

(1959) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petn No's. 476, 511, 539 and 616 of 1959

T.V. Krishna

APPELLANT

Vs

Andhra Prabha (Private) Ltd. and Another

RESPONDENT

Date of Decision : 29-07-1959

Acts Referred:

Companies Act, 1956 — Section 12, 234, 235, 237, 243
Constitution of India, 1950 — Article 226

Citation : AIR 1960 AP 123 : (1960) 30 CompCas 437

Hon'ble Judges : P. Chandra Reddy, C.J.;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : P.A. Chowdhari and P. Venkayamma, for the Appellant; D. Narasaraju, General, P. Ramachandra Reddy, 3rd Govt. Pleader, A.V. Viswanath Sastri, N.V.B. Sankarra Rao and D.V. Sastri, for the Respondent

Judgement

P. Chandra Reddy, C.J.—Writ Petitions Nos. 476, 539 and 616 of 1959 are for the issue of a Writ of scire facias to rescind the certificate issued by the Registrar of Companies to Andhra Prabha Private Limited, Vijayawada, while Writ Petition No. 511 of 1959 is for the issuance of a Writ of Certiorari to quash the authentication of declaration by one of the respondents for the printing and publication of "Indian Express" from Vijayawada. All the petitioners were either working journalists or workers employed in the Express Newspaper Private Limited and their petitions follow the same pattern and raise common questions of law and fact, and could, therefore, be disposed of in one judgment.

2. A few facts, which are material for appreciating the issues involved in these petitions, may be briefly set out. Express Newspapers Private Limited, otherwise termed as the Express Group, has been publishing several dailies and weeklies amongst them being the Indian Express, Duiamani. Andhra Prabha and Andhra Prabha Illustrated Weekly. We are now concerned only with Andhra Prabha and Andhra Prabha Illustrated Weekly. Express Group is supposed to be the biggest chain in the newspapers World. This concern had in its employment a number of working journalists proof readers, members of the staff and workers. Some of

the newspapers published by this concern have a wide circulation and, according to the petitioners, it was a very flourishing industry earning enormous profits, while the respondents have it that the company was incurring huge losses for some years. There are several other newspapers similarly situated in India,

3. For some years past working journalists were agitating for the creation of a machinery to have their salaries, allowances etc., enquired into by some agency, which would be empowered to fix reasonable terms and conditions of services for them as whole. Isolated attempts were made by the various State to appoint Committees to enquire into the conditions of the employees of the newspaper industry. But the problem could not be tackled on an All India basis. Following on the declaration of the policy by the Prime Minister in that behalf in the year 1951, the Press (Objectional Matter) Act. 1952 was passed by the Parliament.

In September 1952, the Press Commission was appointed to report, among other things on the method of recruitment, training, scales of remuneration, benefits and other conditions of employment for working journalists, the settlement of disputes affecting them and the factors which influenced the establishment and maintenance of high professional standards. After the Press Commission made its report, the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act (Act XLV of 1955) was passed which received the assent of the President in December, 1955, to have better conditions of service established for those working in the newspaper industry. Section 8 of the Act authorised the Central Government to constitute a Wage Board for fixing the rates of wages in respect of working journalists.

4. In exercise of that power the Union Government created a Wage Board for fixing and determining the rates of wages in accordance with the provisions of the Act. This Board gave its decision classifying newspaper establishments into several groups according to their gross earnings and fixing scales of wages of the various grades of working journalists. As a result of the proposals of the Board, there was an increase in the emoluments of the employees working in this industry with the result that the wage bill went up very high. This threw an additional burden on the industry, the Express Newspapers being one such. The Express Newspapers Private Limited and several other newspaper establishments invoked the jurisdiction of the Supreme Court under Article 32 of the Constitution questioning the vires of the Act and challenging the decision of the Board contending, inter alia, that the implementation of the decisions would be beyond the capacity of the industry and would lead to their utter ruin.

