that he actually delivered the requisite documents at the office of respondent

No. 2 within the prescribed period after commencement of the publication. It needs no emphasis that the petitioner would have been issued a

proper receipt detailing the documents submitted, had he actually delivered the documents as claimed in the writ petition. The government offices

as a matter of practice issue the receipt in such cases and where the receipt is not issued due to any lapse on the part of the Dealing Clerk, the

person delivering the documents insists on issuance of receipt and is given such receipt.

13. The stand taken by the respondents that the documents were received from the petitioner much after the deadline sounds convincing. The

respondents have given the actual date the documents were delivered and explained their inability to help the petitioner as by the date the

documents were delivered, the title was automatically de-blocked, free to be verified in favour of some other person. The fact that the title was

subsequently verified in favour of respondent No. 4, declaration made, authentication letter issued, makes it abundantly clear that respondents 1 to

3 have adhered to the rule book and the petitioner deprived of an opportunity to publish his newspaper under title ""Kashmir Today"" because of his

own fault.

14. Petitioner's case that he was entitled to be heard before the title was withdrawn and verified in favour of respondent No. 4 is build up on a

wrong assumption that it was a case of cancellation of title or declaration in terms of section 8B, Press and Registration of Books Act 1987.

Section 8B would come into play when a title duly registered is cancelled or withdrawn. Here is a case where the title was yet to be registered and

it got automatically de-blocked because of failure on the part of petitioner to submit the requisite documents within prescribed time. It cannot be by

any stretch of imagination taken to be a cancellation order warranting adherence to the procedure laid down therein including principal of audi

alteram partem. Learned counsel for the petitioner, therefore, cannot draw any support of Sahara India (Firm), Lucknow Vs. Commissioner of

Income Tax, Central-I and Another, .

15. The above discussion apart, the principle of natural justice do not call for a universal application in all circumstances and eventualities. Even if it

is assumed that there was a scope for hearing in matter on hand, yet any such opportunity would not be warranted as it would not yield any results.

We need to be reminded that the petitioner as the record would reveal did not submit the documents within prescribed time and failed to take

steps for registration of the title in his favour within two years from the date verification letter was issued in his favour. The failure on the part of the

petitioner led to de-blocking of the title and its verification in favour of respondent No. 4. The petitioner, therefore, had nothing to explain the

failure on the part of the respondents to hear him has therefore not exposed him to any prejudice.

16. The petitioner surprisingly has avoided to narrate facts about de-blocking of the title in question, its verification in favour of respondent No. 4,

grant of authentication letter upon declaration made by respondent No. 4 in his favour and publication of a number of issues of the newspaper by

respondent No. 4 before restraint order was granted at the instance of the petitioner. These facts are expected to have been in the knowledge of

the petitioner and should have been disclosed in the petition. The writ jurisdiction is an equitable jurisdiction exercised at the instance of one who

does not withhold the true facts and events irrespective of the weightage these may warrant or deserve once the petition is taken up for

consideration. The petitioner by withholding the information has disentitled himself from the discretionary and equitable relief. For the reasons

discussed, the writ petition is bereft of any merit and is accordingly dismissed. Interim order is recalled.