5. While upholding the constitutionality of the Act, except in regard to one or two provisions, the Supreme Court set aside the decision of the Wage Board as illegal and void. One of the reasons adduced in support of the conclusion of their Lordships was that the Wage Board, in fixing the rates of wages, had not taken into account the capacity of the industry to pay. After this, the Government made an ordinance subsequently replaced by Act XXIX of 1958, which was in substance on the same lines as Act XLV of 1955 and which made no departure in regard to

the main policy embodied in the earlier Act By virtue of the authority conferred by Act XXIX of 1958, the Government of India constituted a Wage Committee in June, 1958 to fix the rates of wages etc. This Committee made tentative proposals in December 1958, which were circulated to all newspaper proprietors including those of the Express Group. The Committee also classified the newspaper industry into various Classes A to E according to their gross receipts In this classification, the Andhra Prabha Limited, which was treated as a unit was assigned place in Group C. As a result of the recommendations of this Committee, the Express Newspapers Limited had to pay a sum of about two lakhs of rupees a month by way of additional wages to working journalists and the members of the staff.

6. Early in November, 1958, there was a dispute between Express Newspapers Limited and its employees and it was settled through the mediation of one of the Ministers of Madras. However, this did not result in the establishment of peace between the employers and the employees. The management was contemplating either to transfer and sell its publications or to do some other thing in order to relieve itself of the difficulties in carrying on business and further losses. This appears from the resolution passed by the share-holders of the company at an extraordinary general body meeting on the 11th of February, 1959, which reads as follows :

"Considering the difficulties experienced by the company in carrying on its business, this company should cease to do business as proprietors and publishers of newspapers dailies, weeklies and magazines and that the company should transfer and sell its publications to other parties and also sell or hire out or otherwise dispose of its printing plant and machinery and equipment and also lease out its premises at various places."

7. It is claimed on behalf of the respondents that it was in pursuance of this resolution that the Board of Directors sold to the Andhra Prabha Private Limited, Vijayawada as a going concern the proprietary rights of printing and publishing the Andhra Prabha and the Andhra Prabha Illustrated Weekly, which was registered in April, 1959. There-after, correspondence ensued between the employers and the employees in the course of which the latter were informed, among other things, that the Andhra Prabha Private Limited had agreed to take into their service all staff and workers that are connected with the aforesaid business purchased by them at Vijayawada without any interruption of service on the existing terms and conditions of service and with the obligation to pay to all of them in the event of retrenchment, compensation on the basis that their services have been continuous and have not been interrupted by such transfer. This did not satisfy the employees and they wrote to the management impeaching the transaction of sale as a sham and not a real or genuine one resorted to, to defraud them. The assurances of the management to the contrary did not have the desired effect and the employees of the Union decided to go on strike if the following fresh demands formulated by them were not complied with

forthwith :

"1. Payment of gratuity at the rate of one month's wages for every completed year of service or part thereof in excess of six months to every employee of Express Newspapers who was retired subsequent to 1-11-1958.

2. Reinstatement of the nine women clerks whose services were terminated as a measure of punishment following their participation in the protest demonstration conducted by the Union in October-November last.

3. Payment of three months wages as bonus for the financial year 1957-58,"

8. It is said that there being no prospect of resumption of work, the Express Newspapers Private Limited decided to close the publication of all the dailies and periodicals at Madras and notice of this was given to the workers and the working journalists individually as well as by publication in other newspapers.

9. Thereupon, some of the persons working in the Andhra Prabha and the Andhra Prabha Illustrated Weekly Section have filed these petitions for the prayers mentioned above, questioning the bona fides of the promoters of Andhra Prabha Private Limited, Vijayawada and imputing a motive to them to circumvent the recommendations of the Wage Committee and to defeat the lawful claims of the employees. These allegations are refuted by the respondents, who assert that there was nothing sinister in the formation of the Andhra Prabha Private Limited, Vijayawada, that it was for a perfectly legitimate purpose that the company in question was started and that the creation of the company had not in any way affected prejudicially the interests of the erstwhile workers and working journalists and that such of them who were working in the particular department could be absorbed into the new concern on the same conditions of service obtaining in the Express Group.

10. Before we embark upon a discussion on the several problems that present themselves in this enquiry, it is useful to understand the meaning and scope of a writ of scire facias, This is a Latin phrase meaning "that you cause to know". In Wharton's Law Lexicon, this is described as a judicial writ, founded upon some record, and requiring the persons against whom it is brought to show cause why the party bringing it should not have advantage of such record. Osborn in his "Concise Law Dictionary" says that it is a Writ founded upon some record, such as a judgment or letters patent etc., directing the sheriff to make known to the person against whom it is brought to show cause why the person bringing it should not have advantage of the record etc. or where it is used to repeal Letters Patent etc., why the record should not be annulled.

11. This writ is of two kinds. One is satisfaction of a decree in execution. This has become obsolete. The other is issued for the purpose of rescinding Crown grants, charters of or franchises. In England, the Crown used to issue charters authorising companies to do business, the most famous example of such charters being the one issued to the East India Company to make grants or

franchises, such as the right to levy tolls at a Particular place or to ply a ferry or the sole right to the benefits of fisheries etc. When such charters or franchises were granted, there was an implied condition under the doctrine of common law that they could be repealed or rescinded if it appeared that they were obtained by misrepresentation or by fraud. In other words, this was the means adopted for getting rid of the incorporation of a company or franchise or grant given on a misrepresentation. Though it is not abolished, it is now out of use even in England except in Crown Practice on the Revenue side of the King's Bench Division for recovery of Crown debts and also for rescinding Crown grants and charters.

12. We will now consider the limits of the operation of this peculiar type of writ, which is rarely heard of in this country. On this topic, it is useful to refer to a passage in Halsbury's Laws of England. Vol. 11, 3rd Edition Page 153.

"Scire facias on the Crown side of the Queen's Bench Division is a proceeding for the purpose of rescinding or repealing Crown grants, charters and franchises. It must be distinguished from the obsolete writ of scire facias used in aid of executions and from scire facias on the Revenue side of the Queen's Bench Division which was abolished by the Crown Proceedings Act, 1947, Scire facias on the Crown side is still available."

13. This passage indicates that it is available only for the purpose of cancelling or revoking the incorporation of a company created under a charter.

14. The statement of law contained in Halsbury's Laws of England, Vol. 9 (Simonds Edition) Page 99 is also apposite in this context.

"A corporation may be dissolved on proceedings on a scire facias instituted on the Crown side of the Queen's Bench Division and to every Crown grant there is annexed by the common law an implied condition that it may be repealed by scire facias by the Crown.

Proceedings on a scire facias may be taken if the charter has been obtained by fraud or misrepresentation; or if the Crown has granted a charter under a mistake as to facts, or under a misapprehension as to the construction of effect of the charter; or if the Crown has exceeded its powers; or if the corporation has done something which is prohibited or is not authorised by its charter, A subject whose rights are affected by a franchise or charter granted to a corporation may, as of right, procure the cancellation or forfeiture of the charter by scire facias for the prerogative of the Crown is the privilege of, and may be used by, the subject On the fiat of the Attorney General."

15. It is open to serious doubt whether this could be applied to a company incorporated under the Indian Companies Act or under some special enactment, In *Princess of Reuss v. Bos* (1871) LR 5 HL 176, the House of Lords were not prepared to extend this Writ to Companies created under a Statute. There a company was incorporated under the Companies Act, 1863. Some persons, who

were foreigners, formed a company with the aim of raising money in England and for investing it in Germany. For this purpose, they issued two kinds of shares (i) nominative shares and (ii) shares which could be passed from hand to hand, the latter of which was opposed to the principle underlying the Companies Act. On the issue of a certificate by the Registrar, the company was incorporated. After some time, it fell into difficulties with the result that winding up proceedings were started, The objection of one of the share-holders was that the incorporation itself being invalid, the winding up proceedings were not permissible.

This contention was overruled and the incorporation was held to be valid notwithstanding that the memorandum of Association was extraordinary and unusual, that the real object was to attract the company and that the creation of shares that were to pass from hand to hand was contrary to the spirit of the Act of 1862. According to the learned Law Lords, when once a company was born, the only method by which it could be got rid of was by getting it extinguished through the effect of the Act of Parliament which provides for the winding up and not by disincorporation. The speech of the Lord Chancellor (Lord Hatherley) brings out the scope of this writ:

"The question is, therefore, simply whether it has been created. If created, there is no power, given in this Act of Parliament, nor in any other Act of Parliament that I am aware of by which through any result of a formal application, like an application, by *scire facias* to repeal a charter, the company can be got rid of unless it can be got rid of by being extinguished through the effect of the Act of Parliament which provides for the winding up of companies when they ought, from any circumstances whatsoever, to be wound up."

16. This doctrine was to some extent modified by the House of Lords in *Bowman v. Secular Society Ltd.*, 1917 AC 406. Lord Parker observed that the section did not preclude all His Majesty's lieges from going behind the certificate or from alleging that the society was not a corporate body with the status and capacity conferred by the Acts, that such a certificate of registration could not bind the Crown and that the Attorney General on behalf of the Crown could institute proceedings by way of *certiorari* to cancel registration, which the Registrar had improperly or erroneously allowed. The effect of the pronouncement is that either the Attorney-General can initiate proceedings for the cancellation of the certificate or a subject, who is adversely affected by the franchise, could invoke such a writ with the fiat of the Attorney-General.

17. Dealing with the dictum of Lord Parker on the subject. Holdsworth in Vol. IX of "A History of English Law" offers this comment:

"It is true that dicta of great weight assert that the Crown might institute proceedings to attack the validity of its creation, because the crown is not bound, as the subject is bound by Section 17 of the Companies (Consolidation) Act 1908, which makes the certificate of the Registrar absolutely conclusive as to the

fact of incorporation. But as yet there has been no direct decision on the question whether the Crown possess even this modified power.

18. 1917 AC 406 does not render much assistance to the petitioners, who strongly relied upon it, since the fiat of the Attorney General or of the Advocate General is absent in this case.

19. Queen v. Prosser (1848) 50 ER 834 and the Eastern Archipelago Company v. The Queen (1853) 118 ER 988, called in aid by the Counsel for the petitioners for the proposition that any subject could apply for a writ of scire facias do not really carry them anywhere. On the other hand they tend to negative their contention. In (1848) 50 EH 834, the Master of the Rolls (Lord Langdale) remarked:

"The action of scire facias to repeal letters patent is a proceeding of the Crown for the benefit of the public adopted and authorised upon information that the letters patent are void and of no force or effect in law for some such reason as that the conditions upon which the grant was made were not performed or that the grant was improperly made; or in effect, that a monopoly supposed to have been granted legally, has in fact been granted illegally, and to the prejudice of the public or of her Majesty's subjects.

It has been said that the writ issues of course, the fiat of the Attorney General for issuing it being granted as of course. I think that this ought not to be the case; and I would hope, that there is some error or exaggeration in the notion upon that subject which seems to prevail; as it appears to me, that the Attorney General, when applied to for his fiat, without which the writ cannot issue, has an important duty to perform."

20. To a like effect is the dictum in the second one. It is to be borne in mind that these two cases are cases of either a charter or a patent. It is apparent from these two rulings that the fiat of the Attorney General is an essential ingredient of the issue of this type of writ at the instance of a subject. Thus, these two decisions do not lay down anything inconsistent with our view. On the other hand, the rule stated therein accords with the conception indicated by us above.

21. In view of this, it is still a moot question whether the writ of scire facias could be called in aid to get rid of an incorporation effected under the provisions of an enactment and not by virtue of a charter.

22. Assuming that this form of writ survives, could the registration of the company be impugned on any of the grounds, which are urged in these cases, namely, that it was incompetent for the registrar of Companies to issue the certificate having regard to the aims and objects of the company. This contention has to be answered with reference to the powers and duties of the Registrar of Companies. They are defined in Section 33. Before registration of the memorandum and Articles could be effected, certain requirements are to be fulfilled by virtue of that section,

23. It is convenient at this stage to refer to the terms of Section 33 :

"1. There shall be presented for registration to the Registrar of the State in which the registered office of the Company is stated by. the memorandum to be situate:

(a) the memorandum of the company;

(b) its articles, if any, and

(c) the agreement, if any, which the company proposes to enter into with any individual firm or body corporate to be appointed as its managing agent, or with any firm or body corporate to be appointed as its secretaries and treasurers.

2. A declaration by an advocate of the Supreme Court or of a High, Court, an Attorney or a Pleader entitled to appear before a High Court, or a chartered Accountant practising in India, who is engaged in the formation of a company, or by a person named in the articles as a director, managing agent, secretaries and treasurers, manager or Secretary of the company, that all the requirements of this Act and the rules thereunder have been complied with in respect of registration and matters, precedent and incidental thereto shall be filed with the Registrar and the Registrar may accept such a declaration as sufficient evidence of such compliance.

3. If the Registrar is satisfied that all the requirements aforesaid have been complied with by the company and that it is authorised to be registered under this Act, he shall retain and register the memorandum, the articles if any and the agreement referred to in Clause (c) of Sub-section (1) if any."

24. It is manifest that once the conditions envisaged in paragraphs 1 and 2 are satisfied, the Registrar has no option but to register it. It is not competent for him to refuse registration on any extraneous considerations or for any reason other than non-compliance with the provisions of Sub-sections 1 and 2 of Section 33. The only duty cast on the Registrar before he could Register it is to see that the requirements prescribed by Sub-sections 1 and 2 are complied with, It is not within his province to make enquiries into matters, which are unconnected with the conditions enumerated in Sub-sections 1 and 2 or into collateral matters to probe into the motives of the promoters.

25. Indisputably, the provisions of Sub-sections 1 and 2 have been satisfied here. Yet the point presented for the petitioners is that the condition precedent to registration of a company is the existence of a validly incorporated company and if the purpose for which a company is floated is illegal or opposed to public policy, no recognition could be given to it by the Registrar. The admissibility of this argument depends upon the interpretation to be put upon Section 12 of the Indian Companies Act.

26. Section 12, so far as is relevant for this enquiry, runs thus:

(1) Any seven or more persons or where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise

complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

27. Thus the essence of a validly incorporated company is that it should consist of a particular number of persons and that it should be associated for a lawful purpose. It is not the petitioner's case that the promoters of the company fell short of the number needed for the purpose of this section. The only point debated is that this was not started for any lawful purpose. We find it difficult to assent to the proposition that the purpose for which the company was formed is any way unlawful or opposed to any public policy.

28. We may now examine the relevant clause of the Memorandum of Association of the Andhra Prabha Private Limited. Clause III, so far as it is relevant for this enquiry recites the objects of the company to be

1. To carry on business as Proprietors and publishers of any newspapers, journals, magazines, books and other literary works and undertakings,

2. To acquire and take over and carry on the business of publishing of the Madras edition of the Telugu newspaper known as Andhra Prabha and the Madras edition of the Telugu weekly known as Andhra Prabha Illustrated Weekly being newspaper and weekly now being published by the Express Newspapers Private Limited and for this purpose to enter into one or more agreements with the Express Newspapers Private Limited on such conditions and on such terms as may be deemed fit. We are unable to find anything in the objects, which could be regarded as objectionable or unlawful or opposed to public policy. There is nothing illegal in the publishing of a newspaper. Unless the purpose appears to be unlawful *ex facie* or is transparently illegal or prohibited by any statute it could not be regarded as an unlawful purpose. The question "of the motive that induced the founders of a company is unrelated to the scope of Section 12 as it is not a *Held of enquiry* which the section recognises as legitimate. The problem has to be solved quite apart from the motive or the conduct of the individuals forming the association. The only consideration that is material is whether it is permitted by law.

A right is given to every citizen to form a limited concern and so long as there is nothing unlawful or illegal in the objects of the association, that right cannot be denied to him. The fact that this company is calculated to affect the future interests of its workers would not nullify it. It is not suggested that any attempts are being made to carry on the business by illegal methods so the objectives and the means are good. Even if this tends to jeopardise the interests of the petitioners, it cannot enter the determination of the character of the object of the association since it is a collateral consequence.

29. The view of ours gathers support from a judgment of the House of Lords in *Saloman v. Saloman and Co.*, 1897 A C 22. What happened there was this. One Saloman carried on business as a leather merchant in a very satisfactory way for sometime. Encouraged by this, he conceived the idea of starting a limited

company with a nominal capital of 40,000 shares of ₹ 1/- each. The issued shares were only 20,000. He sold all his assets to a limited company which consisted of himself, his wife, daughter and four sons, who each subscribed for one share, the sale being known and approved by the share-holders. In consideration of the transfer of his assets to the company, Solomon took all the shares for himself except those allotted to his wife and children one each.

In part payment of the purchase money, debentures forming floating security were issued to Solomon and these shares gave him the power of voting and all the requirements of the Companies Act were observed. The business was conducted for a while. Then, bad times came and the company had to be wound up. After satisfying the debentures, there was not sufficient money to pay the ordinary creditors. In the course of the winding up, the court of Appeal, in agreement with the judgment of Vaughan Williams J., held that the company was merely an instrument of Solomon, that it was devised to enable him to carry on business in the name of the company with limited liability contrary to the trade intent of the Companies Act of 1862 and to get preference over other creditors of the company by procuring a first charge on the assets by means of such debentures and that the creditors were unaffected by other arrangements.

On appeal, the House of Lords reversed that judgment. The learned Law Lords could not subscribe to the rule stated by the Court of Appeal "that the Act contemplated the incorporation of seven independent bona fide members, who had a mind and a will of their own and were not the mere puppets of an individual who, adopting the machinery of the Act carried on his old business in the same way as before, when he was a sole trader." It was remarked by Lord Chancellor (Lord Halsbury) that the words "seven independent bona fide members with a mind and will of their own and not the puppets of an individual which were not there are by construction to be read into the Act."

According to the learned Lord Chancellor, it would be possible to go behind the certificate of incorporation by proceedings in the nature of *scire facias* by showing that fraud had been committed upon the officer entrusted with the duty of giving the certificate. But when once the company was legally incorporated, it should be treated like any other independent person and the motives of those who took part in floating the company were quite irrelevant in discussing what those rights and liabilities are.

30. We cannot also see our way to accede to the theory that the Registrar before functioning u/s 33 of the Act should enquire into the circumstances under which the company was proposed to be formed. In our considered judgment, not only is such an obligation not laid on him but he would be exceeding his jurisdiction if he should undertake any such thing. It is not within his duty to call upon the parties to lead evidence for this purpose.

31. In this connection we may advert to the pronouncement of the Judicial Committee in *Moosa Goolam Ariff v. Ebrahim Goolam Ariff*. ILR Cal 1. There, the

memorandum of association of a proposed company was signed by two adult persons and by a guardian of the other five members, who were minors at that time, the guardian making a separate signature for each of the minors. Thereupon, the Registrar issued a certificate of incorporation. The Question arose in a suit for certain reliefs whether the company was properly constituted, the memorandum of association not having been signed by the required number of subscribers, five of them being minors not competent to contract. The Privy Council, in disagreement with the Chief Court of Lower Burma, held that the certificate of incorporation was conclusive for all purposes and not merely a *prima facie* answer to such an objection and that courts would not question the validity of the certificate, even assuming that the conditions of registration were not fulfilled.

32. The same concept underlies Section 35 of the Indian Companies Act. This section gives legislative recognition to the dicta of the Judicial Committee in ILR 40 Cal 1 extending the conclusiveness of the certificate to matters precedent and incidental thereto.

33. Thus, the position is firmly established that if a company is born, the only method to get it extinguished is not by assailing its incorporation, since courts could not go behind it but by resorting to the provisions of enactments, which provide for the winding up of companies. It is essential that the objects of association should be considered apart from the motives of the conduct of the individual incorporators, that the company is only an artificial creation and that the distinction should be well marked between its legal entity and its actions. That being the case the only course open to any one who is aggrieved by the constitution of a company is to get rid of it by resorting to winding up proceedings. It is not as if such persons are without remedy.

34. Ample provision is made in the Indian Companies Act in this respect in the shape of Sections 234, 235, 237 and 243. The scheme of these provisions is that the Central Government can suo motu initiate an enquiry into the formation of a company, cause an investigation to be made into its affairs and if it is not satisfied apply to the court to wind up the business. u/s 234, even the Registrar of Companies could, on perusing the documents which a company is required to submit to him under the Act, call for any information that might be necessary and bring it to the notice of the Central Government if they reveal an unsatisfactory state of affairs. It is not necessary for us to examine in detail the various provisions of these sections in this behalf. So, the workers and the working journalists could approach the authorities concerned for redress by invoking these provisions, if the affairs of the company are conducted to their detriment.

35. On the assumption that it is competent for a court to scrutinise the objects of a company, we will now proceed to consider the intent and the purpose of the formation of the company as both sides have requested us to express our opinion on this topic. A fraudulent desire to evade responsibility thrown by the

recommendations of the Wages Committee as accented by the Government by the creation of a dummy company is ascribed by the petitioners to the promoters of Andhra Prabha Private Limited, Vijayawada. We are invited to infer such an intention from two circumstances (i) a going concern, which was worth very much more than ten lakhs was sold for only about seven lakhs of rupees which indicates in the view of the petitioners that it was not financial consideration that was responsible for the transaction now attacked as fraudulent but an anxiety to avoid paying the workers according to the wages structure embodied in the proposals of the Wage Committee, and (ii) that the Express Newspapers Limited reserved the right of advertisement and that the new company would have nothing to do with advertisement revenue. According to the petitioners, this device was adopted with a view to show a reduced income since the main stay of any newspaper is advertisement revenue. Without that the profits of a newspaper industry would be considerably low, which would deprive the workers and working journalists of a decent bonus.

36. On the other hand, it is stated for the respondents that the creation of the company in dispute was quite a bona fide act and that there were very weighty reasons for its formation with its registered office at Vijayawada. Sri Viswanatha Sastri, learned counsel for respondents 2 to 4, urges that in starting this company to publish a Telugu daily and weekly at Vijayawada, the founders went in a way meeting the past demands of the workers and were also giving effect to the recommendations of the Press Commission. It is pointed out that the workers and the working journalists were agitating for the separation of different units run by Express Newspapers so that the profit or loss of each of the periodicals might be separately accounted for and that it was their grievance that profits accruing from some of the prosperous dailies were absorbed by the units which were run at a great loss. In fact one of the complaints made in the affidavit itself is that the clubbing together of the several papers was prejudicial to the interests and prospects of working journalists. Further, it is said that the Press Commission itself in paragraph 1207 of its report recommended as follows:

"We would like, if it were possible that every paper should be constituted as a separate unit so that its profits and losses are definitely ascertainable and both the proprietor and the employees know where they stand. In the case of multiple editions, each unit should be separated from the others in the matter of accounts."

37. It is to carry out the recommendations of the Press Commission and to mollify the agitators in that behalf that the step now challenged was taken. The further case of the respondents is that endless trouble was created by the workers and the working journalists and so it was felt that the Express Newspapers Limited could not afford to carry on the business of publishing newspapers without incurring further loss and for that purpose the Directors of Express Newspapers Limited thought of selling their publications to the new company. We are told and it is not disputed that the machinery that was sold to

the new concern was pledged to the United Commercial Bank and that it was only released on payment of 3 lakhs of rupees by the Andhra Prabha (Private) Ltd. Another reason offered in this behalf is that after the formation of the State of Andhra Pradesh, Madras was not the place for the production of a Telugu paper, since only a 1000 copies out of 55,000 copies of Andhra Prabha were sold in Madras and that Vijayawada would be a convenient centre for publishing Telugu papers as a separate and distinct unit.

38. It is said on behalf of the respondents that the incorporation of the new company is not calculated in any way to prejudice the interests of the workers and the working journalists, as their conditions of service would be the same in the new concern and that the place assigned to Andhra Prabha in the classification would not be disturbed in the new set up also.

39. Taking up first ground of attack, we feel that it is unsubstantial. We cannot appreciate how such a move on the part of those controlling the destinies of the Express group of papers could minimise the responsibility of the establishment to pay higher wages or adversely affect the position of the workers and the working journalists. As a result of the under-valuation, the net profits to be earned by this paper would be considerably swelled for the reason that the interest to be deducted would be very much less. On this account, the under-valuation far from being harmful to the workers, places them in a position of vantage in regard to bonus etc. and it is hardly beneficial to the employers.

If really the persons responsible for the promotion of this company had in contemplation the enrichment of themselves at the expense of the workers and the working journalists, they would have inflated the value they have paid to the going concern, so that a good part of the profits might be consumed by the interest payable on the capital. For these reasons, we are not persuaded that cheap price was conceived to defraud the employees of their legitimate claims.

40. As regards the reservation of the right of advertisement, it is denied in the counter-affidavit. It is stated that the right of publication of a paper carries with it the right of advertisement as being one of the component parts of the publication of a paper. The rights of printing and publishing the Telugu daily and weekly were unreservedly sold to Andhra Prabha Private Limited and there is no warrant for the complaint that the advertisement rights were not conveyed to the new company.

41. Our attention was also drawn to the agreement dated 2-4-1959 entered into between the Andhra Prabha (Pr.) Ltd. and the Express Newspapers (Pr.) Ltd., wherein it was stipulated that all the proprietary rights in those papers together with all pending contracts including rights and obligations under such contracts with the newspaper selling agents, subscribers to the journals and advertisers and advertising agencies in the aforesaid journals were conveyed to the new company. That apart, we are unable to see how Express Newspapers Limited could keep to themselves this right Or what advantage they would gain by such a

step. Surely, unless it is paid for, advertisements cannot be inserted in these papers and such revenues as are derived from this source have to be treated as the income of this unit. It follows that much weight cannot be attached to these complaints.

42. Coming now to the case of the respondents, there is much substance in the first reason. That there is a recommendation of the Press Commission favouring the constitution of the Telugu paper as a separate unit is not open to doubt. Next the affidavit as also the counter-affidavit seem to support the theory that the workers and the working journalists also were making such a demand.

43. It is unnecessary for us to ascertain the truth or otherwise of the other reasons adduced in support of the formation of the company. But one thing stands out prominently, namely, that the steps now impugned cannot in any way affect the position of the petitioners in regard to their conditions of service, having regard to the agreement and the stipulations between the Express Newspapers (Pr.) Ltd. and the Andhra Prabha Private Limited which we have set out in the above narration. Under those contracts, the new company is under an obligation to take into their service all the employees connected with these two Telugu papers on the same conditions of service and without any interruption. The purchasers were also bound to pay these persons in the event of retrenchment, compensation on the basis that their services have been continuous and have not been interrupted.

It is alleged in the counter-affidavit and it is not traversed in the reply affidavit that dues by way of retrenchment compensation, gratuity etc., amounting to Rs. 70,9480/- had been paid to the employees of the Express group of papers. We cannot, therefore, understand what grievance the petitioners could have by the publication of these Telugu papers from Vijayawada. In these circumstances; we are not convinced that there is much foundation for the complaint that the founders or the promoters of the company had any evil designs or were actuated by the fraudulent object of defeating the rights and privileges of the workers and working journalists connected with these two papers. At any rate, the objectives attributed to the promoters are not apparent to us. However, it does not preclude the petitioners from availing themselves of such remedies as might be open to them as and when necessity arises. In our opinion, the petitioners misconceived their remedy in approaching this court.

44. For the above reasons, we dismiss these writs of the 2nd respondent in W. P. No, 616 of 1959. Advocate's fee is fixed at Rs. 250/-.

W. P. No. 511 of 1959.

The petitioner, who is a staff reporter of the Express Newspapers Limited, seeks the issuance of a writ of certiorari to quash the authentication of a declaration made by one Swami, Printer and Publisher of Indian Express, Vijayawada.

The declaration made by the said Swami was in connection with the publication

of the Indian-Express by the Andhra Prabha Private Ltd., Vijayawada. We have set out the facts and the circumstances leading to the formation of Andhra Prabha Private Limited, Vijayawada and it is not necessary to repeat them here. At that time, this concern seems to have thought of publishing an edition of the Indian Express from Vijayawada also. It is in that context that the declaration, which is now assailed, was made by the said Swami.

The contention advanced on behalf of the petitioner is that the authentication of the declaration was contrary to the terms of Section 6 of the Press and Registration of Books Act, 1867 in that the Magistrate, who authenticated it did not satisfy himself that the newspaper proposed to be published does not bear the same title as the Indian Express that was being published from Madras. We feel that this argument is utterly devoid of any substance. Section 6 of the Press and Registration of Books Act says:

"Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Provided that where any declaration is made and subscribed u/s 5 in respect of a newspaper, the declaration shall not. save in the case of newspaper owned by the same person be so authenticated unless the Magistrate is satisfied from such inquiry as he thinks fit to make from the Press Registrar or otherwise that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State."

It is clear from the proviso that the declaration will be hit at by it only if another newspaper with the same name or title is sought to be published. That could have no application when the same paper is sought to be published from more than one centre. The proviso would come into play when a different printer and publisher attempts to bring into existence another newspaper with the same title as that pertaining to an existing paper. Such a situation does not obtain here. Therefore, the authentication does not in any way violate Section 6.

Further, this court could not nullify such an authentication of declaration. It is for the authorities concerned to deal with that matter. Quite apart from it this is no longer a live issue since the attempt to publish Indian Express from Vijayawada seems to have been given up. That paper has not yet been published from Vijayawada. The publication of the paper should be made within 43 days of the authentication of declaration. For these reasons, this petition must be dismissed.

The same reasoning applies to the relief of a similar nature asked for in W. P. No. 161 of 1959, That relates to the declaration made in connection with the publication of the Telugu daily and weekly. It is to be remembered that the right to publish those papers was purchased by the Andhra Prabha Private Limited and consequently there will be only one publication of them at Vijayawada and it ceases to be published at Madras. In these circumstances the prayer for that

relief in W. P. No. 616 of 1959 is negatived.